

# Completed Acquisition by Eville & Jones (Group) Limited of Vorenta Ltd

## Decision on relevant merger situation and substantial lessening of competition

**ME/2023/22**

The Competition and Market Authority's decision on reference under section 22(1) of the Enterprise Act 2002 given on 6 March 2023. Full text of the decision published on 6 April 2023.

Please note that [X] indicates figures or text which have been deleted at the request of the parties and third parties for reasons of commercial confidentiality. Figures may have also been replaced by ranges at the request of the parties and third parties as a way to protect commercial confidentiality.

### SUMMARY

#### Overview of the CMA's decision

1. The Competition and Markets Authority (**CMA**) conducted a Phase 1 investigation into the completed acquisition by Eville & Jones (Group) Limited (**E&J**) of Vorenta Ltd, including its subsidiaries Hall Mark Meat Hygiene Limited (**HallMark**) and Meat and Livestock Commercial Services Ltd (**MLCSL**) (the **Merger**). Vorenta Ltd and its subsidiaries are together referred to as **Vorenta**; E&J and Vorenta are together referred to as the **Parties**; and for statements referring to the future (if the Merger was to proceed), E&J and Vorenta are referred to as the **Merged Entity**.
2. After examining a range of evidence, the CMA believes the Merger meets the threshold for reference to an in-depth Phase 2 investigation, giving rise to a realistic prospect of a substantial lessening of competition (**SLC**) in relation to certain veterinary public health (**VPH**) services provided by the Parties.

#### Veterinary public health services

3. E&J and Vorenta are active in the VPH industry in the UK. VPH services play an important role in the food supply chain in the UK. VPH includes services such as the

provision of specialist veterinarians and non-veterinary personnel at slaughterhouses and other meat production facilities to ensure compliance with food safety and animal welfare standards, the provision of specialist veterinarians at border control points to ensure animal products coming into the UK meet UK standards, and the provision of specialist veterinarians and non-veterinary personnel to carry out inspections on farms and other food production establishments, for instance to assess compliance with requirements for the payment of funds to farmers, traders and landowners under a number of funding schemes available in the UK. The Parties therefore provide services that ensure UK consumers have access to food products that are safe for consumption and UK exporters are able to sell the animal products they produce.

### How did the CMA investigate the Merger?

4. To assess the effects of the Merger on competition, the CMA has gathered information and documents from a variety of sources, including the Parties and other market participants. Based on this evidence, the CMA has assessed the effects of the Merger in relation to:
  - (a) Theory of harm (**TOH**) 1.A: the outsourced supply of document and physical checks of animals, carcase and offal to ensure compliance with hygiene, food and feed law and rules on animal health and welfare in meat production establishments (**Meat Official Controls**) to the Food Standards Authority (**FSA**) in England and Wales, including the supply of official veterinarians (**OVs**) and non-veterinary staff (referred to as Meat Hygiene Inspectors (**MHIs**)) to undertake such controls;
  - (b) TOH 2: the supply of export health certificates (**EHCs**) in relation to products of animal origin (**POAO**) being exported from Great Britain;
  - (c) TOH 3: the outsourced supply of OVs to undertake inspections over POAO being imported into the UK from certain third countries (**Border Inspections**) at border control posts (**BCPs**) in England; and
  - (d) TOH 4: the outsourced supply of OVs and non-veterinary personnel (together referred to as **Inspectors**) to undertake a range of inspection services (**Agricultural Inspections**) in England on behalf of the Rural Payments Agency (**RPA**).
5. In addition to its assessment on the above areas, the CMA has also considered the effects of the Merger in relation to the outsourced supply of OVs and MHIs to undertake Meat Official Controls on behalf of Food Standards Scotland (**FSS**) in

Scotland (TOH 1.B). The CMA found FSS insources most of its OV and MHI requirements and has no plans to outsource the large share of its requirements in the foreseeable future. For the small share of its requirements that it will put to tender, there will remain sufficient competition from other suppliers who are able to supply more limited amounts of OVs and MHIs to FSS. The CMA therefore considers the Merger does not give rise to a realistic prospect of an SLC in relation to TOH 1.B.

