

Anticipated joint venture between ForFarmers N.V. and Boparan Private Office Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7007/22

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 21 December 2022. Full text of the decision published on 15 February 2023.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. On 30 June 2022, ForFarmers N.V., via ForFarmers UK Holdings Limited, and Boparan Private Office Limited, via Amber REI Holdings Limited, entered into a series of agreements to establish a joint venture with the purpose of merging their respective businesses and operations in the production of animal nutrition products, namely ForFarmers UK Limited (**ForFarmers UK**) and 2 Agriculture Limited (**2Agriculture**) (the **Merger**).
2. The Competition and Markets Authority (**CMA**) found that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of (i) horizontal unilateral effects in the supply of meat poultry feed in a number of local areas in the UK; and (ii) as a result of vertical effects in the downstream supply of chicken in the UK, as the Merger could lead to foreclosure by the combined business of smaller poultry producers (including growers) in the same local areas. The Parties have until 30 December 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).

3. One of the parties to the joint venture, the ForFarmers group, is a European manufacturer and supplier of animal feed based in the Netherlands, and listed on Euronext Amsterdam. It is active in the UK through its indirectly wholly owned subsidiary, ForFarmers UK. In this decision, **ForFarmers** refers to ForFarmers N.V. and its subsidiaries.
4. The other party to the joint venture is a group of companies operated by, and under the common ownership of, Ranjit Boparan and his family interests, through Boparan Private Office Limited and Boparan Holdco Limited (collectively referred to, together with their subsidiaries, as **Boparan**).
5. Boparan oversees one of the UK's largest food businesses and manages a group of companies with activities covering (among others) food production and supply. A primary focus of Boparan's food business is the supply of poultry products, in particular chicken, and to a lesser extent turkey, in the UK.
6. Boparan, through 2Agriculture, is also active in the production and supply of conventional (ie non-organic) poultry feed. 2Agriculture is one of the UK's largest suppliers of poultry feed by volume produced and uses part of its production to supply a company affiliated with Boparan (Hook 2 Sisters Limited, **H2S**), and third-party growers.
7. ForFarmers and Boparan are together referred to as the **Parties**. For statements referring to the future, the businesses ForFarmers and Boparan are contributing towards the joint venture (generating combined UK sales exceeding £800 million per year) are together referred to as the **Merged Entity**. Post-Merger, ForFarmers will hold a 50.1% interest and Boparan a 49.9% interest in the Merged Entity.
8. In the UK, the Parties compete in the supply of conventional compound poultry feed (including both meat poultry feed and layer poultry feed, as defined below) in East Anglia, North Wales, the North of England and in the Scottish Borders.
9. The CMA has assessed the impact of the Merger on (i) the supply of conventional compound meat poultry feed (**meat poultry feed**); and (ii) the supply of conventional compound layer poultry feed (**layer poultry feed**). Meat poultry feed is primarily feed given to chickens raised for meat, and also includes feed given to ducks and turkeys raised for meat. Layer poultry feed is primarily given to egg-laying hens.
10. The CMA assessed how the Merger could affect competition in the local areas around the Parties' feed mills. In particular, the CMA considered competition in catchment areas of [70-80] miles around the Parties' 19 mills (reflecting where 80%

of the Parties' customers are located on average around the Parties' mills). The CMA also considered how the Merger could affect competition on a national basis in UK.

11. The CMA determined that competition concerns would arise in any local area where the Parties would have a combined share of supply of 35% or more, with an increment brought about by the Merger of 5% or more. In determining this threshold, the CMA took into account a range of evidence and the specific circumstances of this case, including the limited spare capacity in the industry; that both Parties are part of a limited set of national competitors, who present a stronger constraint than smaller local competitors; and the high proportion of customers that indicated concerns about the Merger. The CMA also took into account constraints from outside the local chicken feed markets, in particular from suppliers outside the relevant catchment areas, and from suppliers of pig feed who have some ability to switch to supplying chicken feed.
12. Applying the 35% threshold, the CMA believes that the Merger gives rise to competition concerns (ie a realistic prospect of an SLC) in the supply of meat poultry feed at a local level within the catchments centred on the Parties' Burston, Bury, Llay and Preston mills. These mills are located across East Anglia, North Wales, and the North of England. The CMA found that in each of these local areas, the Merged Entity would account for a significant proportion of meat poultry feed supplied to third parties (50-60% in the case of Burston, Bury and Llay and 40-50% in the case of Preston). The CMA is therefore concerned that the Merged Entity would not face sufficient competition after the Merger, which could lead to chicken growers paying more for their feed or getting feed of a lower quality or facing worse quality of service compared to the situation without the Merger.
13. The CMA is also concerned that in each of these four local areas, the Merged Entity could harm the competitiveness of downstream chicken producers (including growers) that compete with the Boparan chicken business (ie it could foreclose these competitors). For example, the Merged Entity could refuse to supply feed to Boparan's rival chicken suppliers or increase the price of the feed, or worsen the quality of the feed supplied to these customers. The CMA found that the Merged Entity would have the ability to take steps to harm competing chicken growers because the Merged Entity will supply a large proportion of chicken feed in these local areas, competing feed suppliers in those areas have limited capacity (and therefore limited ability to increase their supply to downstream chicken growers and processors), and chicken feed is an important input for downstream chicken growers. The CMA also found that the Merged Entity would have the incentive to harm competing chicken producers (including growers), taking into account a range

of evidence, including the minimal losses that such a strategy would entail for the Merged Entity in the supply of chicken feed, and Boparan being well-placed to capture any downstream business that competing chicken growers and processors might lose as a result of this strategy.

14. Furthermore, the CMA concluded that such a strategy to harm the competitiveness of competing chicken growers could result in substantial harm to overall competition downstream in the supply of chicken in the UK. While large chicken suppliers that have their own in-house supply of meat poultry feed are unlikely to be harmed, the CMA is concerned that the foreclosure strategy could substantially harm smaller chicken producers (including growers) that do not have their own in-house supply of feed. A foreclosure strategy could also make it more difficult for new suppliers of chicken to enter the UK market as they would likely find it more difficult to find suitable and affordable sources of feed. The CMA notes that the supply of chicken in the UK is already a concentrated sector and foreclosure of these smaller, non-integrated chicken growers and processors (or increased barriers to entry) could lead to further concentration in the supply of chicken.
15. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the downstream supply of chicken in the UK arising from the foreclosure by the Merged Entity of poultry meat producers (including growers) competing with Boparan at a local level, within the catchments identified in paragraph 12.
16. The CMA also investigated potential vertical effects arising from the foreclosure by the Merged Entity of rival meat poultry feed suppliers, and in particular AB Agri. This is because AB Agri currently supplies meat poultry feed to Boparan (through one of its affiliated companies). However, the CMA believes that the available evidence taken in the round indicates that the Merged Entity will not have the ability to foreclose rival meat poultry feed suppliers at a local level, and in particular AB Agri.
17. The CMA is therefore considering whether to accept undertakings under section 73 of the Act.

ASSESSMENT

Parties

ForFarmers

18. ForFarmers is a European animal feed supplier with activities in the Netherlands, Germany, Belgium, Poland and the UK, that had worldwide turnover of approximately £2.3 billion in the year ending 31 December 2021, approximately £560 million of which was generated in the UK.¹
19. In the UK, ForFarmers produces and supplies conventional blended feed for ruminants (eg cows and sheep), conventional compound feed for ruminants and monogastric animals (eg pigs and poultry) and organic feed for ruminants, poultry and pigs. ForFarmers has 14 feed mills and blend plants at 13 sites throughout the UK which manufacture nearly 2 million tonnes of animal feed per year. It sells all of the feed it produces to third parties.²

Boparan

20. Boparan manages a group of companies with activities covering commercial and residential property, restaurants, farming, as well as a range of activities relating to food production and supply. Specifically:
 - (a) Boparan, through its UK-based animal feed milling business 2Agriculture, is active in the production and supply of conventional compound poultry feed. 2Agriculture, currently under the direct control Amber REI Holdings Limited (**AREIL**) (a wholly-owned subsidiary of Boparan), has 5 feed mills in the UK manufacturing approximately 1.1 million tonnes of poultry feed per year, together with an extrusion plant to manufacture Extrupro, a partial soy replacement.³ Approximately [70-80]% of volumes produced by 2Agriculture is supplied to H2S and therefore used internally.⁴ The remainder is sold on the open market. 2Agriculture had UK (and total worldwide) turnover of approximately £398 million in the year ending 1 January 2022.⁵

¹ Final Merger Notice submitted by the Parties to the CMA on 24 October 2022 (**Merger Notice**), paragraphs 2.1 and 6.1.

² Merger Notice, paragraphs 2.1-2.3.

³ Over [80-90]% of all Extrupro produced by 2Agriculture in 2021 was used internally for its own feed (Merger Notice, paragraph 2.6.).

⁴ Merger Notice, paragraph 9.33.

⁵ E-mail from Freshfields Bruckhaus Deringer LLP to the CMA on 15 December 2022, 18:27.

- (b) 2 Sisters Food Group Limited (**2SFG**) is Boparan's core food production business and is one of the UK's largest suppliers of primary and processed chicken to retailers, food service companies, and other industrial food processors in the UK and Europe.⁶ The business is active across the entire chicken supply chain, from rearing live birds on farms to cutting and processing the birds in preparation for supply to customers.⁷
- (c) Boparan, through 2SFG, also has a 50% interest in the H2S joint venture, which owns a number of broiler farms that are active in the supply of live chickens. H2S's activities concern the rearing and growing of poultry for supply to 2SFG and other Boparan entities, such as Banham Poultry (**Banham**), Bernard Matthews, and Shazan Foods (a supplier of halal meat products).⁸

Transaction

21. On 30 June 2022, the Parties entered into a series of agreements relating to the establishment of a joint venture with the purpose of merging the Parties' respective businesses and operations in the production of animal nutrition products, namely ForFarmers UK, used as the joint venture entity (the **JV**), and 2Agriculture. This included:
 - (a) a share purchase agreement (**SPA**) between AREIL, ForFarmers UK and ForFarmers UK Holdings Limited (**ForFarmers Holdings**) relating to the sale and purchase of 2Agriculture from AREIL to ForFarmers UK in connection with a joint venture arrangement to be entered into between AREIL, ForFarmers UK and ForFarmers Holdings;⁹ and
 - (b) a joint venture agreement between ForFarmers UK, ForFarmers Holdings and AREIL relating to ForFarmers UK.¹⁰
22. On the same date, 2Agriculture, H2S and 2SFG also [~~§~~].¹¹
23. Pursuant to the terms of the SPA, ForFarmers (via ForFarmers Holdings) will acquire the entire issued share capital of 2Agriculture from AREIL and in return will issue 'consideration shares' in the JV to AREIL. This will result in AREIL acquiring a

⁶ Merger Notice, paragraph 2.6.

⁷ ME/6975/21 – [Boparan Private Office/Banham, 25 March 2022](#), paragraph 16.

⁸ Merger Notice, paragraph 2.6.

⁹ Annex Q8.01 to the Merger Notice.

¹⁰ Annex Q8.02 to the Merger Notice.

¹¹ Merger Notice, paragraph 2.22 and Annex Q8.03 to the Merger Notice.

49.9% shareholding in the JV, while the remainder shareholding of 50.1% will be retained by ForFarmers Holdings.¹²

Rationale for the transaction

24. In relation to the Merger rationale, the Parties submitted that the JV will:
- (a) Support ForFarmers in increasing its production of poultry feed by utilising existing spare capacity.¹³
 - (b) Allow the Parties to optimise feed mill capacity and logistics while benefitting from the mutual exchange of know-how and expertise.¹⁴
 - (c) Be able to [REDACTED].¹⁵
 - (d) Allow Boparan to reduce its reliance on [REDACTED].¹⁶ On this point, post-Merger, [REDACTED]. The Parties submitted that [REDACTED].¹⁷
 - (e) Give the Merged Entity sufficient comfort to make relationship-specific investments (such as optimising mill capacities on both a short and long-term basis), which in turn will lead to efficiencies for the JV.¹⁸
25. The internal documents reviewed by the CMA are broadly consistent with the Parties' stated rationale for the Merger. However, in the case of Boparan, the internal documents received by the CMA strongly point to a transaction rationale focusing on [REDACTED], which would reduce risks to Boparan from a supply chain perspective. In addition, this would remove the [REDACTED]. In more detail:
- (a) Internal documents emphasise that the JV would allow [REDACTED].¹⁹
 - (b) Several internal documents discuss the [REDACTED]²⁰ and the fact that [REDACTED].²¹ Further, internal documents suggest that an additional incentive for the Merger is [REDACTED].²²

¹² Merger Notice, paragraph 2.11 and Annex Q8.01 to the Merger Notice.

¹³ Merger Notice, paragraphs 2.16, 14.33 and Figure 3; Parties' response to the Issues Letter submitted to the CMA on 2 December 2022 (**Issues Letter Response**), slide 12.

¹⁴ Merger Notice, paragraphs 2.16, 2.18, and 2.39; Issues Letter Response, slide 12.

¹⁵ Merger Notice, paragraphs 2.24-2.25; Issues Letter Response, slide 12.

¹⁶ Merger Notice, paragraphs 2.18, 2.22-2.24 and 14.33.

¹⁷ Merger Notice, paragraphs 2.28-2.29.

¹⁸ Merger Notice, paragraph 2.27; Issues Letter Response, slide 12.

¹⁹ Boparan Annexes Q9.104 (pages 3 and 7), Q9.102 (pages 7 and 36), and Q9.119 (page 2).

²⁰ Boparan Annex Q9.104 (page 3) and internal document AMB-BOP-000003758 (page 1).

²¹ Boparan Annex Q9.119 (page 2).

²² Boparan Annexes Q9.102 (page 7), Q9.104 (page 2), Q9.119 (page 2), and Q9.124 (page 4).

Procedure

26. The Merger was considered at a Case Review Meeting.²³

Industry Background

27. ForFarmers and Boparan (through 2Agriculture) overlap solely in the production and supply of conventional compound poultry feed in the UK, including both meat poultry feed and layer poultry feed (as explained further below).
28. Conventional (ie non-organic) animal feed products are typically made up of agricultural raw materials (eg wheat, soy) and pre-mix (ie feed additives), and can be produced in three forms:
- (a) singles (or straights) are made up of a single substance (eg grain or sugar beet pulp) and can be used to home mix feed or as an input into blended and compound feeds;
 - (b) compound feeds (compounds) are combinations of ingredients mixed together, ground, and processed to suit the animals' nutritional requirements, and then generally pelleted; and
 - (c) blended feeds (blends) are an unprocessed mixture of raw materials (ie that have not been ground), and that can be used as complements to singles.²⁴
29. While pigs and ruminants (mainly dairy and beef cattle, and sheep) can be fed compounds, meals and also blends, poultry are unable to eat blends, as their digestive systems require feed to be ground.²⁵ In practice, the majority of monogastric feed (ie feed for pigs and poultry) produced in the UK is compound feed.²⁶
30. Poultry feed comprises two sub-categories of feed:
- (a) meat poultry feed includes feed for 'broiler' chicken (the term used for chickens reared for meat) as well as feed for other poultry reared for meat such as turkey or duck. While there are some differences in the feed additives used for turkey and broiler feed, both types of feed involve the same raw materials and

²³ [Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2021, from page 46.

²⁴ Merger Notice, paragraphs 13.2-13.3; ME/6785/18 – [ForFarmers/Bowerings Animal Feeds](#), 13 May 2019, paragraph 22; ME/6507/14 - [ForFarmers/Countrywide Farmers](#), 13 April 2015, paragraph 19; ME/3637/08 – [John Thompson/AB Agri](#), 24 June 2008, paragraph 19.

²⁵ Meals are semi-processed blend alternatives where the feed ingredients have been ground before being mixed and are produced in a mash rather than pellet form.

²⁶ Merger Notice, paragraph 13.12.

are very similar in manufacturing terms and are both supplied as either pellets or crumbs.²⁷ and

(b) layer poultry feed is used to feed egg-laying hens.