6. The CMA has summarised the reasons for its competition concerns below.

### **What could be the impact of the Merger?**

#### ***Outsourced supply of Meat Official Controls in England and Wales***

7. Meat Official Controls involves the supply of OVs and MHIs to slaughterhouses and other meat production facilities to ensure they are complying with food safety and animal welfare standards. Slaughterhouses cannot operate without an OV and meat produced at meat production facilities shall be inspected by MHIs. Contracts to supply OVs and MHIs in England and Wales are awarded through tenders run by the FSA.
8. In the last FSA tender, in 2019, E&J was awarded all six contracts to provide OVs and MHIs covering all of England and Wales. Vorenta has historically provided OVs and MHIs to the FSA and other competent authorities, and the CMA has found that it was a close competitor to E&J in the 2019 tender. The CMA found that, absent the Merger, Vorenta would likely be a significant competitor in the next FSA tender (which is expected to take place in 2024/25). The CMA also found that there are very few other suppliers who would be likely to bid in that tender, and that no other supplier has the same level of experience or capabilities as E&J or Vorenta.
9. While at a late stage in the CMA's investigation, the Parties submitted arguments suggesting that Vorenta might not, or might not be able to, compete in the next FSA tender, the CMA has found that the evidence overall indicates that Vorenta would likely have the capability to be a significant competitor in the next FSA tender. In particular, E&J's internal documents show that it considered Vorenta might bid in the next tender, and earlier submissions from Vorenta to the CMA also stated that Vorenta would consider bidding in the next tender.
10. As a result, the CMA found that there would be a realistic prospect of an SLC in relation to the outsourced supply of Meat Official Controls to the FSA in England and Wales following the Merger.

### ***Supply of POAO EHCs in Great Britain***

11. Food suppliers in the UK who wish to export their products to other countries typically must obtain an EHC. Exporters in Great Britain requiring POAO EHCs vary from small individual traders with a single export site and ad hoc POAO EHC requirements to large multi-national corporations with multiple export sites and regular POAO EHC requirements. The CMA found that, while there are a range of smaller suppliers of EHCs who may be able to support smaller exporter, larger exporters with multiple sites often require the services of a supplier that can provide national coverage.
12. The CMA found the Merger would create a clear market leader and reduce from four to three the number of large national suppliers of POAO EHCs in Great Britain.
13. The CMA also found that the Parties have competed closely in past tenders and in non-tender competition across different customer groups, including large, national customers, and it considers that the Parties would continue to compete closely absent the Merger.
14. The CMA found that the two other large national suppliers, IVC Evidencia (**IVC**) and AIO Partners Ltd (**AIO**), would continue to compete with the Merged Entity. However, the CMA found that these two suppliers would not make up for the competitive constraint lost due to the Merger.
15. The CMA found that the long tail of small, regional providers, which supply close to half of the total POAO EHCs issued in Great Britain, would constitute only a limited constraint on the Parties and there is no evidence that they would act as a more significant constraint on the Merged Entity in the future, especially for large, national customers. In addition, there are material barriers to expansion preventing smaller suppliers from expanding to compete effectively with national suppliers.
16. As a result, the CMA found that there would be a realistic prospect of an SLC in relation to the supply of POAO EHCs in Great Britain following the Merger.

### ***Outsourced supply of OVs to undertake POAO Border Inspections at BCPs in England***

17. Some animal products coming into the UK are subject to inspection at BCPs to ensure they comply with UK food safety and animal welfare standards. Many BCPs

contract with service providers to supply OV's to carry out POAO Border Inspections. The UK may impose a further requirement for POAO Border Inspections for products arriving from the European Union (EU), which may result in a need for more OV's to carry out POAO Border Inspections in the future.