31. Meat poultry feed and layer poultry feed differ in both form and properties insofar as (i) meat poultry feed requires pelleting post grinding and mixing to provide the birds with the form of feed they need and (ii) meat poultry feed has a higher protein content whereas egg-laying hens require higher proportions of phosphorous, vitamins, minerals and calcium.²⁸
32. As discussed in paragraph 20, Boparan is active across the poultry supply chain, from rearing live birds to cutting and processing them for customers. Boparan is therefore active both upstream, through its feed milling operations, and downstream, through its farming and processing operations.²⁹
33. The UK poultry sector, in particular chicken, is an important industry for consumers. Poultry is the most consumed meat in the UK by some margin³⁰ and the supply of chicken accounts for the vast majority of the volume of poultry meat produced annually.³¹ The market for chicken meat in the UK has been growing each year for several years,³² resulting in increased demand for protein products. Forecasts estimate that chicken production will need to increase by 5 million birds per week, requiring an additional 1 million tonnes of feed per year by 2050.³³
34. In recent years, there have been several mergers and acquisitions in the UK poultry industry,³⁴ and Boparan is today the largest chicken supplier in the UK, with a share of nearly [30-40]% in terms of the volume of chickens slaughtered.³⁵ The overall

²⁷ As part of its merger investigation, the CMA asked third parties questions based on a segmentation between broiler feed and layer poultry feed, hence this decision contains references to broiler feed instead of meat poultry feed. However, as meat poultry feed primarily comprises broiler feed the CMA considers that evidence relevant to broiler feed extends to meat poultry feed.

²⁸ Merger Notice, paragraphs 13.36 and 13.39; notes of call with third parties ([§<]).

²⁹ A detail of the farms and manufacturing facilities involved at the different stages of the poultry supply chain is set out in the CMA's decision in ME/6975/21 – *Boparan Private Office/Banham*, 25 March 2022, paragraph 21.

³⁰ *Agricultural output – Meat consumption - OEC Data*, last accessed on 21 December 2022.

³¹ *Monthly statistics on the activity of UK hatcheries and UK poultry slaughterhouses*, based on annual production for 2021, last accessed on 21 December 2022.

³² *Monthly statistics on the activity of UK hatcheries and UK poultry slaughterhouses*, last accessed on 21 December 2022; note of call with third party ([§<]).

³³ Rapley's Planning Statement for AB Agri Ltd and British Sugar Plc, 11 July 2022, ref: 20-00156, available at:

<https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RFBGM0PD0CW00>, last accessed on 21 December 2022.

³⁴ See, for example, ME/6975/21 – *Boparan Private Office/Banham*, 25 March 2022; ME/6703/17 – *Cargill Incorporated/Faccenda Investments Ltd*, 7 December 2017; ME/6649/16 – *Boparan Private Office/Bernard Matthews*, 12 January 2017; ME/6013/13 – *Boparan Holdings/Vion Poultry*, 18 June 2013; ME/4539/10 – *2 Sisters Property BV/Storteboom Group BV*, 28 June 2010.

³⁵ ME/6975/21 – *Boparan Private Office/Banham*, 25 March 2022, Table 1.

supply of chicken is concentrated, with three firms – Boparan, Moy Park and Avara – accounting for more than 80% of the supply.³⁶

35. The UK compound feed industry has similarly seen consolidation (including through merger and acquisition activity³⁷), and in its annual report for 2021 ForFarmers stated that: ‘the three largest [compound] feed companies in the United Kingdom – AB Agri, ForFarmers and 2Agriculture – have a combined market share of around 35%’.³⁸ Further, the CMA notes that each of Boparan’s main rivals in the supply of chicken in the UK (namely, Moy Park, Avara and Cranswick) are partially or fully vertically integrated and therefore absorb a substantial proportion of their own meat poultry feed production (and, doing so, rely less or not at all on volumes sold on the open marketplace).³⁹
36. Evidence from the CMA’s merger investigation in this case suggests that the animal feed industry is currently facing challenges owing to the aging and inefficient condition of the feed milling infrastructure in the UK as a result of under-investment, and limited spare capacity in the industry.⁴⁰

Jurisdiction

37. A relevant merger situation exists where there are arrangements in progress or in contemplation which, if carried into effect, will lead to two or more enterprises ceasing to be distinct and either the turnover or the share of supply test is met.⁴¹ Two or more enterprises will cease to be distinct if they are brought under common ownership or control.⁴²
38. The CMA believes that the Merger (as described in paragraph 21 above) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.⁴³

³⁶ ME/6975/21 – *Boparan Private Office/Banham*, 25 March 2022, paragraph 65 and Table 1.

³⁷ See, for example, ME/6785/18 – *ForFarmers/Bowerings Animal Feeds*, 13 May 2019; ME/6507/14, *ForFarmers/Countrywide Farmers*, 13 April 2015; ME/40957/09 – *AB Agri/JE Porter*, 19 April 2009.

³⁸ *For the Future of Farming Annual Report 2021* (page 18), last accessed on 21 December 2022. See also, *Associated British Foods plc’s Annual Report 2022* (page 20), last accessed on 21 December 2022.

³⁹ In the Issues Letter Response, the Parties submitted that the market is pushing meat poultry feed suppliers to vertically integrate (Issues Letter Response, paragraph 1.2(a)(i)). In addition, the Parties’ internal documents, in particular ForFarmers’, [redacted] (for example, ForFarmers Annexes Q9.08 (pages 4 and 5) and Q9.10 (page 7)).

⁴⁰ Rapley’s Planning Statement for AB Agri Ltd and British Sugar Plc, 11 July 2022, ref: 20-00156, available at: <https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RFBGM0PD0CW00>, last accessed on 21 December 2022; notes of call with third parties ([redacted]).

⁴¹ *CMA2revised*, January 2021, chapter 4; section 23 of the Act.

⁴² Section 26 of the Act.

⁴³ Section 33(1)(a) of the Act.

39. Each of ForFarmers, Boparan, ForFarmers UK and 2Agriculture is an enterprise within the meaning of section 129 of the Act. As a result of the Merger, ForFarmers (via ForFarmers Holdings) will acquire the entire issued share capital of 2Agriculture, while Boparan (via AREIL) will acquire 'consideration shares' in the JV. This will result in Boparan (via AREIL) acquiring 49.9% of the voting rights in the JV and ForFarmers (via ForFarmers Holdings) retaining 50.1% of the voting rights in the JV.⁴⁴
40. The CMA found that ForFarmers (via ForFarmers Holdings) will have a controlling interest in the JV. Boparan (through Ranjit Boparan) will be able to exert at least material influence over the JV by virtue of:
- (a) AREIL's voting rights in the JV of 49.9%; and
 - (b) Consultation rights in respect of key areas regarding the strategic decision of the JV. In particular, Ranjit Boparan's interest in, and experience gained via, businesses active in neighbouring markets, including his controlling interest in the H2S joint venture [X], and his controlling interest in 2SFG which is [X] H2S's largest customer.⁴⁵
41. The CMA believes that the existence of a long-term supply agreement⁴⁶ executed as part of the JV agreements and to which Boparan (through both H2S and 2SFG) is a party, further supports this conclusion.⁴⁷
42. Accordingly, ForFarmers (via ForFarmers Holdings) will cease to be distinct from 2Agriculture and Boparan (via AREIL) will cease to be distinct from ForFarmers UK.
43. The combined UK turnover of the enterprises contributed to the JV exceeds £70 million,⁴⁸ so the turnover test in section 23(a)(b) of the Act is satisfied.
44. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
45. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 27 October 2022 and the statutory 40 working day deadline for a decision is therefore 21 December 2022.

⁴⁴ Merger Notice, paragraphs 2.50-2.51; Annex Q8.02 to the Merger Notice, clause 8.9.

⁴⁵ Merger Notice, paragraph 2.54. In light of these factors, the Parties also submitted that they cannot exclude that Boparan will acquire material influence over the JV.

⁴⁶ Annex Q8.03 to the Merger Notice.

⁴⁷ Annex Q8.02 to the Merger Notice.

⁴⁸ See paragraphs 19 and 20(a).

Counterfactual

46. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁴⁹
47. In this case, the CMA has not seen any evidence supporting a different counterfactual, nor have the Parties or third parties put forward arguments in support of one. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

48. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.⁵⁰ It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.⁵¹
49. While market definition can be an important part of the overall merger assessment process, the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, captures the competitive dynamics more fully than formal market definition.⁵² There may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market definition (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether particular products or services fall within the relevant market).⁵³

⁴⁹ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

⁵⁰ [CMA129](#), March 2021, paragraph 9.1.

⁵¹ [CMA129](#), March 2021, paragraph 9.2.

⁵² [CMA129](#), March 2021, paragraph 9.2.

⁵³ [CMA129](#), March 2021, paragraph 9.5.

Product scope

Parties' submissions

50. The Parties submitted that all types of conventional animal feed form part of a single frame of reference as the vast majority of all feed is composed of similar raw materials, and is processed and delivered in similar ways.⁵⁴ However, in line with the CMA's decision in *ForFarmers/Bowerings*, the Parties recognised that the narrowest product frame of reference is the supply of conventional compound poultry feed.⁵⁵
51. The Parties acknowledged that there is limited demand-side substitutability between broiler and layer feed, on the basis that the different types of poultry require different feed mixes, reflecting in particular the fact that broilers need to be grown very quickly and to the exact proportions required by poultry meat processors at a precise time.⁵⁶
52. But the Parties submitted that there is a high degree of supply-side substitutability between both sub-types of poultry feed and between feeds produced for different species more generally.⁵⁷ According to the Parties, this is because:
- (a) Suppliers can adjust the relative quantities of the various input ingredients and the process method (ie crumb or pellet) to better cater for animals at different stages of development and different poultry species (eg turkeys or chickens).
 - (b) While the production of broiler feed requires an additional processing step (pelleting) and a mill would need to install a pellet press, crumbler and fat sprayer to produce broiler feed, the Parties submitted that this would only require a modest level of investment of around £750,000 in total and could be ordered and installed in approximately six months.
 - (c) Poultry feed producers can and regularly do switch between broiler and layer poultry feed in order to make use of spare capacity and largely the same

⁵⁴ Merger Notice, paragraphs 10, 13.1, 13.4-13.18, and 13.23. On the basis that 2Agriculture does not produce organic feed, the Parties submitted that only the supply of conventional feed is relevant in considering the relevant product frame of reference (Merger Notice, paragraph 13.1).

⁵⁵ Merger Notice, paragraph 12.9; Issues Letter Response, slide 31. The Parties submitted that the majority of monogastric feed produced in the UK is compound feed, and acknowledged that the CMA has previously found that growers of some types of animals, such as poultry, might prefer compound over blended feeds for reasons including the better consistency in its nutritional value of the pellet form (Merger notice, paragraph 13.12). See also, ME/6507/14 - [ForFarmers/Countrywide Farmers](#), 13 April 2015, paragraphs 24-29.

⁵⁶ Merger Notice, paragraph 13.36.

⁵⁷ Merger Notice, paragraphs 13.13 and 13.37.

suppliers compete to supply both products, with most broiler feed suppliers supplying layer poultry feed and vice versa.⁵⁸

CMA's analysis

53. Across previous decisions, the CMA has used different product segmentations according to what was appropriate to the case and the evidence available at the time. Across these decisions, the CMA segmented the supply of animal feed by category of feed and type of animal, and used separate product frames of reference for:
- (a) Conventional compound feed for each of ruminants, pigs and poultry separately. Regarding the segmentation between pig and poultry feed specifically, the CMA previously found that feed producers may not have the ability or incentive to switch feed production quickly between pig and poultry feed;⁵⁹
 - (b) Conventional blended feed for ruminants; and
 - (c) Organic compound feed for each of ruminants, pigs and poultry separately.⁶⁰
54. The CMA considers that there is no reason to depart from the approach taken in *ForFarmers/Bowerings* to use separate product frames of reference for conventional compound feed, conventional blended feed and organic compound feed as third-party evidence did not indicate that these categories of feed are part of a single frame of reference. On the basis that the Parties do not overlap in the UK in the production and supply of conventional blended feed and organic compound feed, these segmentations are not discussed further in this decision and any reference to feed types hereafter should be construed as types of conventional compound feed.
55. Consistent with its established practice, the CMA considers the overlapping products of the Parties form the starting point for the product frame of reference.⁶¹ In the UK, the Parties overlap in the supply of poultry feed, including both meat poultry feed and layer poultry feed.⁶²

⁵⁸ Merger Notice, paragraphs 13.37-13.41 and 13.44; Issues Letter Response, slide 31.

⁵⁹ ME/6507/14 – *ForFarmers/Countrywide Farmers*, 13 April 2015, paragraph 34 and ME/6785/18 – *ForFarmers/Bowerings Animal Feeds*, 13 May 2019, paragraph 33.

⁶⁰ ME/6785/18 – *ForFarmers/Bowerings Animal Feeds*, 13 May 2019, paragraph 35; ME/6507/14 – *ForFarmers/Countrywide Farmers*, 13 April 2015, paragraph 58.

⁶¹ *CMA129*, March 2021, paragraph 9.6.

⁶² Meat poultry feed primarily comprises broiler feed, however it also includes other types of meat poultry feed, such as duck and turkey, which require similar production processes. As part of its merger investigation, the CMA asked third

56. The CMA considered the extent to which meat poultry feed and layer poultry feed are separate product frames of reference, or segments within a frame of reference for the supply of poultry feed. The CMA also considered the extent to which the product frame of reference should be extended to all types of monogastric feed (ie including pig feed) and, further, all types of animal feed (ie including ruminant feed). The CMA's assessment has been based on considerations of demand-side and supply-side substitutability.

Demand-side substitutability

57. The Parties recognised in their submissions that there is limited demand-side substitutability across different animal types, including between meat poultry feed and layer poultry feed as these require different feed mixes.⁶³ This was confirmed by third parties.⁶⁴

Supply-side substitutability

58. Where there is limited demand-side substitution, the CMA may aggregate markets based on supply-side substitution when (i) firms routinely use their existing production assets to supply a range of different products that are not demand-side substitutes, and there is evidence that firms in practice shift their existing capacity between these different products depending on demand for each, and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.⁶⁵

- Meat poultry feed and layer poultry feed

59. Given the limited demand-side substitutability between meat poultry feed and layer poultry feed, the CMA considered whether it is appropriate to aggregate these segments based on the conditions set out in paragraph 58 above and, in doing so, has had regard to:

- (a) the Parties' submissions (set out in paragraph 52 above);
- (b) data on actual feed production;

parties questions based on a segmentation between broiler feed and layer poultry feed, hence this decision contains references to broiler feed instead of meat poultry feed. However, as meat poultry feed primarily comprises broiler feed the CMA considers that evidence relevant to broiler feed extends to meat poultry feed.

⁶³ Merger Notice, paragraphs 13.36 and 20.2(b).

⁶⁴ For example, notes of call with third parties ([§<]).

⁶⁵ CMA129, March 2021, paragraph 9.8.

- (c) evidence from third parties; and
- (d) evidence from internal documents.

- Data on actual feed production

60. The data received by the CMA in the course of its merger investigation indicate that in 2021 most poultry feed suppliers, including most large suppliers of poultry feed to third parties, produced both meat poultry feed and layer poultry feed.
61. However, the same data shows that a substantial proportion of mills focused primarily or exclusively on one type of feed. Specifically, data submitted by the Parties indicates that 32 of the 55 poultry feed mills in the UK produced exclusively meat poultry feed (broiler feed specifically) or layer poultry feed in 2021, which was broadly corroborated by data gathered from third parties.
62. Furthermore, even when suppliers produced both types of poultry feed, suppliers tend to have different focuses. For example, while 2Agriculture and Lloyds [redacted] volumes of poultry feed to third parties in 2021, Lloyds' sales to third parties were primarily layer poultry feed whereas 2Agriculture's were primarily meat poultry feed (broiler feed in particular).

- Evidence from third parties

63. Consistent with the Parties' submissions, third parties confirmed that the key difference between production of meat poultry feed and layer poultry feed is the additional pelleting step required to produce meat poultry feed.⁶⁶
64. While many third parties indicated that switching production between broiler feed and layer poultry feed would be easy or very easy,⁶⁷ a few sophisticated poultry feed suppliers indicated it would be more difficult to do so considering that the ease of switching would depend on the existing equipment available at the mill, and the fact that broiler feed requires the use of a pelleting machine and different grit size, compared to layer mash.⁶⁸ One supplier also indicated that continual investment would be needed for mill security.⁶⁹

- Evidence from internal documents

⁶⁶ For example, note of call with third party ([redacted]).

⁶⁷ Responses to competitor questionnaire ([redacted]).

⁶⁸ Responses to competitor questionnaire ([redacted]).

⁶⁹ Response to competitor questionnaire ([redacted]).

65. A significant number of ForFarmers' internal documents [REDACTED].⁷⁰ In addition, one ForFarmers internal document on [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].⁷¹
- Conclusion on aggregation of meat poultry feed and layer poultry feed
66. Taking the evidence in the round, the CMA believes that the conditions set out at paragraph 58 for aggregating meat poultry feed and layer poultry feed in a single poultry feed product frame of reference on the basis of supply-side substitutability, are not met. Recognising, however, that the evidence from third parties on ease of switching is mixed, the CMA has considered it appropriate to account for the out-of-market constraint that suppliers of layer poultry feed may provide on suppliers of meat poultry feed (and vice versa) in the competitive assessment.
- Feed for other monogastric animals and ruminants
67. The CMA also considered whether the product frame of reference should be defined more widely to include other types of monogastric feed or ruminant feed.
68. The CMA notes that it has received some evidence that suppliers of other types of monogastric feed (ie pig feed) may impose a constraint on poultry feed suppliers, in particular on suppliers of meat poultry feed:
- (a) On the one hand, the CMA received evidence that around half of monogastric feed suppliers produced both pig feed and poultry feed in 2021, and that some firms had high shares of third-party supply in both pig feed and poultry feed, notably AB Agri and ForFarmers. Further, many suppliers that responded to the CMA's merger investigation indicated that that it would be easy or very easy to switch production between pig and poultry feed.⁷²
 - (b) On the other hand, there are asymmetries between shares of supply in pig and poultry feed production, with some large suppliers, such as 2Agriculture, focused primarily or exclusively on one type of feed. As with meat poultry feed and layer poultry feed, a significant number of ForFarmers' internal documents [REDACTED], suggesting that these are different segments within its business.⁷³
69. Whilst the evidence from third parties is again mixed, the CMA has considered it appropriate to account for the out-of-market constraint that suppliers of pig feed may provide on suppliers of poultry feed in the competitive assessment.

⁷⁰ For example, ForFarmers Annexes Q9.01, Q10.22, Q10.28, Q10.35, and Q9.93.

⁷¹ ForFarmers Annex Q9.01 (page 127).

⁷² Responses to competitor questionnaire ([REDACTED]).

⁷³ For example, ForFarmers Annexes Q9.01, Q10.22, Q10.28, Q10.35, and Q9.93.

70. Finally, the data submitted by the Parties indicates that the set of firms that supply ruminant feed is substantially different from the set of firms supplying poultry feed, with large suppliers of meat poultry feed and layer poultry feed such as AB Agri, 2Agriculture and Noble not present in ruminant feed, and large suppliers of ruminant feed such as Mole Valley, Carrs and NWF not present in poultry feed. This indicates that suppliers of feed for ruminants do not provide a significant out-of-market constraint on poultry feed suppliers (including both meat poultry feed and layer poultry feed suppliers). The CMA has therefore not taken the constraint from ruminant feed suppliers into account in the competitive assessment.
71. Finally, for its assessment of vertical effects as a result of input foreclosure in relation to downstream meat poultry and egg producers (including growers) (discussed from paragraph 146), the CMA has considered the downstream supply of meat poultry and the downstream supply of eggs respectively to be the appropriate downstream product frames of reference, consistent with the CMA's previous decisions.⁷⁴

Conclusion on product scope

72. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
- (a) The supply of meat poultry feed and the supply of layer poultry feed, taken separately. The constraint from suppliers of other types of monogastric feed has been taken into account in the competitive assessment, where appropriate.
 - (b) The downstream supply of each of meat poultry and eggs.

Geographic scope

Supply of meat poultry feed and supply of layer poultry feed locally

Parties' submissions

73. The Parties submitted that the transport of feed and low operating margins for feed producers limit how far products can profitably be transported and therefore that the

⁷⁴ M/6975/21 – [Boparan Private Office/Banham](#), 25 March 2022 (paragraphs 55-57) in which the CMA defined Boparan as being active in an overall product market for the supply of chicken (the product frame of reference did not include other types of poultry as the merging parties only overlapped in relation to the supply of chicken); and ME/6438/14 – [Noble Egg Innovations/Manton](#), 19 August 2014 (paragraphs 16-36) in which the CMA considered an overall product market for egg processing.

appropriate geographic frame of reference is sub-national. The Parties provided data on the basis of a 100-mile radius from each of their feed mills and blend plants but submitted that, once these areas have been identified, it is then necessary to consider the competitive constraint from mills located outside of this catchment area.⁷⁵

74. Further, the Parties submitted that, owing to the homogenous nature of the product, and as prices, input and transport costs do not vary significantly nationwide, there are no material regional differences from one catchment area to another, and therefore it is appropriate to apply 100-mile catchment areas to each of the Parties' mills nationwide.⁷⁶
75. The Parties also submitted that retailers downstream are not constrained by local catchments and assert significant pressure nationally to ensure that feed prices remain low. According to the Parties, this is because if, hypothetically, growers (or processors) could not switch to a credible alternative feed supplier in response to uncompetitive pricing, retailers (who source nationally and are cost-conscious) would switch to alternative processors and would not be constrained by geographic catchments in doing so. On this basis, the Parties submitted that the CMA should therefore take account of the evidence they provided regarding the national effect of retailers' buyer power, including in how the CMA approaches the definition of local catchment areas.⁷⁷

CMA's analysis

76. In previous decisions, the CMA has used a geographic frame of reference for conventional feed of 100-mile radius from each mill. This was on the basis of information submitted by third parties on average distance that feed was delivered (albeit 100 miles was at the upper end of the average distances in *ForFarmers/Bowerings*).⁷⁸
77. In the present case, the CMA believes there is substantial evidence that customers of meat poultry feed and layer poultry feed are unwilling to purchase feed from non-local mills. This indicates that each mill has a catchment area, with customers within this catchment area generating most of its business.
78. The CMA's analysis of data provided by the Parties showed that only [0-5]% of the Parties' poultry feed sales in 2021 were to customers located more than 100 miles

⁷⁵ Merger Notice, paragraphs 13.46-13.48; Issues Letter Response, slide 28.

⁷⁶ Issues Letter Response, slide 28.

⁷⁷ Issues Letter Response, paragraphs 1.2 and 5.1, slides 16-17 and 28.

⁷⁸ ME/6785/15 – *ForFarmers/Bowerings Animal Feeds*, 13 May 2019, paragraphs 38-39.

from the mill that supplied them.⁷⁹ The CMA notes that the evidence from Parties' internal documents also supports the view that customer concentration zones around mills are smaller than 100 miles.⁸⁰

79. The CMA asked competitors how far they typically transport feed to their customers. The responses varied from 30 miles to 130 miles, with one competitor noting that it makes nationwide deliveries of up to 500 miles, but that most of its deliveries are local.⁸¹
80. The CMA also asked customers (i) what distance they typically receive feed deliveries from and (ii) what maximum distance they would be willing to purchase feed from.
- (a) On the first point, the responses varied from 10 miles up to 150 miles.⁸² However, most customer respondents gave a typical delivery distance of 60 miles or less.
- (b) On the second point, of the customers that provided a maximum distance, nearly half told the CMA that they would only be willing to purchase feed from 75 miles or less, and the vast majority indicated that they would not be willing to purchase feed from further than 100 miles.
81. The available evidence therefore indicates that the geographic frame of reference is local, with some evidence of differences between catchment areas. The appropriate catchment is discussed in paragraph 113.
82. Third parties also provided additional evidence that the geographic frame of reference is local. In particular, one vertically integrated poultry meat processor told the CMA that because animal feed is bulky and expensive to transport it typically delivers feed 30 miles from its mills.⁸³ Another vertically integrated poultry meat processor told the CMA that the typical distance from mill to farm is 40 miles considering delivering further afield does not allow for the maximisation of the number of loads for any given vehicle.⁸⁴ One industry association contacted by the CMA commented that as haulage is expensive, transporting feed over long

⁷⁹ This is discussed further in paragraph 113.

⁸⁰ For example, ForFarmers Annex Q9.09 (page 4).

⁸¹ Response to competitor questionnaire ([redacted]).

⁸² The CMA also observed, based on the Parties' data, that the typical distance feed is transported differs from one region to another. Notably, customers based in East Anglia gave shorter typical distances than customers in other areas.

⁸³ Note of call with third party (Cranswick, dated 31 August 2022).

⁸⁴ Note of call with third party ([redacted]).

distances will lead to higher costs, which would also be incurred on empty lorries returning to mills after delivering the feed.⁸⁵

83. Further to submissions made by the Parties that retailers (and processors) are not constrained by local catchments, the CMA considered the extent to which these national dynamics may shape competition at a local level.
84. For such a constraint to exist, credible alternative players with sufficient spare capacity to accommodate customers switching away from the less competitive rivals would need to be present. However, as discussed in paragraph 119, the evidence received by the CMA in the course of its merger investigation points to poultry feed suppliers having limited spare capacity at present, despite the Parties' submissions that ForFarmers currently has significant spare capacity for pig and poultry feed (in the region of [redacted]).⁸⁶
85. In addition, the CMA observes that the Parties did not provide evidence of volumes moving between geographic catchments as the result of retailers switching processors, nor of how the mere threat of switching to a supplier in another catchment area would be sufficient to constrain feed suppliers at a local level. The Parties' submissions also pre-suppose that all national demand by retailers could be met by growers and processors in regions unaffected by any price increase, which the CMA does not believe to be the case. Indeed, supply is concentrated in some regions,⁸⁷ and on the basis of the available evidence, the CMA does not consider that both processors and growers could move from one region to another sufficiently quickly or easily for the threat of switching to be effective, considering:
- (a) the scale of operations needed to process several million of birds every week (as the main poultry processors do); and
 - (b) while there are poultry meat growers and processors active in different areas, they tend to be concentrated in particular regions (eg East Anglia) such that (i) if those regions were to see increased prices and/or reduced quality, it is uncertain how growers and processors could move to other regions which do not have an existing infrastructure, and (ii) if only one region were to see an increase in prices and/or reduced quality, this would require that other regions

⁸⁵ Note of call with third party ([redacted]).

⁸⁶ Issues Letter Response, paragraph 4.5(a). On ForFarmers' spare capacity, the CMA believes that the Parties' submissions in the Issues Letter Response may overstate ForFarmers' actual levels of spare capacity. In the Merger Notice (Figure 3), the Parties indicated that in 2021 ForFarmers had spare capacity of [redacted].

⁸⁷ See [Livestock Demographic Data Group: Poultry population report, Livestock population density maps in GB, using July 2021 data](#), last accessed on 21 December 2022.

have sufficient spare capacity to serve the additional demand, which is currently limited (as discussed in paragraph 84).

86. While the CMA recognises that there may be a degree of pricing pressure at national level, which is discussed further below, the CMA does not consider that this pressure overrides local competitive dynamics or limits the competitive constraint exercised by local feed suppliers on each other.

Supply of meat poultry feed and supply of layer poultry feed nationally

87. In some instances, the CMA has previously considered the impact of transactions in this sector on both a local and a national basis.⁸⁸ Recognising this, the Parties also provided data on a national basis.⁸⁹
88. The CMA believes that the level of competition between the Parties on a national basis is likely to be relatively limited on the basis that the evidence suggests that 2Agriculture does not compete heavily for national customers. The CMA, however, notes that there are a small number of customers with growing activities in multiple regions. While such customers typically purchase feed from mills that are local to each of their farms, they may do so from suppliers with a national reach or close to national reach, such as the Parties, AB Agri, and Noble (as discussed from paragraph 97), with prices set on a multi-mill basis.⁹⁰
89. In light of this the CMA has also considered the effects of the Merger in the supply of meat poultry feed and layer poultry feed on a UK-wide basis.

Supply of chicken and supply of eggs

90. For its assessment of vertical effects as a result of input foreclosure (discussed from paragraph 146 below), the CMA considered the appropriate geographic frame of reference for the supply of meat poultry and the supply of eggs to be UK-wide in scope, consistent with previous cases.⁹¹

⁸⁸ See, for example, ME/6785/18 - [ForFarmers/ Bowerings Animal Feeds](#), 13 May 2019, paragraph 42.

⁸⁹ Merger Notice, paragraphs 25, 15.171-15.172, and Table 44.

⁹⁰ Merger Notice, paragraph 13.65; and notes of call with third parties ([&]).

⁹¹ ME/6975/21 – [Boparan Private Office/Banham](#), 25 March 2022 (paragraphs 54-60) in which the CMA defined the overall market for market for chicken to be UK-wide; ME/6438/14 – [Noble Egg Innovations/Manton](#), 19 August 2014 (paragraphs 16-49) in which the CMA considered the market for egg processing (including its various sub-segments) to be UK-wide.

Conclusion on frame of reference

91. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the supply of meat poultry feed and the supply of layer poultry feed at a local and on a UK-wide basis.
 - (b) the supply of each of meat poultry and eggs on a UK-wide basis.

Competitive assessment

92. As set out in the following sections, the CMA has assessed the following theories of harm:
- (a) Horizontal unilateral effects in the supply of meat poultry feed and in the supply of layer poultry feed at a local and on a UK-wide basis;
 - (b) The foreclosure by the Merged Entity of meat poultry and egg producers (including growers); and
 - (c) The foreclosure by the Merged Entity of rival meat poultry feed suppliers at a local level.

Horizontal unilateral effects in the supply of meat poultry feed and in the supply of layer poultry feed

93. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁹² Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in the supply of meat poultry feed and layer poultry feed, separately, at a local level and on a UK-wide basis.
94. In order to assess the likelihood of the Merger resulting in such horizontal unilateral effects, the CMA considered:
- (a) the closeness of competition between the Parties;

⁹² [CMA129](#), March 2021, paragraph 4.1.

- (b) competitive constraints (including out-of-market constraints);
- (c) the effect of downstream buyer power; and
- (d) entry and expansion by rivals (from paragraph 226).

Closeness of competition

95. The CMA considered whether the Parties are close competitors. Although poultry feed (including both sub-types of feed) is a homogenous product to some extent, the Parties might be closer competitors than some other rivals because (for example) of their scale, their geographic reach, their geographic proximity to each other and/or their research and development capabilities which adds some differentiation to their feed products.

Parties' submissions

96. The Parties submitted that they are not close competitors in the UK as the two businesses have different focuses: ForFarmers primarily produces ruminant feed while 2Agriculture only produces poultry feed, most of which is used for self-supply.⁹³ The Parties submitted that several feed suppliers compete more closely with one or both of the Parties across all of the regions or some regions in which they have overlapping mills (eg AB Agri, Noble, Lloyds) in the UK.⁹⁴ The Parties also submitted that the fact both Parties are nationally active in the UK is not relevant when assessing closeness of competition within local areas.⁹⁵

CMA's analysis

- Evidence from internal documents

97. The Parties' internal documents demonstrate that they each view larger, nationally active firms – including each other as well as AB Agri and Noble – as their main competitors in the supply of meat poultry feed and layer poultry feed. For example:

- (a) A ForFarmers internal document lists [redacted].⁹⁶ In addition, while this document [redacted].

⁹³ Merger Notice, paragraph 15.98.

⁹⁴ Issues Letter Response, slide 10; Merger Notice, paragraph 16(a).

⁹⁵ Issues Letter Response, paragraph 3.8(a).

⁹⁶ ForFarmers Annex Q9.08.