18. The CMA found the Parties are close competitors for the outsourced supply of OV's to undertake POAO Border Inspections at BCP's in England. They bid for the same tenders in recent years and either E&J or Vorenta had the winning bid in each of them.
19. Besides the Parties, there is currently only one other active supplier, which currently supplies OV's to a single BCP in England. In addition, the Merged Entity would face very limited constraint from potential entrants.
20. BCP's can insource OV's, and the CMA found that insourcing may provide some constraint on the Merged Entity. However, the CMA found this constraint is limited by the expressed preference of some BCP's to outsource OV requirements, particularly in response to variable demand. Accordingly, the CMA found that significant demand is likely to remain for the outsourced supply of OV's to undertake POAO Border Inspections in England.
21. As a result, the CMA found that there would be a realistic prospect of an SLC in relation to the outsourced supply of OV's to undertake POAO Border Inspections at BCP's in England.

***Outsourced supply of Inspectors to undertake Agricultural Inspections for the RPA in England***

22. The Rural Payments Agency (RPA), an agency sponsored by the Department for Environment, Food and Rural Affairs requires that certain Agricultural Inspections are carried out, for instance before it makes grants or payments to farmers, traders, or landowners under a number of funding schemes available in the UK. RPA enters contracts with service providers to supply Inspectors to carry out Agricultural Inspections in England.
23. The CMA found that the Parties were close competitors in the most recent RPA tender in 2021. Vorenta won this tender and is currently the sole supplier of Inspectors to undertake Agricultural Inspections in England, while the CMA has found that E&J was Vorenta's closest competitor. The Parties did not face strong competition from alternative suppliers.

24. In relation to future tenders, the CMA found that Vorenta, the incumbent, would be a very strong competitor, and E&J would remain a close competitor. Evidence indicates that E&J has the capability to bid and fulfil future RPA contracts.
25. The CMA found that alternative suppliers would provide limited constraint, as it has not seen evidence of third-party interest to bid for future tenders, and third parties cited barriers to both bidding and fulfilling the RPA contract. The CMA also found that insourcing would provide a limited constraint on the Merged Entity, with the RPA having some ability to insource Inspectors, but significant demand for outsourcing is likely to remain for the foreseeable future.
26. As a result, the CMA found that there would be a realistic prospect of an SLC in relation to the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England.

***The CMA's decision on the investigated TOHs***

27. On the basis of the evidence received during its Phase 1 investigation, the CMA considers the Merger gives rise to a realistic prospect of an SLC in relation to each of the four theories of harm outlined above.

# ASSESSMENT

## PARTIES

28. **E&J** is a limited liability company incorporated in England. In the financial year ending April 2022, it had a turnover of approximately £45 million in the UK.
29. E&J is primarily active in the VPH industry in the UK, delivering a range of statutory work on behalf of different public bodies and for private entities.
30. Historically, E&J has focussed on the outsourced supply of Meat Official Controls to the FSA (and predecessor competent authorities) in England and Wales, including the supply of OVs<sup>1</sup> and MHIs<sup>2</sup> to undertake such controls.
31. Over the years, E&J has expanded or tried to expand into other services within the VPH industry, including:<sup>3</sup> (a) the supply of POAO EHCs to exporters in Great Britain; (b) the outsourced supply of OVs to undertake POAO Border Inspections of imported products at BCPs in England; and (c) the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England.
32. **Vorenta** is a limited liability company incorporated in England. Prior to the acquisition by E&J, Vorenta was owned by Diederick Johannes Opperman (**Mr Opperman**), Emma Catherine Opperman, and David Francis Clift Peace (**Mr Peace**) (together, the **Sellers**). In the financial year ending March 2022, it had a UK turnover of approximately £9 million.<sup>4</sup> Vorenta operates primarily through two subsidiaries: HallMark and MLCSL.<sup>5</sup>

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<sup>1</sup> Official veterinarian is used to describe veterinary surgeons who perform statutory work on behalf of the UK government. The training, qualifications and appointments of veterinary surgeons as OVs is set out in the [Policy for Authorisation of Official Veterinarians in Great Britain \(OV13\)](#).

<sup>2</sup> Meat Hygiene Inspector is used to refer to the more junior role performed by individuals who do not have the training, qualifications and appointments required to be an OV. Note of call with a third party on [redacted], paragraphs 15 and 17.

<sup>3</sup> In addition, E&J supplies plant inspection assistants to food businesses in the UK poultry industry to undertake certain statutory inspections; provides tuberculosis testing services for cattle in England and holds a place on a framework agreement with the Animal and Plant Health Agency (**APHA**) for the provision of temporary staff for business-as-usual purposes, as well as responding to animal disease outbreaks and incidents across Great Britain. According to E&J, the last time it undertook chargeable work under any similar framework agreement was in 2017 and since July 2019 it has only put forward one external candidate under the framework agreement. Response by E&J on 24 November 2022 to the request for information and documents made by the CMA under section 109 of the Act on 27 October 2022 (**E&J Enquiry Letter Response of 24 November 2022**), Introduction/Summary and question 12; and Response by E&J on 22 December 2022 to the request for information and documents made by the CMA under section 109 of the Act on 27 October 2022 (**E&J Enquiry Letter Response of 22 December 2022**), question 12.

<sup>4</sup> E&J Enquiry Letter Response of 24 November 2022, question 10.

<sup>5</sup> Non-trading subsidiaries of Vorenta include Probita Solutions, Keyskill.com Limited, OV Online Limited, and Official Vet Online Limited. Response by E&J on 4 November 2022 to the request for information and documents made by the CMA on 1 November 2022 (**E&J S109 Request Response of 4 November 2022**), page 1.

33. **HallMark** is also active in the VPH industry in the UK, delivering a range of statutory work on behalf of different public bodies and for private entities.
34. HallMark was established in 2002 to supply Meat Official Controls throughout the UK. Its last contract for Meat Official Controls ended in 2019. Since then, HallMark has continued to bid on tenders for Meat Official Controls run by different competent authorities.<sup>6</sup>
35. Over the years, HallMark has also expanded into other services within the VPH industry, including:<sup>7</sup> (a) the supply of POAO EHCs to exporters in Great Britain; (b) the outsourced supply of OVAs to undertake POAO Border Inspections of imported products at BCPs currently in England; and (c) the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England.
36. **MLCSL** was acquired in November 2018 to diversify the Vorenta business and bolster Vorenta's position in future tenders within the meat industry. It delivers carcass classification services to private customers in the UK.<sup>8</sup>

## TRANSACTION AND RATIONALE

37. Pursuant to a share purchase agreement of 9 September 2022 (**SPA**), E&J acquired the whole issued share capital of Vorenta from the Sellers for approximately £[<del>X</del>], comprising of a mix of cash on completion, deferred cash payable in up to [<del>X</del>] from completion, and a minority shareholding of [<del>X</del>]% in the Merged Entity.<sup>9</sup>
38. In connection with the SPA, E&J entered into service agreements with each of Mr Opperman and Mr Peace, pursuant to which Mr Opperman would perform a hybrid role of fee-earning veterinarian and adviser to E&J's Chief Executive Officer, and Mr

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<sup>6</sup> Response by Vorenta on 20 December 2022 to the request for information and documents made by the CMA under section 109 of the Act on 14 December 2022 (**Vorenta S109 Request Response of 20 December 2022**), questions 1(a) and 9.

<sup>7</sup> HallMark also holds a place on, and often provides staff under, a framework agreement with APHA for the provision of temporary animal and plant health staff for business-as-usual purposes, as well as responding to animal disease outbreaks and incidents across Great Britain. In addition, HallMark provides food sampling services to the FSA. E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; Vorenta S109 Request Response of 20 December 2022, from question 15; and Response by Vorenta on 9 January 2023 to the request for information and documents made by the CMA under section 109 of the Act on 29 December 2022 (**Vorenta S109 Request Response of 9 January 2023**), from question 9.

<sup>8</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; and Vorenta S109 Request Response of 20 December 2022, questions 1(a) and 9.