(b) Similarly, a 2Agriculture internal document from April 2022 listing [REDACTED].⁹⁷

- Evidence from third parties

98. Customer responses to the CMA's merger investigation also point to the Parties being close competitors. When ForFarmers' poultry feed customers were asked who they would purchase feed from in the event that ForFarmers no longer supplied them, 2Agriculture was the second most commonly listed alternative, after AB Agri. Similarly, when 2Agriculture's customers were asked the same question, ForFarmers was the second most commonly listed alternative, after AB Agri. Several customers also indicated that they prefer to purchase from the same supplier across multiple sites, indicating that nationally active competitors provide a stronger competitive constraint than competitors only present in one location.⁹⁸

99. Similarly, some competitor responses indicated that the Parties are close competitors:

- (a) A nationally active competitor listed ForFarmers and 2Agriculture as two of its three strongest competitors, highlighting their national presence.⁹⁹
- (b) An integrated supplier indicated that 2Agriculture, ForFarmers and AB Agri are its three strongest competitors.¹⁰⁰
- (c) Another competitor listed 2Agriculture, ForFarmers and Crediton Milling as its three strongest competitors, with 2Agriculture being the strongest.¹⁰¹

100. However, most independent poultry feed suppliers listed ForFarmers as a competitor, but not 2Agriculture. The CMA considers this feedback may indicate differences in the competitor set from one region to another, reflecting that many of these suppliers are only active locally, rather than pointing to the Parties not being close competitors, particularly in light of the evidence base above with respect to the views of customers and nationally active competitors.

- Evidence on customer switching

101. ForFarmers provided internal data covering contracts that it has won and lost across all mills and types of feed during the period January 2020 to June 2022.¹⁰² ForFarmers submitted that [REDACTED]. As a result, the CMA considers that this data may

⁹⁷ Boparan Annex Q10.123 (page 1).

⁹⁸ Response to customer questionnaire ([REDACTED]), notes of call with third parties ([REDACTED]).

⁹⁹ Response to competitor questionnaire ([REDACTED]).

¹⁰⁰ Response to competitor questionnaire (Cranswick).

¹⁰¹ Response to competitor questionnaire ([REDACTED]).

¹⁰² Annexes Q7.1-Q7.3 to the Parties' response to the CMA's second request for information dated 6 September 2022.

not be a fully accurate representation of win/loss events; the CMA notes, however, that the data does provide an indication as to [REDACTED]. Nonetheless, the data suggests that, for ForFarmers mills which are geographically close to 2Agriculture mills, a high proportion of poultry feed volumes were won from or lost to 2Agriculture.¹⁰³

102. Nationally, this data indicates that [REDACTED], [REDACTED], and [REDACTED] were the top three competitors to ForFarmers (in order) in terms of total poultry volumes gained and lost, with a [REDACTED] to the fourth ranked competitor, [REDACTED]. This supports the view that ForFarmers perceives 2Agriculture as a close competitor in the supply of meat poultry feed and in the supply of layer poultry feed, alongside [REDACTED] and [REDACTED].

Conclusion on closeness of competition

103. Taking the available evidence in the round, the CMA believes that internal documents, third-party responses and customer switching data indicate that the Parties are close competitors. This evidence also indicates that AB Agri and Noble are also close competitors to the Parties. In this regard, the CMA notes that merger parties need not be each other's closest competitors for horizontal unilateral effects to arise.¹⁰⁴ As the Parties are closer competitors to one another than smaller regional or local suppliers, the CMA believes that, in local areas where both Parties are present, they exercise a stronger competitive constraint on one another than smaller regional or local suppliers in the same areas. The CMA's competitive assessment at a local level is discussed next.

Local competitive assessment

Use of a decision rule

104. The CMA considers that the appropriate approach to identifying any local area in which the test for reference is met in this case is to apply a decision rule. The decision rule adopted in this case reflects the evidence that the CMA has gathered on how competition works and the existing competitive constraints on the Parties at a local level.
105. The Parties submitted that the use of a decision rule would be disproportionate in this case, and that the CMA should instead conduct an in-depth assessment of each catchment that fail the application of certain filters.¹⁰⁵ The Parties submitted that, consistent with the CMA's Merger Assessment Guidelines, a review of the CMA's

¹⁰³ [REDACTED]% of volumes across the Burston, Bury and Preston mills.

¹⁰⁴ CMA129, March 2021, paragraph 4.8.

¹⁰⁵ Issues Letter Response, section 3.

recent decisional practice shows that a decision rule approach has been employed only in cases in which there were a materially greater number of initial overlap areas than in the case of the present Merger.¹⁰⁶ The Parties argued that by applying a decision rule, the CMA would be failing to consider relevant evidence, and pointed in particular to evidence on the constraint from AB Agri's Flixborough mill, which the Parties contend has a wider catchment area than other mills and should be assessed as a constraint in each local area where the CMA has identified competition concerns in the Issues Letter.¹⁰⁷

106. The CMA considers, however, that the use of a decision rule is appropriate in the context of this case. A decision rule facilitates the efficient conduct of the CMA's investigation and ensures that all local areas of overlap are assessed systematically by reference to the same factors, rather than having regard to different factors in different local areas.¹⁰⁸ The CMA considers that, in this case, the factors used in the decision rule effectively cover the important factors which influence local competitive dynamics.
107. The CMA has considered whether it received evidence of competitive constraints that it has failed to take into account as a result of the application of a decision rule. The CMA has not received such evidence. With respect to the Flixborough mill in particular, the CMA notes that to the extent a constraint from Flixborough was present in all local areas of concern, such a constraint could appropriately be reflected in any decision rule. Further, the information the CMA received on relevant competitive constraints and dynamics, such as the degree of constraint from larger and smaller suppliers, and the out-of-market constraints from other monogastric feed suppliers, is reflected in the decision rule applied in this case. As such, the CMA considers that the decision rule has provided an efficient and clear approach to taking account of all relevant evidence.
108. The Parties made submissions on factors that the CMA should consider in addition to the factors that it has considered in the decision rule, which are addressed in paragraphs 126 to 137.

¹⁰⁶ Issues Letter Response, section 3.

¹⁰⁷ Letter from Freshfields Bruckhaus Deringer LLP to the CMA dated 7 December 2022.

¹⁰⁸ In a number of recent CMA Phase 1 decisions, the CMA has noted the risks of adopting a filtering approach where certain parameters of competition are taken into account only in the assessment of local areas that fail a filter, rather than systematically across all local areas of overlap (as this could undermine the results of the initial filter, for example, if other areas would have failed the initial filter had those factors been taken into account). See, for example, ME/6990/22 – [Riviera Bidco/Dental Partners Group](#), 23 August 2022; ME/6911/20 – [Bellis/Asda](#), 20 April 2021; ME/6656/16 – [Heineken/Punch Taverns](#), 13 June 2017; ME/6862/19 – [Breedon/Cemex](#), 26 August 2020.

Design of the decision rule

109. In considering an appropriate decision rule to use, the CMA considered:
- (a) treatment of self-supplied volumes;
 - (b) catchment areas over which to assess competitive constraints;
 - (c) concentration measure(s);
 - (d) level of capacity utilisation; and
 - (e) appropriate threshold(s) above which the CMA considers there is a realistic prospect of an SLC in each local area.
- Self-supplied volumes
 - Parties' submissions
110. The Parties submitted that, for the purpose of the local assessment, 2Agriculture's self-supply volumes should be excluded from the relevant frame of reference, as they are not an available choice for third party customers.¹⁰⁹
- CMA's analysis
111. Third parties also indicated that volumes produced for self-supply are not available for third party customers.¹¹⁰ As such, the CMA excluded self-supplied volumes from the competitive assessment on the basis that these volumes do not provide a competitive constraint on poultry feed supplied to third party customers.¹¹¹
- Catchment areas
 - Parties' submissions
112. The Parties submitted that the narrowest possible geographic frame of reference is a 100-mile radius from each of their feed mills and blend plants but submitted that, once these areas have been identified, it is then necessary to consider the competitive constraint from mills located outside of this catchment area.¹¹² The Parties also submitted that there are no material regional differences from one catchment area to another,¹¹³ and that 80th percentile catchment areas for individual

¹⁰⁹ Merger Notice, paragraph 15.86.

¹¹⁰ For example, note of call with third party ([><]); response to competitor questionnaire ([><]).

¹¹¹ The CMA notes that neither ForFarmers nor AB Agri is vertically integrated.

¹¹² Merger Notice, paragraphs 13.46-13.48; Issues Letter Response, slide 28.

¹¹³ Issues Letter Response, slide 28.

mills may be misleading as (i) catchments for a single mill may exhibit significant variation on a year-to-year basis,¹¹⁴ and (ii) volumes for individual mills may be low.¹¹⁵

– CMA’s analysis

113. The CMA’s focus in defining geographic frames of reference is on identifying the most important competitive alternatives to the merger firms.¹¹⁶ As noted in paragraph 80(b), a substantial share of customers are not willing to purchase feed from 100 miles, and even for those who are willing to do so, 100 miles typically represents the outer limit. As such, the CMA considers that a catchment of 100 miles would include less important competitive alternatives. In line with its decisional practice, the CMA has determined the applicable catchment areas around the Parties’ mills by calculating the average 80th percentile distance (based on sales of poultry feed to third parties) for the Parties’ compound feed mills.¹¹⁷ The average catchment area across the Parties’ mills is [70-80] miles, which the CMA used for the purpose of calculating shares of supply. While the CMA found some evidence of differences between catchment areas, the CMA believes that catchments calculated for a single mill or region may be less reliable than an average, for the reasons given by the Parties.

114. As noted in 80(b), nearly half of customer respondents would only be willing to purchase feed from 75 miles or less; this is consistent with the CMA’s use of a [70-80] mile catchment area to identify the most important competitive alternatives. Nonetheless, a majority of customers would be willing to purchase feed from beyond this catchment and the CMA has taken into account the out-of-market constraint from mills further away when considering the appropriate threshold for concern.

● Concentration measure(s)

– Parties’ submissions

115. The Parties submitted that shares of supply are less informative of competitive pressure than the number of potential suppliers as, in commodity markets, access to any reasonable alternative will ensure significant competitive pressure.¹¹⁸

¹¹⁴ Merger Notice, paragraph 13.56.

¹¹⁵ Merger Notice, paragraph 13.57.

¹¹⁶ CMA129, March 2021, paragraph 9.13.

¹¹⁷ See [Retail Mergers Commentary](#), paragraph 2.20. This approach is also consistent with previous decisions in the sector, for example ME/4057/09 – [AB Agri / JE Porter](#), 17 April 2009.

¹¹⁸ Issues Letter Response, slide 27.

– CMA’s analysis

116. The CMA believes that shares of supply in this industry give a reasonable indication of competitive strength given the short length of contracts and ability of firms to source from multiple suppliers.¹¹⁹ The Parties’ internal documents and third party responses indicate that there is differentiation between mills based on quality. However, while the CMA has not seen direct evidence on the quality of different mills, it expects this would be reflected in the shares of supply, as almost all customers that replied to the CMA’s merger investigation indicated that quality or performance were factors in their purchasing decisions. Counting the number of potential suppliers would not account for the relative strength of suppliers, including in relation to quality and mill capacity.

- Level of capacity utilisation

117. In markets with undifferentiated products, if rivals have spare capacity, these rivals may be expected to respond to a reduction in volumes by expanding their own production. This may prevent an increase in price levels.¹²⁰

– Parties’ submissions

118. The Parties estimated that UK-wide capacity utilisation is in the range of [X]%, below the optimal utilisation of around [Y]%, and there will be spare capacity in each region of the UK post-Merger.¹²¹ The Parties also submitted that [X] would have a significantly higher level of spare capacity post-Merger than currently.¹²²

– CMA’s analysis

119. The Parties and third party competitors provided data on their 2021 production and current capacity levels. This data indicates that there is currently limited spare capacity across the industry as a whole, which implies that the Parties’ customers may have limited ability to switch suppliers post-Merger in the face of a price increase or quality decrease. Furthermore, multiple customers and competitors have indicated that there currently is limited spare capacity in the industry, and that feed mills across the UK are inefficient.¹²³ The CMA has taken this into account in

¹¹⁹ Contracts are typically not longer than six months to one year (Merger Notice, paragraph 10.48).

¹²⁰ CMA129, March 2021, paragraph 4.38(c).

¹²¹ Merger Notice, paragraph 14.29.

¹²² Issues Letter Response, slide 26.

¹²³ Responses to customer questionnaire ([X]) and competitor questionnaire ([X]). These third party comments were made notwithstanding ForFarmers’ submission that it currently has [X] spare capacity. The CMA also notes that, [X], which limits the overall level of spare capacity that may exist post-Merger.

considering the appropriate threshold to use for finding a realistic prospect of an SLC at a local level, as discussed further in the next section.

- Concentration threshold
 - Parties' submissions

120. The Parties submitted that the appropriate threshold for a filter should be 40%. The Parties submitted that this was the threshold used in previous cases, and that there is no reason to use a lower threshold in this case as (i) there will remain a number of reasonable alternatives in each local area post-Merger, (ii) competitors, in particular [X], will have spare capacity post-Merger, and (iii) contrary to the position set out in the CMA's Issues Letter, it is not relevant to a local area analysis that the Parties are nationally active firms.¹²⁴

- CMA's analysis

121. The CMA believes that a threshold of a 35% combined share of supply and a 5% increment brought about by the Merger is appropriate given the particular facts of the case.¹²⁵ The CMA's assessment of the appropriate threshold to find competition concerns considered:

- (a) the nature of the CMA's test for reference at the end of a Phase 1 investigation and the availability of evidence in this case in relation to market characteristics relied upon in previous cases to support a higher threshold;
- (b) the available evidence in relation to out-of-market constraints; and
- (c) evidence that some aspects of the methodology for calculating the shares of supply may understate the Parties' position and overstate some competitors' strength.

122. The CMA notes that the thresholds chosen in a given case are based upon the particular evidence available in that investigation. A number of factors (summarised below) distinguish the position in this case from that in other cases.

¹²⁴ Issues Letter Response, slide 27.

¹²⁵ The CMA also considered whether an SLC may arise in an area left with three or fewer competitors post-Merger, regardless of the Parties' combined share and increment, however the CMA did not identify any additional problematic overlaps on this basis.

123. First, the CMA notes that the threshold in this case is intended to enable the CMA to assess whether there is a realistic prospect that the Merger will substantially lessen competition.
124. In previous local assessment cases, the CMA has typically used thresholds of between 30% and 40%. Which threshold was used depended on the facts of the case. The CMA considers that a threshold of 40% would not reflect the evidence in this case that the Parties may face relatively limited constraints given (i) both are part of a limited set of national competitors who, as explained in paragraph 103, present a stronger constraint than local-only competitors (ii) there is limited spare capacity in the industry, and (iii) a high proportion of customers have indicated that they have concerns about the Merger. The CMA therefore believes that a threshold of 35% appropriately reflects the evidence regarding these three factors.
125. The CMA concluded that a lower threshold, such as 30%, would not be appropriate given the evidence that (i) some suppliers can switch easily between production of pig, meat poultry and layer poultry feed, and (ii) mills beyond the 80th percentile catchment impose some competitive constraint on the Parties. This assessment is discussed further below.

Out-of-market constraints

- Parties' submissions

126. The Parties submitted that suppliers can easily switch between production of meat poultry feed and layer poultry feed, and do so regularly. The Parties also submitted that suppliers of pig feed and layer poultry feed exert a constraint on meat poultry feed suppliers, and similarly suppliers of pig feed and meat poultry feed exert a constraint on layer poultry feed suppliers, and highlighted that suppliers of pig feed, meat poultry feed and/or layer poultry feed are present in a number of local areas.¹²⁶
127. The Parties also submitted that suppliers beyond the 80% catchment exert a significant competitive constraint, and that in particular the AB Agri mill at Flixborough should be considered as falling within the catchment of all mills within 120 miles. This is because, according to the Parties: (i) a previous OFT decision found that the catchment for this mill is 110-120 miles, (ii) this mill currently supplies [X] growers [X] and (iii) [X], allowing it to serve a wider catchment.

¹²⁶ Issues Letter Response, slides 31, 36-38.

- CMA's analysis

128. As noted in paragraph 68(a), the CMA found that many suppliers consider it easy to switch between meat poultry feed, layer poultry feed and pig feed, and that it is appropriate to account for the out-of-market constraint that suppliers of other monogastric feed types impose on meat poultry feed and layer poultry feed suppliers. As explained in paragraph 124, the CMA considered this when determining the appropriate concentration threshold.
129. While suppliers outside of catchment areas impose some constraint on the Parties for some customers located nearer the edge of the catchment, these will be weaker competitive alternatives given distance is an important parameter of competition.
130. As regards AB Agri's Flixborough mill, the CMA believes that a catchment larger than [70-80] miles should not be used in the assessment for the following reasons:
- (a) Data submitted by [X] and the Parties suggest that typical transport distances are lower today than at the time of the *AB Agri/JE Porter* decision in 2009,¹²⁷ as (i) the Parties' average distance to customers today is broadly similar to [X]'s currently, and (ii) the Parties' national average 80th percentile distance today is significantly lower than AB Agri's national average 80th percentile distance at the time of the *JE Porter/AB Agri* decision.¹²⁸ Therefore, the CMA does not consider that the evidence supports using the same catchment area around the Flixborough mill as was used 13 years ago.
 - (b) With respect to the Flixborough mill in particular, the evidence gathered by the CMA indicates that, while Flixborough supplies [X], there are [X] detriments to this longer distance supply arrangement. Boparan internal documents indicate that [X]. In the same document, Boparan suggests that [X]. By comparison, Boparan comments that the JV would have a [X].¹²⁹ Owing to ForFarmers' strong presence in East Anglia, the CMA considers that, taken in the round, these statements indicate that Boparan perceives the current supplying arrangements with AB Agri [X] which, in turn, suggests it is not a good alternative for customers at this distance.
 - (c) The Parties' 80th percentile catchments around its largest mills are similar to those for smaller mills, which suggests that the CMA should not consider larger

¹²⁷ ME/4057/09 – *AB Agri/JE Porter*, 17 April 2009.

¹²⁸ Response to competitor questionnaire ([X]). In *AB Agri/JE Porter*, the CMA's analysis showed that, on average, across the nine AB Agri monogastric feed mills, 80% of customers were located between 90 and 100 miles from the relevant mill, while the 80% catchment area for customers of the Flixborough mill was 110-120 miles, see ME/4057/09 – *AB Agri/JE Porter*, 17 April 2009, paragraph 44.

¹²⁹ Boparan Annex Q9.104.

catchments for larger mills. Indeed, the Parties' Llay, Stoke Ferry and Selby mills all have capacity similar to the Flixborough mill.

131. The CMA considers that the Flixborough mill, like other mills outside the relevant catchment areas, may provide a degree of out-of-market constraint but that this constraint is not so material that it should be given additional weight in the CMA's analysis beyond the weighting of out-of-market constraints already reflected in the 35% concentration measure.

Downstream buyer power

- Parties' submissions

132. The Parties submitted that feed suppliers and processors are under considerable pressure to keep prices low due to downstream buyer power from retailers: processors operate on tight margins and cannot easily pass through cost increases to retailers, and processors thus place feed suppliers under significant pricing pressure.¹³⁰ Thus, the Parties submitted that the Merged Entity would be unable to increase margins on poultry feed at a local level in any area, irrespective of share of supply.¹³¹

133. The Parties submitted that the measures used by retailers to exercise buyer power are:

- (a) inviting processors to tender regularly;
- (b) regularly switching between processors, even in the middle of a contract;
- (c) implementing mechanisms to ensure transparency of input costs and testing these on a regular basis; and
- (d) sourcing nationally, which helps to manage input costs.¹³²

- CMA's analysis

134. Most forms of buyer power that do not result in new entry – for example, buyer power based on 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 merger firms. This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the

¹³⁰ Issues Letter Response, slide 16.

¹³¹ Issues Letter Response, paragraph 5.12.

¹³² Issues Letter Response, paragraph 5.4

context of an SLC will have been reduced.¹³³ As such, if the Merger were to substantially lessen competition by altering the structure of the market, buyer power is unlikely to prevent an SLC from arising. Indeed, one customer addressed this explicitly, saying that despite pressure from retailers to reduce costs, processors are price-takers for feed, and that the merger risked leading to higher prices due to reduced competition.¹³⁴

135. The CMA notes that the measures identified by the Parties as being used by retailers to exercise buyer power (paragraph 133) do rely on effective upstream competition which would better allow for competitive tendering and effective switching between processors with lower cost bases. Notwithstanding this, large supermarket retailers may have some buyer power which might constrain suppliers somewhat across different parts of the supply chain.
136. Even to the extent that larger processors may be able to exercise a degree of market power (either directly, or indirectly on behalf of their national customers), the CMA notes that the Parties' third party customers are [redacted] small processors and growers: while Avara, Moy Park, Cranswick and Boparan supply over 80% of chickens slaughtered in the UK,¹³⁵ sales to these processors comprised only [10-20]% of ForFarmers' and [0-5]% of 2Agriculture's third-party sales volumes in 2021.¹³⁶ As such, the Parties' third party customers have particularly limited buyer power.
137. Moreover, even if these customers were constrained to a degree by the prices demanded by the large supermarkets, processed and unprocessed chickens are sold in other channels such as the food manufacturing sector or wholesalers. These downstream customers would not benefit from the same buyer power as large supermarket chains.

Application of the decision rule

138. As explained above, the CMA considers that there is a realistic prospect of an SLC in local catchments where the Parties' combined share of supply is above 35% and there is at least a 5% increment brought about by the Merger.
139. By applying this decision rule, the CMA found that:

¹³³ CMA129, March 2021, paragraph 4.20.

¹³⁴ Response to customer questionnaire ([redacted]) and note of call with third party ([redacted]).

¹³⁵ ME/6975/21 – *Boparan Private Office/Banham*, 25 March 2022, paragraph 65.

¹³⁶ Parties' response to the CMA's request for information dated 2 August 2022 (**RFI1 Response**), Annex Q44.1 and Annex Q44.2.

- (a) The Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of layer poultry feed to third parties in the catchments centred on the mills operated by the Parties.
- (b) The Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of meat poultry feed to third parties in the catchments centred on the Parties' mills listed in Table 1 below.

Table 1: Combined 2021 shares of supply and increment for the Parties' mills failing the decision rule

Mill	Party	Combined shares of supply	Increment
Burston	ForFarmers	[50-60]%	[10-20]% ¹³⁷
Bury	ForFarmers	[50-60]%	[10-20]% ¹³⁸
Llay	2Agriculture	[50-60]%	[20-30]% ¹³⁹
Preston	ForFarmers	[40-50]%	[0-10]% ¹⁴⁰

Source: CMA's analysis based on the Parties' share of supply estimates and third party data

Conclusion on horizontal unilateral effects in the supply of meat poultry feed and layer poultry feed at a local level

140. For the reasons set out above, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of meat poultry feed at a local level, within the catchments centred on the Parties' Burston, Bury, Llay and Preston mills. As a result, the CMA is concerned that the Merger could lead to higher prices and a worse quality of service compared to the situation without the Merger.
141. However, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of layer poultry feed at a local level.

¹³⁷ The 2Agriculture Stoke Ferry and Bawsey mills supplied meat poultry feed to third parties in 2021 and fall within the catchment centred on the ForFarmers Burston mill. In addition, ForFarmers' Bury mill is in this catchment.

¹³⁸ The 2Agriculture Stoke Ferry and Bawsey mills supplied meat poultry feed to third parties in 2021 and fall within the catchment centred on the ForFarmers Bury mill. In addition, ForFarmers' Burston mill is in this catchment.

¹³⁹ The ForFarmers Preston and Newcastle mills supplied meat poultry feed to third parties in 2021 and fall within the catchment centred on the 2Agriculture Llay mill.

¹⁴⁰ The 2Agriculture Llay mill supplied meat poultry feed to third parties in 2021 and falls within the catchment centred on the ForFarmers Preston mill. In addition, ForFarmers' Selby, Newcastle and Penrith mills are in this catchment.

National competitive assessment

142. The Parties submitted that, in 2021, they had a combined share of supply to third parties in each of meat poultry feed and layer poultry feed of [20-30]% and [10-20]%, respectively (with an increment brought about by the Merger of [10-20]% and [0-5]%, respectively), at a national level.¹⁴¹ This was broadly corroborated by data gathered from third parties.
143. The evidence gathered by the CMA in the course of its merger investigation indicates that 2Agriculture primarily supplies customers from one mill only, or mills in one region only. By comparison, ForFarmers has several larger customers which it supplies from multiple sites including [§<].
144. Further, at least five multiple-location rival poultry feed suppliers would continue to constrain the Parties post-Merger, including three large competitors (AB Agri, Noble and Lloyds).¹⁴²
145. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal effects in the supply of meat poultry feed and in the supply of layer poultry feed on a UK-wide basis.

Foreclosure of poultry meat and egg producers (including growers) at a local level

146. Both Parties are active in the supply of meat poultry feed and layer poultry feed. As set out in paragraph 24(c) above, part of the rationale for the Merger is that the Merged Entity will [§<]. As previously mentioned, 2Agriculture is under the indirect control of Boparan (via AREIL), and Boparan (through 2SFG that it indirectly solely controls) also has a 50% interest in H2S. 2Agriculture currently supplies [70-80]% of its poultry feed production¹⁴³ to H2S which, in turn, itself supplies live poultry to 2SFG, a subsidiary company active in the supply of primary and processed chicken in the UK, and other Boparan entities.¹⁴⁴
147. The concern under this theory of harm is that the Merged Entity could use its supply of poultry feed (ie upstream) to non-vertically integrated poultry meat processors and egg producers to harm the competitiveness of these downstream players who compete against Boparan. For example, the Merged Entity could refuse to supply the poultry feed input to these customers, increase the price of the feed or lower its

¹⁴¹ RF11 Response, question 24.

¹⁴² Responses to competitor questionnaire ([§<]).

¹⁴³ The overwhelming majority of the poultry feed volumes produced by 2Agriculture are meat poultry feed, including broiler feed for the most part (Merger Notice, Table 27).

¹⁴⁴ Annex Q2.05 to the Merger Notice; Merger Notice, paragraph 4; ME/6975/21 - [Boparan Private Office/Banham](#), 25 March 2022.

quality, or worsen the quality of service provided.¹⁴⁵ This could then harm overall competition in the downstream supply of poultry meat and eggs in the UK.¹⁴⁶

148. The CMA's approach to assessing foreclosure theories of harm is to analyse:
- (a) the ability of the Merged Entity to foreclose rivals;
 - (b) the incentive for it to do so; and
 - (c) the overall effect of the strategy on competition.¹⁴⁷

Ability

149. For the purpose of assessing whether the Merged Entity would have the ability to harm the competitiveness of downstream poultry meat and egg producers by restricting their access to, and/or raising prices of, meat poultry feed and layer poultry feed, the CMA has considered:
- (a) concentration and position of the Merged Entity upstream; and
 - (b) importance of the input.
150. The CMA has assessed whether downstream firms (poultry meat and egg producers) can easily switch away from the upstream party (poultry feed suppliers) to a range of effective alternative suppliers, or whether the Merged Entity would occupy an important position upstream. The starting point for this assessment is therefore the structure of the upstream market.¹⁴⁸
151. The Merged Entity may occupy an important position in the upstream market if it has a high share of supply. Where there is a high existing degree of concentration, if the Merged Entity does not supply feed to third parties, supplying H2S on a preferential basis (in effect, leaving the market), this may cause remaining suppliers to increase prices or worsen non-price terms or levels of service because of the dampened level of competition. The effect of this might be to foreclose downstream firms in the same way as if the Merged Entity had raised prices to downstream firms directly, even if the Merged Entity could not profitably raise prices unilaterally. The CMA has considered whether the Merged Entity could profitably raise prices unilaterally in the

¹⁴⁵ The CMA may consider a wide range of mechanisms through which the merged entity could potentially harm its rivals when supplying inputs. These may include, for example: refusing or restricting supply, increasing prices or reducing quality or service levels.

¹⁴⁶ CMA129, March 2021, paragraph 7.9.

¹⁴⁷ CMA129, March 2021, paragraph 7.8.

¹⁴⁸ CMA129, March 2021, paragraph 7.14.

previous section on horizontal unilateral effects in the supply of meat poultry feed and in the supply of layer poultry feed. The CMA has thus considered the ability of the Merged Entity to foreclose firms both where the Parties do and do not have a high share of supply upstream.

Parties' submissions

152. The Parties submitted that the Merged Entity will not have the ability to engage in input foreclosure of downstream poultry growers and processors.¹⁴⁹ The Parties submitted that given the large number of credible alternative suppliers in the UK, any foreclosure strategy would not materially impact the ability of downstream growers and processors to compete. The Parties also highlighted that most of the largest processors are vertically integrated and could not be foreclosed by the Merged Entity.

CMA's analysis

- Concentration and position of the Merged Entity upstream

153. The Parties supply substantial volumes of poultry feed to third parties from nine mills in the UK.¹⁵⁰ The CMA assessed the concentration and position of the Merged Entity in the supply of meat poultry and layer poultry feed within the catchment area of each of these nine mills. When assessing this, the CMA considered the Parties' shares of supply, the number of competitors in each catchment, the level of spare capacity, the possibility of supply-side switching and customers' ability to source from out-of-catchment mills. The CMA also considered the fact that (i) 2Agriculture is already vertically integrated within the Boparan group to some extent and, (ii) in areas where ForFarmers is not present, the Merger will not affect 2Agriculture's existing position upstream.
154. As set out in Table 1, the Parties' combined share of supply in meat poultry feed is between 40% and 60% for each of the Burston, Bury, Llay and Preston mills, with a significant increment brought about by the Merger. The CMA found that in the catchments centred on these mills the Merger gives rise to a realistic prospect of an SLC on the basis of horizontal unilateral effects in the supply of meat poultry feed (paragraph 140). Therefore, the CMA believes the Merged Entity would have the ability to raise prices unilaterally in these areas.

¹⁴⁹ Merger Notice, paragraph 19.13.

¹⁵⁰ The Fairview, Llay, Stoke Ferry, Burston, Bury, Penrith, Preston, Radstock and Selby mills each supplied third parties with at least [X<] of poultry feed in 2021; these mills comprised [90-100]% of the Parties' supply of poultry feed (including both meat poultry feed and layer poultry feed) to third parties in 2021.

155. The CMA considered whether in any of these particular areas, any price rise would be defeated by competition from AB Agri. Indeed, as discussed further in paragraphs 193 to 196, AB Agri would have [X]. However, this additional spare capacity would primarily be at the [X], none of which fall within the catchments centred on the four mills listed above. As explained in more detail in paragraphs 129 and 130, the CMA considers mills outside of catchment areas, including the AB Agri Flixborough mill, to be weaker competitive alternatives given distance is an important parameter of competition.

156. Given the Parties' high share of supply, the importance of the input, and taking into account the evidence that there is limited spare capacity in the industry and that feed mills across the UK are inefficient, as discussed in paragraph 119, the CMA believes that meat poultry feed customers in the catchment centred on these mills could not easily switch to alternative suppliers.

Table 2: 2021 shares of supply in the supply of meat poultry feed to third parties within the catchments centred on the Burston, Bury, Llay and Preston mills

Supplier	Burston	Bury	Llay	Preston
ForFarmers	[10-20]%	[10-20]%	[20-30]%	[30-40]%
2Agriculture	[40-50]%	[40-50]%	[30-40]%	[5-10]%
Combined	[50-60]%	[50-60]%	[50-60]%	[40-50]%
AB Agri	[30-40]%	[30-40]%	[0-5]%	[30-40]%
Lloyds	[0-5]%	[0-5]%	[30-40]%	[10-20]%
Cranswick (Crown)	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Massey Feeds	[0-5]%	[0-5]%	[5-10]%	[0-5]%
W L Duffield & Sons	[0-5]%	[0-5]%	[0-5]%	[0-5]%

Source: CMA's analysis based on the Parties' share of supply estimates and third-party data

157. The Parties' combined share of supply in meat poultry feed in the catchment centred on the Fairview mill is [30-40]%. This mill is operated by 2Agriculture and the Merger does not give rise to any increment, hence the CMA believes that the Merger does not significantly reduce customers' ability to switch from 2Agriculture to alternative suppliers.