<sup>9</sup> E&J MIC RF11 Response, paragraphs 1-3. Response by E&J on 1 November 2022 to the request for information and documents made by the CMA on 27 October 2022 (**E&J Enquiry Letter Response of 1 November 2022**), Annex 1a, Annex 1b, Annex 30 and Annex 31; and Response by E&J on 16 and 20 December 2022 to the request for information and documents made by the CMA under section 109 of the Act on 13 December 2022 (**E&J S109 Request Response of 16 and 20 December 2022**), Appendix D.



Peace would become a member of E&J's Board of Directors in the role of Commercial Director.<sup>10</sup>

## E&J's rationale for the Merger

39. E&J submitted the Merger is part of an ongoing growth strategy which began in around 2020.<sup>11</sup> A key aspect of this strategy is to diversify the E&J business into a wider range of service offerings within the VPH industry.
40. According to E&J, the Merger will diversify its business into veterinary and non-veterinary services where only Vorenta is active. E&J expects diversification will bring about new revenue streams, generate economies of scope and scale, and allow E&J to reduce its historical reliance on FSA Meat Official Controls contracts and to reduce staff churn (by providing a more attractive workplace for staff who will be able to rotate across a wider range of activities).<sup>12</sup> Specifically, E&J explained that a large portion of its turnover has historically been generated by FSA contracts<sup>13</sup> and that [redacted].<sup>14</sup> E&J also explained that staff attrition is a recurring issue within the VPH industry which has been compounded by the UK's exit from the EU, especially in relation to staff undertaking Meat Official Controls.<sup>15</sup>
41. E&J's internal documents generally supported its stated rationale for the Merger.<sup>16</sup> However, internal documents presented to E&J's board of directors further indicated that E&J expected the Merger would remove an important competitor, including for employing E&J's staff.<sup>17</sup> Moreover, E&J took into account Vorenta's senior management expertise and knowledge in the delivery of Meat Official Controls in the process of considering and negotiating the Merger and specifically included terms that would prevent the Sellers either from bidding for a future FSA tender or from assisting a third party in bidding for a future FSA tender.<sup>18</sup> In addition, growing

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<sup>10</sup> E&J Enquiry Letter Response of 1 November 2022, Annex 19(a), Annex 19(b), Annex 19(c), Annex 30, and Annex 31; and E&J S109 Request Response of 4 November 2022, questions 1(a) and (f) and 20.

<sup>11</sup> E&J MIC RF11 Response, paragraph 2.

<sup>12</sup> E&J RF11 Response, paragraph 4; and E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary and question 35.

<sup>13</sup> For example, E&J stated that FSA contracts for Meat Official Controls accounted for approximately 90% of its revenues until 2020 and 70% in 2022. E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>14</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 48.

<sup>15</sup> E&J RF11 Response, paragraphs 1-4; and E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>16</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 22.1, page 4; Appendix 22.2, page 8; Appendix 23; Appendix 24.1, pages 4-9, 13-15, 25, 34; Appendix 24.2, pages 3-6, 8-9, 19-20, 24-25, 27, 32 and 36; Appendix 24.3; Appendix 24.4, page 5; and E&J Enquiry Letter Response of 12 December 2022, Appendix 22J.

<sup>17</sup> Response by E&J on 12 December 2022 to the request for information and documents made by the CMA on 27 October 2022 (**E&J Enquiry Letter Response of 12 December 2022**), Appendix 22N, page 9; E&J Enquiry Letter Response of 24 November 2022, Appendix 22.1, page 1; and E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, page 33.

<sup>18</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, pages 27 and 32; E&J S109 Request Response of 16 and 20 December 2022, Appendix C; and E&J Response to S109 Request of 4 January 2023, question 2.

its market position in the supply of POAO EHCs and the outsourced supply of OVs to undertake POAO Border Inspections was an important part of E&J's rationale for the Merger.<sup>19</sup>