158. The Parties' combined share of supply in meat poultry feed in the catchment centred on the Stoke Ferry mill is [30-40]%, with a significant increment due to the Merger. However, accounting for the fact that (i) some suppliers at least can switch easily between production of pig feed, meat poultry feed and layer poultry feed, and (ii) mills beyond the 80th percentile catchment impose some competitive constraint on the Parties, the CMA believes that there are sufficient alternatives such that customers in the catchment centred on the Stoke Ferry mill could switch away from the Merged Entity to alternative suppliers.
159. The Parties' combined share of supply in meat poultry feed is below 20% in the catchments centred on each of the Penrith, Radstock and Selby mills, and there are at least three remaining competitors in each catchment. As such, the CMA believes that meat poultry feed customers within the catchments centred on the Penrith, Radstock and Selby mills could switch away from the Merged Entity to alternative suppliers.
160. The Parties' combined share of supply in layer poultry feed in the catchment centred on the Penrith mill is [40-50]%, and 2Agriculture is not currently present in this catchment. Given the Parties' high share of supply, and taking into account the evidence that there is limited spare capacity in the industry and feed mills across the UK are inefficient (as discussed in paragraph 119), the CMA believes that layer poultry feed customers in the catchment of this mill could not easily switch to alternative suppliers.¹⁵¹
161. The Parties' combined share of supply in layer poultry feed in the catchment centred on the Preston mill is [30-40]%, and there are four remaining competitors within this catchment. As such, the CMA believes that layer poultry feed customers within this catchment could switch away from the Merged Entity to alternative suppliers. The Parties' combined share of supply is below 25% in the catchment of each of the Fairview, Llay, Stoke Ferry, Burston, Bury, Radstock and Selby mills and there are at least three remaining competitors in each catchment. As such, the CMA believes that layer poultry feed customers within these catchments could also switch away from the Merged Entity to alternative suppliers.
162. The CMA has considered whether the Parties' ability to foreclose downstream growers and processors could be undermined by (i) feed producers switching into providing meat poultry feed or layer poultry feed where they currently use capacity

¹⁵¹ The CMA notes that AB Agri currently supplies H2S from [redacted], and that AB Agri may thus have [redacted]. Nonetheless, the CMA has not assessed this in detail given it did not find competition concerns in this area in any event.

to supply other types of feed, or (ii) by entry or expansion, including whether customers can self-supply.

163. Switching by feed producers is discussed in more detail in paragraph 68, where the CMA found that there is some evidence of supply-side switching by monogastric feed producers; however, this does not alleviate the CMA's concerns within the catchments centred on the Burston, Bury, Preston, Llay and Fairview mills as there are few further suppliers of pig or other forms of poultry feed who could provide an additional constraint to those currently in the market. Entry and expansion are discussed in more detail from paragraph 226, where the CMA found that entry and expansion are difficult, hence there is only a weak constraint from potential entry and expansion.
164. The CMA also considered whether customers could self-supply to limit their exposure to changes in availability of feed from the Parties. Third-party feedback indicated that self-supply is not a preferred or realistic option for customers who are currently non-integrated, as the costs of setting up their own feed supplies would be prohibitive. One non-integrated processor indicated it had considered producing feed in-house but the cost would be prohibitive as its feed volume requirements are too small to justify the investment;¹⁵² another indicated finding a site and getting planning permission to set up feed mills is challenging and costly (approximately £[redacted] million), although indicated it may be forced into milling feed itself, if it can afford it.¹⁵³ No non-integrated customer indicated they would begin to self-supply if the Merged Entity were to stop supplying them.
- Evidence from third parties
165. When asked to consider a hypothetical scenario where both ForFarmers and 2Agriculture would refuse to supply them with feed, customer respondents across the UK indicated that they would be concerned. The Parties' mills can be grouped into four broad geographic areas – East Anglia, the North of England, the Scottish Borders and the South-West.¹⁵⁴ Across these areas, of those responding to the CMA's merger investigation:
- (a) Most customers active in East Anglia expressed concerns.

¹⁵² Note of call with third party ([redacted]).

¹⁵³ Note of call with third party ([redacted]).

¹⁵⁴ The Burston, Bury and Stoke Ferry mills are located in East Anglia; while the mill in Llay is located in North Wales (near the border with England) given geographical proximity with the Preston and Selby mills, both located in the North of England, the CMA has grouped this three mills in the same North of England geographic area; the Fairview and Penrith mills are located in the Scottish Borders; the Radstock mill is located in the South-West.

- (b) A substantial share of customers active in the North of England expressed concerns.
- (c) All customers active in the Scottish Borders expressed concerns.
- (d) All customers active in the South-West expressed concerns.

166. Overall, most customers indicated this scenario would harm their business. Customers active in the Scottish Borders and East Anglia all indicated that AB Agri was the main or only alternative to the Parties, with one customer stating that independent growers would not be able to survive if the Merged Entity refused to supply them.¹⁵⁵ Customers active in all areas expressed concerns over the level of spare capacity available in the industry.¹⁵⁶

- Importance of the input

167. Feed is a necessary input for growers downstream and by far the largest cost, typically representing approximately 70% of the total production cost for a poultry farmer.¹⁵⁷ Furthermore, third parties confirmed that security of supply is crucial.¹⁵⁸

Conclusion on the ability to foreclose poultry meat and egg producers

168. For the reasons set out above, the CMA found that the Merged Entity would have the ability to foreclose meat poultry feed customers within the catchments centred on the Parties' Burston, Bury, Llay and Preston mills, and the ability to foreclose layer poultry feed customers in the catchment centred on ForFarmers' Penrith mill.

Incentive

169. The CMA has assessed whether the Merged Entity may have the incentive to pursue a foreclosure strategy, in particular through a consideration of:

- (a) the Parties' submissions;
- (b) the Merged Entity's business strategy; and
- (c) gains downstream and losses upstream.¹⁵⁹

¹⁵⁵ Responses to customer questionnaire ([§<]).

¹⁵⁶ Responses to customer questionnaire ([§<]).

¹⁵⁷ Merger Notice, paragraph 15.37.

¹⁵⁸ Notes of call with third parties ([§<]).

¹⁵⁹ CMA129, March 2021, paragraph 7.19.

Parties' submissions

170. The Parties submitted that the Merged Entity will not have the incentive to foreclose customers as ForFarmers will have majority control over the JV and is not active downstream, thus foreclosure would be to the financial detriment of the JV's majority shareholder and controller ie ForFarmers.¹⁶⁰ The Parties also submitted that Boparan is not active in the supply of eggs, so would not gain downstream from the foreclosure of layer poultry feed customers.¹⁶¹

CMA's analysis

- The Merged Entity's business strategy

171. As discussed in paragraph 25 above, Boparan's rationale for the Merger is to [redacted].¹⁶² The JV involves a [redacted].¹⁶³ [redacted].¹⁶⁴

172. In support of their submission regarding the lack of incentive for ForFarmers to engage in an input foreclosure strategy, the Parties cited the CMA's decision in *Brookfield Asset Management/Scotia Gas Network*, where the CMA found that that the incentive to engage in a foreclosure strategy, in a context of joint control between Brookfield and other shareholders, would be limited. However, the CMA notes that this finding was reached on the basis that engaging in any discriminatory behaviour could lead to financial penalties or other enforcement action, and that the risk of this could act as an effective deterrent, thereby limiting the incentive for any discriminatory behaviour, which the CMA considers to be a very specific set of circumstances.¹⁶⁵ The CMA recognises that as only Boparan is active downstream, ForFarmers' interest in foregoing input sales will be smaller than Boparan's. The CMA also notes that in this case, ForFarmers – as the upstream input supplier – may not be confronted with the choice of materially foregoing input sales since (i) the JV would have [redacted] and (ii) poultry feed to third parties can be easily targeted to poultry meat processors. Further, to the extent that foreclosure increases Boparan's market position downstream (and that, as a result of the Merger, Boparan would direct any increase feed requirements to the JV), ForFarmers may have some incentive to support the increase in Boparan's position downstream.

¹⁶⁰ Issues Letter Response, paragraph 1.2(c).

¹⁶¹ Issues Letter Response, slide 46.

¹⁶² Merger Notice, paragraph 2.15 states [redacted] (emphasis added).

¹⁶³ Merger Notice, paragraph 2.22. [redacted] (Merger Notice, footnote 40; Annex Q8.03 to the Merger Notice).

¹⁶⁴ Annex Q8.03 to the Merger Notice.

¹⁶⁵ ME/6960/21 – [Brookfield Asset Management/Scotia Gas Networks](#), 1 March 2022, paragraphs 191-194.

173. The CMA considers that the Merged Entity therefore intends to prioritise self-supply over supply to third parties, including in its use of ForFarmers' assets, which may have the effect of limiting supply to third parties where this conflicts with Boparan's own requirements downstream. These concerns have been echoed by customers, including a customer in the Scottish Borders who commented that the Merger could put it in a 'vulnerable position' as it is expected that ForFarmers would prioritise H2S.¹⁶⁶ This is supported by a ForFarmers internal document, which indicates that [redacted].¹⁶⁷
174. Furthermore, [redacted], and a ForFarmers' internal document indicates that [redacted].¹⁶⁸ The CMA therefore believes that the JV would be required to displace or foreclose third-party customers in some areas to accommodate H2S's needs (at least for a period).
- Gains downstream and losses upstream
175. For the reasons set out above, the CMA believes that the Merged Entity would face minimal losses upstream from foreclosure in areas where the [redacted]. To the extent that ForFarmers continues to supply third parties in addition to supplying H2S, the CMA believes the Merged Entity may be able to target foreclosure of smaller firms who are more reliant on third-party feed supply, which would reduce any potential losses.
176. For the reasons set out in paragraph 204, the CMA believes that Boparan is well placed to capture downstream demand for chicken from foreclosed rivals.
177. Furthermore, all third parties that responded to the CMA's merger investigation indicated that barriers to entry in poultry meat processing are high. This suggests a long-term gain to foreclosure, as new rivals will not easily be able to enter to replace those who are weakened or exit the market.
178. The CMA found that the Merged Entity would have the ability to foreclose meat poultry feed customers within the catchments centred on the Llay, Preston, Burston and Bury mills. The Parties' internal documents indicate that the [redacted].¹⁶⁹ The CMA therefore believes that the Merged Entity would have an incentive to foreclose meat poultry feed customers of these mills.
179. The CMA found that the Merged Entity would have the ability to foreclose layer poultry feed customers in the catchment of the Penrith mill. Neither ForFarmers nor Boparan would make any gains downstream from the foreclosure of layer poultry

¹⁶⁶ Responses to customer questionnaire ([redacted]).

¹⁶⁷ ForFarmers Annex Q9.12.

¹⁶⁸ ForFarmers Annex Q9.12.

¹⁶⁹ ForFarmers Annex Q9.12.

feed customers as neither is active in the supply of eggs. While the Parties' internal documents indicate that [X]. The CMA therefore believes that the Merged Entity would not have an incentive to foreclose layer poultry feed customers of this mill.

Conclusion on incentive to foreclose poultry meat and egg producers

180. The CMA believes that the Merged Entity would face minimal losses upstream from the foreclosure of meat poultry feed customers at a local level, within the catchments centred on the Parties' Llay, Preston, Burston and Bury mills and that Boparan is well placed to capture downstream demand from foreclosed customers, hence the Merged Entity has an incentive to foreclose meat poultry feed customers of these mills. The CMA also believes that the Merged Entity would face minimal losses upstream from the foreclosure of layer poultry feed customers in the catchment centred on ForFarmers' Penrith mill, however the Parties would not capture any downstream demand, hence the CMA believes that the Merged Entity would not have an incentive to foreclose layer poultry feed customers of this mill.

Effect

Parties' submissions

181. The Parties submitted that any foreclosure strategy by the Merged Entity could not significantly reduce competition downstream in the supply of chicken, as the bulk of customers are vertically integrated.¹⁷⁰

CMA's analysis

182. The CMA considered whether the harm to Boparan's competitors would result in substantial harm to overall competition in the relevant downstream frames of reference, including through raising barriers to entry for potential entrants where the negative impact on customers may take some time to materialise.¹⁷¹ Competition concerns may be particularly likely to arise if one of the merger firms has a degree of pre-existing market power in the downstream frame of reference, and already faced limited competitive constraints pre-merger.¹⁷²

¹⁷⁰ Issues Letter Response, paragraph 1.3(c).

¹⁷¹ CMA129, March 2021, paragraph 7.36.

¹⁷² CMA129, March 2021, paragraph 7.21.

183. Boparan is the largest supplier of chickens in the UK and has few remaining rivals.¹⁷³ The industry overall appears to be concentrated, with three suppliers holding more than 80% of the share of supply.¹⁷⁴
184. The three largest suppliers of chicken in the UK other than Boparan are Avara, Moy Park and Cranswick, all of whom are large, vertically integrated firms. The CMA believes that an input foreclosure strategy by the Merged Entity would not substantially harm Avara, Moy Park or Cranswick's ability to compete downstream in the supply of poultry meat, and in particular chicken.
185. However, there are a number of smaller, non-integrated processors which also compete in the downstream frame of reference. The CMA believes that these processors, and the growers which supply them, may be susceptible to a foreclosure strategy given:
- (a) The Parties' submission that growers 'operate with extremely thin margins, which have become thinner over time, so they cannot absorb cost increases'.¹⁷⁵
 - (b) The fact that several small processors have encountered financial difficulties and have been purchased by larger processors in the last ten years.¹⁷⁶
 - (c) The fact that, as noted in paragraph 166, most customers indicated that it would harm their business if the Merged Entity were to stop supplying them, with a number indicating that this would have a very significant effect.
186. The CMA also believes that an input foreclosure strategy by the Merged Entity could increase barriers to entry and expansion downstream. ForFarmers and AB Agri are currently the largest independent third-party suppliers of meat poultry feed in the UK and, post-Merger, there will be few independent suppliers of meat poultry feed remaining. This was also raised by third parties: one downstream competitor stated 'there has been significant consolidation in feed supply over time and this JV further tightens that market leaving reliable third-party supply in fewer hands and further encouraging vertical integration', while one customer stated that it would be 'difficult for independent grower/farmers to survive' following the Merger.¹⁷⁷

¹⁷³ ME/6975/21 – [Boparan Private Office/Banham](#), 25 March 2022, paragraph 9.

¹⁷⁴ ME/6975/21 – [Boparan Private Office/Banham](#), 25 March 2022, paragraph 65.

¹⁷⁵ Parties' supplementary submission dated 18 October 2022, paragraph 2.3.

¹⁷⁶ See, for example, ME/6975/21 – [Boparan Private Office/Banham](#), 25 March 2022; ME/6649/16 – [Boparan Private Office/Bernard Matthews](#), 12 January 2017; ME/6013/13 – [Boparan Holdings/Vion Poultry](#), 18 June 2013.

¹⁷⁷ Responses to competitor questionnaire (Avara) and customer questionnaire ([><]).

187. Furthermore, the CMA found that the upstream supply of meat poultry feed is local, whereas the downstream supply of poultry meat is national. Nonetheless, the CMA believes that harming rival growers and processors within the catchments centred on the Parties' Llay, Preston, Burston and Bury mills could reduce competition in the national downstream frame of reference. The catchments centred on these mills are some of the highest density poultry producing areas in the UK; for example Norfolk, the county in which the Burston mill is situated, is the single most important poultry growing county, with 10% of the UK's total poultry stock.¹⁷⁸ The CMA believes that if the Parties were to harm growers in these areas, processors could not easily source volumes from elsewhere in the UK, hence foreclosure in these local areas could reduce competition in the national poultry meat supply, and in particular chicken.
188. Finally, the CMA notes that the supply of poultry meat, and in particular chicken, in the UK is already a concentrated sector and foreclosure of smaller, non-integrated chicken growers and processors (or increased barriers to entry) could lead to further concentration downstream in the UK.
189. These factors overall suggest that a strategy of input foreclosure could result in substantial harm to overall competition downstream in the supply of poultry meat in the UK (including both growers and processors). Further, while the CMA has not taken into account the importance of this market to UK consumers when concluding that the harm to overall competition could be substantial, the CMA notes that the downstream supply of poultry meat in the UK, and in particular chicken, is an important sector and this may further increase the CMA's concern about the significance of the harm.¹⁷⁹

Conclusion on foreclosure of poultry meat and egg producers

190. For the reasons set out above, the CMA believes that the Merged Entity would have the ability and incentive to foreclose meat poultry feed customers at a local level, within the catchments centred on the Parties' Llay, Preston, Burston and Bury mills, and that a foreclosure strategy could result in substantial harm to overall competition in downstream in the supply of poultry meat in the UK. Accordingly, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the downstream supply of poultry meat in the UK arising from the foreclosure by the Merged Entity of poultry meat producers (including growers) competing with Boparan at a local level, within the catchments centred on the

¹⁷⁸ See [Livestock Demographic Data Group: Poultry population report, Livestock population density maps in GB, using July 2021 data](#), last accessed on 21 December 2022.

¹⁷⁹ [CMA129](#), March 2021, paragraph 2.9.

Parties' Llay, Preston, Burston and Bury mills. The CMA is concerned that prices could rise as a result.

191. The CMA believes that the Merged Entity would not have both the ability and the incentive to foreclose layer poultry feed customers in any local areas, hence the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in the downstream supply of eggs in the UK.

Foreclosure of rival meat poultry feed suppliers at a local level

192. The concern under this theory of harm is that the Merged Entity could use the fact that Boparan controls a downstream firm (ie H2S) to switch purchases of meat poultry feed from rivals to itself, and thereby restrict its competitors' access to a significant customer (H2S). Whilst a loss of sales by competitors is not problematic in and of itself, this may be a concern if it would result in those rival suppliers of meat poultry feed becoming less effective competitors for other customers (some of whom are direct competitors to H2S). The Merged Entity would then face less competition upstream, which could result in higher prices and lower quality.¹⁸⁰
193. H2S (a joint venture between 2SFG and PD Hook and a part of the same overall group of companies as 2Agriculture) sources [X] from AB Agri across several regions in the UK, [X]. The CMA estimated that the meat poultry feed volume that AB Agri supplies to H2S [X] represents approximately [X]% of contestable poultry feed¹⁸¹ volumes in the UK (ie excluding self-supply).
194. AB Agri, a wholly owned subsidiary of Associated British Foods plc (**ABF**), is an international agri-food business producing and marketing animal feed, nutrition and specialists ingredients, and with presence in 86 countries including the UK. In 2021, AB Agri alone generated revenues of £1.7 billion.¹⁸² AB Agri, through its ABN division, describes itself as Britain's leading manufacturer of pig and poultry compound animal feed,¹⁸³ and through its wholesale division, KW Alternative Feeds, also markets blended feeds and co-products for ruminants.¹⁸⁴ AB Agri has 11 compound mills manufacturing monogastric feed across the UK.¹⁸⁵ In 2021, AB Agri

¹⁸⁰ CMA129, March 2021, paragraph 7.23.

¹⁸¹ This is including both meat poultry feed and layer poultry feed.

¹⁸² ABF Annual Report 2022, page 20, last accessed on 21 December 2022.

¹⁸³ About ABN, last accessed on 21 December 2022.

¹⁸⁴ About KW, last accessed on 21 December 2022.

¹⁸⁵ Rapley's Planning Statement for AB Agri Ltd and British Sugar Plc dated 11 July 2022 under reference 20-00156, available at: <https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RFBGM0PD0CW00>, last accessed on 21 December 2022.

was the largest supplier of monogastric feed by volume produced, followed by 2Agriculture.

195. In February 2021, AB Agri announced its plans to build a new, large capacity mill housing the most modern feed manufacturing technology (commonly referred to as a 'super mill') in East Anglia. The new mill has a planned capacity to produce 1 million tonnes of pig and poultry feed per year, one of the aims of which is to 'keep pace with the rising demand for animal feed, poultry and pig feed more specifically'.¹⁸⁶ On 19 July 2022, AB Agri submitted a planning application for its 'super mill' to the relevant local planning authority which is currently undetermined.¹⁸⁷
196. The Parties explained to the CMA that they intend to [§<] post-Merger.¹⁸⁸ The CMA therefore believes that as a result of the Merger, [§<].
197. This loss of sales for AB Agri may be [§<] for AB Agri to [§<] its planned investment in a new 'super mill'. The loss of sales may also harm AB Agri as an effective competitor through a reduction in scale and the loss of scale efficiencies. The CMA notes that in this scenario AB Agri would be a less effective competitor in monogastric feed overall (ie not just poultry feed) which may affect the competitive dynamic regarding ForFarmers.¹⁸⁹
198. The CMA's concern around this theory of harm was therefore twofold:
 - (a) Whether the new 'super mill' would not be brought to market as a result of the Merger therefore denying customers a more efficient and/or competitive mill.
 - (b) Whether AB Agri would need to close a mill or several mills, thereby significantly impacting its ability to serve customers (current and potential) and, in turn, its ability to compete effectively against the Merged Entity upstream, which could result in customers facing higher prices for feed or feed of a lower quality.
199. The CMA's approach to assessing foreclosure theories of harm is to analyse:
 - (a) the ability of the Merged Entity to foreclose rivals;

¹⁸⁶ ABN plan new 1 million tonne UK 'super-mill', last accessed on 21 December 2022.

¹⁸⁷ See <https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=dates&keyVal=RFBGM0PDOCW00>, last accessed on 21 December 2022.

¹⁸⁸ Merger Notice, paragraph 2.18.

¹⁸⁹ In 2021, ForFarmers produced around [§<]kT of poultry feed but almost [§<]kT of monogastric feed overall (Merger Notice, Figure 3).

- (b) the incentive for it to do so; and
- (c) the overall effect of the strategy on competition.¹⁹⁰

Ability

200. The CMA's assessment of the Merged Entity's ability to foreclose considered not only whether the Merged Entity could restrict its rivals' access to customers, namely Boparan (and H2S in particular), but whether it could harm their competitiveness by doing so. The Merger may only have a significant impact on rivals' volumes if the downstream customer is an important customer that accounts for a substantial proportion of purchases.¹⁹¹
201. For the purpose of its assessment, the CMA focused on whether a loss of sales would result in rival meat poultry feed suppliers, and AB Agri in particular, becoming less effective rivals in the supply of meat poultry feed at a local level.

Parties' submissions

202. The Parties submitted that the proposed insourcing of AB Agri's sales to H2S will not limit AB Agri's ability to compete effectively for other customers, as it will continue to be able to compete for a full range of alternative third-party customers.¹⁹²
203. Further, the Parties submitted that AB Agri will be incentivised to compete more aggressively in response to the Merger and is uniquely placed to undercut competitor prices as a result of (i) the efficiency of its Flixborough mill, [X]; and (ii) AB Agri's upstream integration, which means that ABF could lower AB Agri's cost of producing feed (by reducing the internal transfer price of its upstream supplies of wheat, pre-mix and enzymes charged to AB Agri).¹⁹³ The Parties also submitted that given the fixed costs involved in running a mill (eg wages and rent), closing a mill would be a supplier's last resort.¹⁹⁴

CMA's analysis

204. In *Boparan/Banham*, the CMA found that, following a string of recent acquisitions, Boparan is the largest supplier of chicken in the UK (excluding halal chicken) with a

¹⁹⁰ CMA129, March 2021, paragraph 7.25.

¹⁹¹ CMA129, March 2021, paragraph 7.26(a).

¹⁹² Merger Notice, paragraph 19.18.

¹⁹³ Issues Letter Response, paragraphs 4.6-4.8 and slide 41.

¹⁹⁴ Issues Letter Response, slide 41.

share of supply following that acquisition of nearly [30-40]% (by number of chickens slaughtered in 2021), with few remaining rivals in a concentrated industry characterised by limited spare capacity.¹⁹⁵ Considering that feed is a critical input in the production of poultry meat (accounting for approximately [60-70]% of all input costs), the CMA regards Boparan's strong market position downstream as a good proxy for its importance as a meat poultry feed customer. Indeed, using the information provided by the Parties on poultry meat processor feed requirements per year¹⁹⁶ together with the evidence from third parties, the CMA estimated that Boparan alone currently accounts for approximately [10-20]% of contestable poultry feed volumes in the UK (ie excluding self-supply),¹⁹⁷ with Moy Park and Chesterfield significantly behind.

205. As set out in paragraph 193, H2S is AB Agri's [redacted]. In 2021, AB Agri supplied H2S with [redacted]kT of meat poultry feed from [redacted] of its 11 compound mills, with approximately [redacted] of this volume produced at AB Agri's [redacted].¹⁹⁸ As a result of the Merger, it is expected that AB Agri would lose approximately [redacted]kT of feed currently supplied to H2S.¹⁹⁹ [redacted].²⁰⁰

- Evidence from the Parties' internal documents

206. In the course of its merger investigation, the CMA received a significant number of internal documents from the Parties, including in relation to this theory of harm. The CMA found a number of internal documents discussing:

(a) [redacted].²⁰¹

(b) [redacted]. [redacted]. For example:

(i) A ForFarmers merger-specific board presentation from June 2021 discusses [redacted].²⁰² [redacted].

(ii) In an M&A board update of April 2021, ForFarmers note that the Merger [redacted].²⁰³

¹⁹⁵ ME/6975/21 – *Boparan Private Office/Banham*, 25 March 2022, paragraphs 9, 64 and Table 1.

¹⁹⁶ Merger Notice, Table 28.

¹⁹⁷ This is including Banham's volumes.

¹⁹⁸ Parties' response to CMA's request for information dated 1 and 2 December 2022, Table 1.

¹⁹⁹ Merger Notice, paragraph 2.30. Although AB Agri supplied a little over [redacted]kT to H2S in 2021, this figure [redacted].
²⁰⁰ [redacted].

²⁰¹ For example, internal documents AMB-BOP-000000353 and AMB-BOP-000000350.

²⁰² ForFarmers Annex Q9.10 (page 8). ForFarmers Annex Q9.33 (page 28) and internal document AMB-FF-000000960 (page 9) also discuss [redacted].

²⁰³ Internal document AMB-FF-000000048 (page 9).

- (iii) Another ForFarmers merger-specific presentation from September 2021 identifies [redacted]. The same document further states [redacted].²⁰⁴ An e-mail between two members of the senior management of ForFarmers discussing the content of this presentation also states [redacted].²⁰⁵ However, the CMA observes that the slide cited above was [redacted].²⁰⁶ As the document does not contain any clear indication on which scenario ForFarmers believes to be more likely, the CMA put limited weight on the statements in this document.

207. The Parties cautioned the CMA against relying on ForFarmers' internal documents in relation to the transaction rationale and discussing AB Agri's possible reaction to the Merger, noting that 'these contain only speculative statements intended to market the Merger to an internal audience'.²⁰⁷ The CMA does not consider this to be a basis for reducing the weight to attach to these documents, given they represent ForFarmers' informed recommendation to its board in relation to the rationale and impact of the Merger.

208. The CMA also found evidence in internal documents that, prior to the Merger, Boparan (through 2Agriculture) [redacted].²⁰⁸ These plans resulted in a planning application being submitted by 2Agriculture to the relevant local planning authority in July 2020 in relation to the construction of a £[redacted] feed mill in Snetterton (East Anglia), which received approval on 12 July 2021.²⁰⁹ Further, the CMA found in Boparan's internal documents dated prior to the announcement of the Merger some evidence of [redacted].²¹⁰

209. While there is considerable uncertainty as to whether AB Agri would have ultimately lost some or all of the H2S volumes absent the Merger (in particular [redacted]), the CMA believes that it does not ensue that H2S switching away from AB Agri would have no merger-specific effect. This is because the Merger – [redacted] – would also bring about a long-term structural change to market dynamics, resulting in further vertical

²⁰⁴ ForFarmers Annex Q9.33 (page 28).

²⁰⁵ Internal document AMB-FF-00000988.

²⁰⁶ [redacted] (ForFarmers Annex Q9.33, page 28).

²⁰⁷ Issues Letter Response, paragraph 1.2(b)(iv).

²⁰⁸ Boparan Annexes Q9.121 and Q10.118 (pages 2 and 5-8); internal documents AMB-FF-000002123 (page 1), AMB-BOP-000000929 (page 2), AMB-BOP-000003097 (pages 21 and 26), AMB-BOP-000003110, AMB-BOP-000003976 (page 3), AMB-BOP-00000394, AMB-BOP-00000405 and AMB-BOP-00000357.

²⁰⁹ See <http://planning.breckland.gov.uk/OcellaWeb/showDocuments?reference=3PL/2020/0780/F&module=pl>, last accessed on 21 December 2022; [Plans for £40m feed mill in Norfolk village narrowly approved](#), last accessed on 21 December 2022. For completeness, the CMA notes that the Parties submitted that owing to [redacted], 2Agriculture has [redacted] (Merger Notice, paragraph 10.39).

²¹⁰ For example, Boparan Annexes Q9.104 and Q9.121; internal document AMB-BOP-00000187.

integration which might otherwise have not materialised, or have materialised to a lesser degree or less suddenly.

- Additional evidence considered by the CMA

210. Information in the public domain suggests that AB Agri's investment in a new 'super mill' is primarily driven by providing it with the milling capacity it needs to support the growing demand for poultry and pig feed of its customer base in East Anglia, through delivering improved animal feed quality, improved reliability, efficiency and sustainability in addition to greater traceability.²¹¹ In the February 2021 press release announcing the investment, AB Agri stated: '[w]ith an industry operating at near capacity, we are exploring all options to improve and expand our manufacturing capabilities to meet this demand, support our customers' long-term ambitions for growth, and strengthen our own business too'.²¹²
211. On this point, the CMA observes that when AB Agri submitted the planning application for its new 'super mill' in East Anglia in mid-July 2022, it was therefore public knowledge that 2Agriculture's own new mill in East Anglia had received planning permission and the joint venture between ForFarmers and Boparan had also been publicly announced.²¹³ The CMA considers this strongly suggests that AB Agri's investment plans were not primarily targeted at serving H2S.
212. [REDACTED]. [REDACTED].²¹⁴ [REDACTED].
213. [REDACTED]. [REDACTED]. [REDACTED].²¹⁵
214. Regarding [REDACTED] discussed in the Parties' internal documents (see paragraph 206), and notwithstanding the points set out at paragraphs 204 and 205 regarding the overall scale of Boparan and H2S's importance as a customer to AB Agri, the CMA notes that:
- (a) ForFarmers' own internal documents suggest that [REDACTED].²¹⁶ In the event some of its capacity is no longer required to serve H2S ([REDACTED]), AB Agri would have the opportunity to win these and other customers in both the supply of poultry feed

²¹¹ Rapley's Planning Statement dated 11 July 2022, under reference 20-00156, available at:

[https://planning.westsuffolk.gov.uk/online-](https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=dates&keyVal=RFBGM0PD0CW00)

[applications/applicationDetails.do?activeTab=dates&keyVal=RFBGM0PD0CW00](https://planning.westsuffolk.gov.uk/online-applications/applicationDetails.do?activeTab=dates&keyVal=RFBGM0PD0CW00), last accessed on 21 December 2022.

²¹² [ABN plan new 1 million tonne UK 'super-mill'](#), last accessed on 21 December 2022.

²¹³ [ForFarmers and 2Agriculture join forces in the United Kingdom](#), last accessed on 21 December 2022.

²¹⁴ [REDACTED].

²¹⁵ [REDACTED].

²¹⁶ For example, ForFarmers Annex Q9.33 (page 28) and Annex Q9.12.

(including both meat poultry and layer poultry feed) and the supply of pig feed.²¹⁷

- (b) The opportunity for AB Agri to compete for other customers means that the Merged Entity is unlikely to have the ability unilaterally to deny AB Agri access to an important route to market. Instead, customers may switch volumes between suppliers of feed.
- (c) Although Boparan accounts for around [10-20]% of contestable poultry feed volumes in the UK, AB Agri's proposed 'super mill' would supply monogastric feed (ie not just poultry feed). In that context, H2S accounts for approximately [5-10]% only of monogastric feed volumes in the UK. This further indicates that the Merged Entity would not have the ability to foreclose AB Agri as a supplier of poultry or monogastric feed or to prevent it from operating its 'super mill' at an economically viable level of capacity.

215. [REDACTED].²¹⁸

Conclusion on the ability to foreclose rival meat poultry feed suppliers

216. Boparan has a strong market position downstream which the CMA considers to be a good proxy of its importance as a meat poultry feed customer, and in particular for AB Agri also considering the volumes that it currently supplies to H2S. However, the CMA believes that, [REDACTED], the available evidence taken in the round does not support a finding that AB Agri would become a less effective competitor for other customers as a result of the Merger. The CMA believes that, as the Merged Entity would not be in a position to supply both the H2S volumes alongside ForFarmers' existing customers, AB Agri would therefore have the ability to compete for these customers, which reduces further the Merged Entity's ability to foreclose AB Agri. The CMA therefore believes that the Merged Entity would not have the ability to foreclose rival meat poultry feed suppliers, and in particular AB Agri.

Incentive and effect

217. As the CMA concluded that the Merged Entity would lack the ability to foreclose rival meat poultry feed suppliers, and AB Agri in particular, the CMA has not considered

²¹⁷ By way of context of magnitude, ForFarmers produced almost [REDACTED]kT of monogastric feed in the UK in 2021, including around [REDACTED]kT of poultry feed.

²¹⁸ [REDACTED].

whether it would have the incentive to pursue such a strategy or the overall effect of a foreclosure strategy on competition upstream.

Conclusion on foreclosure of rival meat poultry feed suppliers

218. For the reasons set out above, the CMA believes that the Merged Entity would not have the ability to foreclose rival meat poultry feed suppliers, and in particular AB Agri. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of a foreclosure strategy in the supply of meat poultry feed at a local level.

COUNTERVAILING FACTORS

219. In some instances, there may be countervailing factors that prevent or mitigate any SLC arising from a merger. There are two main ways in which this could happen: through merger efficiencies or through the entry and/or expansion of third parties in reaction to the effects of a merger. The CMA has assessed these in turn below.

Efficiencies

220. Efficiencies arising from a merger may enhance rivalry, with the result that the merger does not give rise to an SLC where an SLC may otherwise arise. For example, a merger of two smaller firms in a market resulting in efficiency gains might allow the merged entity to compete more effectively with the larger firms. Efficiencies may also be considered within the framework of relevant customer benefits (which are discussed in paragraphs 237 to 240).²¹⁹

Parties' submissions

221. The Parties submitted that the Merger will give rise to merger-specific efficiencies on the basis that:

- (a) The Merger will allow the JV to optimise its feed mill capacity, thereby providing a wider footprint for sales, allowing the JV to produce feed closer to customers, thereby leading to lower transport costs, driving competitive pricing and increasing product availability.²²⁰
- (b) The Merger will facilitate the exchange of know-how and expertise between the Parties, which will improve feed quality and the service provided to the benefit

²¹⁹ CMA129, March 2021, paragraphs 8.2-8.27.

²²⁰ Merger Notice, paragraphs 2.38, 2.41-2.42 and 15.75.

of customers. The JV will bring together 2Agriculture's existing expertise in the growing poultry feed sector with ForFarmers' capabilities in feed research and development as well as in formulation, enabling higher quality product and on-farm performance. With the Merger, the Parties would also be able to share their knowledge on reducing the use of food-grade raw materials like soy and reducing CO2 emissions to the benefit of the food supply chain in the UK.²²¹

- (c) The JV will generate benefits for its customers by being able to combine the sourcing of the Parties' raw material purchases, which will achieve procurement savings of £[<].²²²
- (d) Overall, the Merger is expected to generate net synergies of approximately £[<] per year by year three, encompassing: (i) [<]; (ii) [<]; (iii) [<]; and (iv) [<].²²³

222. The Parties made additional submissions pertaining to the Merger resulting in the following customer benefits:

- (a) lower prices as a result of marginal cost savings (brought about by net synergies referred to above) being passed on downstream (ie for UK retailer customers and ultimately consumers) due to the fully transparent supply chain and the cost monitoring and benchmarking exercises carried out routinely by national retailer customers; and
- (b) higher quality goods (measured by reference to 'cost per kilo live weight' a metric used to determine the performance of feed relative to cost, with a similar formulation for egg production) through the combination of the Parties' know-how to improve formulation and performance.²²⁴

223. The Parties also submitted that these benefits will be timely (as the marginal cost savings are all expected to be realised within the first three years of the JV) and are merger-specific insofar as de-duplication of costs, procurement savings and optimised geographical footprint cannot be achieved by contract.²²⁵

²²¹ Merger Notice, paragraphs 2.39 and 15.79.

²²² Merger Notice, paragraphs 2.40 and 15.75-15.78.

²²³ Merger Notice, paragraph 2.41; Issues Letter Response, slide 48.

²²⁴ Issues Letter Response, paragraphs 6.1-6.9.

²²⁵ Issues Letter Response, paragraphs 6.3, 6.9 and 6.10.

CMA's analysis

224. The CMA must receive compelling evidence to be satisfied that efficiencies will enhance rivalry so that a merger does not result in an SLC. More specifically, the CMA must be satisfied that the efficiencies will:

- (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.²²⁶

225. The CMA considers that it has not received sufficiently compelling evidence to indicate that the Merger would give rise to efficiencies meeting all of the conditions set out in the above paragraph. In more detail:

- (a) On expansion of geographic coverage and lower logistical costs, the CMA notes that feed suppliers compete across a number of parameters, with price (including delivery costs) being one of the most important parameters. At present, customers have a choice of suppliers some of which may be located closer to them than others and therefore may be able to secure lower delivery costs. Competition therefore incentivises suppliers to find ways to compete either more aggressively on price and delivery and/or to compete on non-price factors (eg quality of feed, supplier's reliability, or service levels). The CMA therefore believes that while the Merger would eliminate competition between the Parties, it would not offer customers additional choice of proximate suppliers or make any supplier more proximate. Further, the Parties have not submitted compelling evidence showing why the Merger is needed for either of them to expand their geographic coverage or lower logistical costs (or, similarly, be located closer to their customers).
- (b) On the exchange of know-how and expertise, the Parties have not submitted evidence as to why they require the Merger to improve know-how in research and development efforts. Specifically, the Parties have not provided any evidence on why the Merger is required to provide such information flows. For example, ForFarmers, a pan-European animal feed supplier and one of the

²²⁶ [CMA129](#), March 2021, paragraph 8.8.

largest suppliers in the UK, supplies many meat poultry growers, some of whom may be used to gather relevant data and information.

- (c) In relation to procurement efficiencies, the Parties have not provided compelling evidence that these could not be obtained without the Merger, eg by leveraging ForFarmers' European scale, especially considering that raw materials are commoditised globally.
- (d) Even if the JV would lead to procurement efficiencies and that these efficiencies cannot be realised without the Merger, the Parties have not provided compelling evidence showing that any efficiencies brought about by the Merger (eg from procurement-related savings) would be passed on to customers in the form of lower prices. The CMA found some internal documents indicating that one motivation for the Merger is to [redacted],²²⁷ and received feedback from one third party that the Merger could give the Parties better bargaining power in negotiating for raw materials (which, in turn could allow them to make their operations more cost effective.²²⁸ However, the Parties provided no detailed evidence to support their views on the benefits arising from the Merger and whether they would be passed on to UK customers.²²⁹
- (e) As noted at paragraph 25(b), the CMA has seen evidence that the Merger would [redacted]. It is not clear that the Parties have taken into account these investments (which may have occurred absent the Merger) in the overall assessment of the net synergies brought about by the Merger.
- (f) With respect to the loss of rivalry between the Parties where the CMA is concerned about horizontal unilateral effects, Table 1 shows that the Parties' combined share of supply is over 50% in three of the four areas and over 45% in the fourth. In none of these areas will the Merged Entity be looking to compete against a larger, stronger supplier (on a local basis). Given the considerable loss in competition in these areas and that the Merged Entity will be the largest supplier in the local areas, the efficiencies required to offset the SLCs identified would need to be considerable. The CMA notes that the greater the expected adverse effect of a merger, the greater the expected efficiencies must be.²³⁰ Even if the Parties' purported efficiencies met all the

²²⁷ For example, ForFarmers Annexes Q9.08 (page 10), Q9.05 (page 15), Q9.09 (page 2), and Q9.10 (pages 8 and 9); internal document AMB-FF-000001532.

²²⁸ Response to competitor questionnaire ([redacted]).

²²⁹ The CMA also notes that some of the purported synergies noted by the Parties, such as [redacted], do not relate to marginal cost savings, and therefore are less likely to result in an incentive on the Merged Entity to reduce prices or make short-run improvements in quality for the benefit of consumers (see further [CMA129](#), March 2021, paragraph 8.10).

²³⁰ [CMA129](#), March 2021, paragraph 8.14.

other conditions set out at paragraph 224, the CMA does not consider that the Parties have put forward sufficient evidence that they would offset the SLCs arising from the Merger.

Entry and expansion

226. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²³¹

Parties' submissions

227. The Parties submitted that barriers to entry and expansion are low. The Parties highlighted examples of expansion via firms changing shift patterns, reducing maintenance, leasing mills, reducing the number of products supplied, adding new lines and carrying out other targeted investments. The Parties also submitted that there were examples of planned entry within the Parties' catchment areas, including the AB Agri planned super mill and a planned mill by l'Anson.²³²

CMA's analysis

228. Most third parties indicated that there are significant barriers to entry in the supply of poultry feed overall and the majority could not name any recent entrants. Third parties indicated that building a new mill may cost upwards of £10 million and that receiving planning permission for either a new mill or expansion of an old mill is difficult.²³³ The CMA notes that 2Agriculture's planning application for a proposed mill at Scunthorpe was refused on 6 May 2022.²³⁴ Third parties also indicated that entering would require technical expertise and a customer base in place.²³⁵ In particular:

- (a) One competitor noted that the cost of entering the market would be 'prohibitive' and could not give any examples of new entrants.²³⁶

²³¹ CMA129, March 2021, from paragraph 8.40.

²³² Issues Letter Response, slide 33.

²³³ For example, response to competitor questionnaire ([§<]).

²³⁴ The CMA notes, however, that 2Agriculture and AREIL subsequently appealed this decision in late November 2022, which is currently under review; see: <https://apps.northlincs.gov.uk/application/pa-2020-1740>, last accessed on 21 December 2022.

²³⁵ Responses to competitor questionnaire ([§<]).

²³⁶ Response to competitor questionnaire (Cranswick).

- (b) Another stated that the market had been the ‘same players for many years’.²³⁷
- (c) One competitor said that entry was ‘not possible’ while another also described it as ‘impossible’.²³⁸

229. The existence of high barriers to entry is also supported by internal documents. A 2Agriculture [redacted].²³⁹

230. Furthermore, the Parties submitted that feed producers have low operating margins,²⁴⁰ and third parties indicated that there has been under-investment in UK milling infrastructure over the years, both of which indicate that there is little incentive for new entry.

231. The CMA notes that all examples of planned entry given by the Parties relate to either (i) firms building new mills within the catchments of their existing mills, (ii) expansion of existing mills, or (iii) leasing or purchasing of existing mills. The CMA considers that the examples provided by the Parties in the geographic catchments where the CMA found a realistic prospect of an SLC are unlikely to prevent an SLC, as (i) leases or purchases of existing mills do not change overall capacity and therefore would be insufficient to offset the loss of competition arising from the Merger, (ii) l’Anson appears to be primarily a ruminant feed producer, and was not identified by the Parties as supplying any poultry feed in 2021 from its existing mill, and (iii) the planned AB Agri ‘super mill’ has not yet received planning permission.

232. The CMA also found that permanent expansion is expensive and difficult: the examples given by the Parties show that it costs millions of pounds to increase capacity permanently, and a third party also indicated that it was very difficult to receive planning permission to expand mills.²⁴¹ The CMA believes it is therefore unlikely that temporary expansion by competitors would be sufficient to prevent an SLC, as the Merger would cause a permanent change in the market structure.

Conclusion on entry and expansion

233. For the reasons set out above, the CMA believes that entry or expansion would not be timely, likely and sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

²³⁷ Response to competitor questionnaire ([redacted]).

²³⁸ Responses to competitor questionnaire (Cranswick and [redacted]).

²³⁹ Internal document AMB-BOP-000000814.

²⁴⁰ Merger Notice, paragraph 12.

²⁴¹ Note of call with third party ([redacted]).

Third party views

234. The CMA contacted customers and competitors of the Parties, along with relevant industry bodies. A large proportion of the customer respondents raised concerns, primarily regarding supplier choice. A few third parties also expressed concerns that investment in new milling infrastructure will be less likely to materialise given the vertical integration arising from the Merger.
235. Third-party comments have been taken into account where appropriate in the competitive assessment, including in the design of the decision rule that the CMA applied to this case.

Conclusion on substantial lessening of competition

236. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of:
- (a) Horizontal unilateral effects in the supply of meat poultry feed at a local level, within the catchments centred on the Parties' Burston, Bury, Llay and Preston mills (the **SLC Areas**); and
 - (b) Vertical effects in the downstream supply of chicken in the UK arising from the foreclosure by the Merged Entity of poultry meat producers (including growers) competing with Boparan at a local level, within the SLC Areas.

Exceptions to the duty to refer

237. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 33(2)(c) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation if it believes that any relevant customer benefits outweigh the adverse effect from the merger's impact on competition.²⁴²
238. As set out in the CMA's guidance on the exception to the duty to refer, to clear a case on the basis of relevant customer benefits, customers need to be better off with the merger, despite the fact that the CMA believes that the merger raises a realistic prospect of an SLC. These will be rare cases since, ordinarily, the CMA would expect an SLC to lead to harm to customers in the form of higher prices, lower quality, reduced service and/or reduced innovation.²⁴³

²⁴² [Exception to the duty to refer](#) (CMA64), December 2018, paragraph 82.

²⁴³ [CMA64](#), December 2018, paragraph 83.

239. Under section 30 of the Act, the CMA must believe that the claimed customer benefits have accrued or may be expected to accrue within a reasonable period as a result of the merger, and would be unlikely to accrue without the merger or a similar lessening of competition. For the CMA to consider exercising its discretion, the claimed customer benefits must be clear, and the evidence in support of them must be compelling. In other words, the merging parties should be able to produce detailed and verifiable evidence that anticipated price reductions or other benefits will in fact emerge.²⁴⁴ Merging parties should also be able to provide evidence that the claimed benefits will be (i) likely, (ii) timely, and (iii) merger-specific.²⁴⁵
240. For the reasons set out above in the efficiencies section, the CMA does not believe that there is compelling, detailed, and verifiable evidence of customer benefits arising from the Merger. The CMA therefore does not have sufficient evidence that customer benefits will outweigh the competition concerns it has identified to warrant exercising its discretion not to refer the Merger.

DECISION

241. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
242. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.²⁴⁶ The Parties have until 30 December 2022²⁴⁷ to offer an undertaking to the CMA.²⁴⁸ The CMA will refer the Merger for a phase 2 investigation²⁴⁹ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides²⁵⁰ by 9 January 2023 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

²⁴⁴ CMA64, December 2018, paragraph 77.

²⁴⁵ CMA64, December 2018, paragraphs 70 and 76.

²⁴⁶ Section 33(3)(b) of the Act.

²⁴⁷ Section 73A(1) of the Act.

²⁴⁸ Section 73(2) of the Act.

²⁴⁹ Sections 33(1) and 34ZA(2) of the Act.

²⁵⁰ Section 73A(2) of the Act.

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