## **Sellers' rationale for the Merger**

42. Vorenta submitted the Sellers' rationale for the Merger stemmed from two key factors: (a) Vorenta's successive failed attempts to win Meat Official Controls tenders and the early termination of its contract for Meat Official Controls on behalf of FSS in 2019, and (b) the additional difficulties and uncertainties brought about by the UK's exit from the EU to the VPH industry.<sup>20</sup>
43. Vorenta explained that its subsidiary HallMark was established to supply Meat Official Controls in the UK, successfully supplying these services to different competent authorities for many years. More recently, however, HallMark lost two consecutive FSA Meat Official Controls tenders in England and Wales (in 2016 and 2019) and one Meat Official Controls tender in Northern Ireland (in 2020) to E&J. In addition, due to higher labour costs caused by the UK's exit of the EU, which meant that HallMark had to deliver the services [X], Vorenta and FSS agreed on an early termination of their ongoing contract for Meat Official Controls in Scotland (in 2019).<sup>21</sup>
44. Vorenta submitted that for many years the Sellers had been contemplating a potential combination of E&J and Vorenta, which they consider would create a larger organisation with a more diversified services offering. Accordingly, around 2019/20 the Sellers approached private equity firms to fund their planned combination of E&J and Vorenta. In parallel, the Sellers considered other strategic acquisitions to diversify the Vorenta business and provide competent authorities with an alternative to E&J for Meat Official Controls as well as a broader service offering.<sup>22</sup>
45. Vorenta's internal documents indicated the Sellers had been seeking to diversify the Vorenta business.<sup>23</sup> Regarding a combination of E&J and Vorenta, internal documents indicated the Sellers expected the Merged Entity (a) would become the UK's largest provider of veterinary regulatory compliance services with a focus on

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<sup>19</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 22.1, page 1; and E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, pages 27 and 32.

<sup>20</sup> Vorenta S109 Request Response of 20 December 2022, question 1(a).

<sup>21</sup> Vorenta S109 Request Response of 20 December 2022, questions 1(a) and 9.

<sup>22</sup> For example, as noted in paragraph 36, Vorenta acquired MLSCL to diversify the business and bolster Vorenta's position in future tenders within the meat industry. Vorenta S109 Request Response of 20 December 2022, questions 1(a) and (b) and Annex 1.

<sup>23</sup> Vorenta S109 Request Response of 20 December 2022, Annex 8 – HallMark – strategic outline for growth.

Meat Official Controls, POAO EHCs, and POAO Border Inspections; (b) would be well-positioned to win public sector contracts and secure work with large private exporters of POAO; and (c) would be well-placed to overcome challenges around staff recruitment.<sup>24</sup>

## PROCEDURE

46. The CMA's mergers intelligence function identified the Merger as warranting a Phase 1 investigation.<sup>25</sup>
47. The Merger was also considered at a Case Review Meeting.<sup>26</sup>

## JURISDICTION

48. The CMA has jurisdiction to review transactions under its merger control function in the Act where arrangements are in progress or in contemplation which have resulted or may result in the creation of a relevant merger situation as a result of:
  - (a) two or more enterprises ceasing to be distinct within the meaning given in section 23 of the Act;
  - (b) either of the jurisdictional thresholds under section 23 of the Act (the 'turnover' test or the 'share of supply' test) being met; and
  - (c) either the merger has not yet taken place or the date of the merger is no more than four months before the day a reference for an in-depth, Phase 2 assessment is made (unless the merger took place without having been made public and without the CMA being informed of it, in which case the four-month period starts from the earlier of the time the merger was made public or the time the CMA was told about it), as set out in section 24 of the Act.
49. Each of E&J and Vorenta is an enterprise under section 129 of the Act. As a result of the Merger, these enterprises have ceased to be distinct within the meaning given in section 23 and 26 of the Act.

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<sup>24</sup> Vorenta S109 Request Response of 20 December 2022, Annex 2, pages 5-6.

<sup>25</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, paragraphs 6.4-6.6.

<sup>26</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020, from page 46.

50. The turnover test in section 23(1)(b) of the Act is not satisfied. Vorenta's UK turnover for the financial year ended 31 March 2022 did not exceed £70 million.<sup>27</sup> However, the share of supply test in section 23(2)(a) of the Act is satisfied.
51. The Parties overlap in the supply of POAO EHCs in each of England and Wales and in the outsourced supply of OVs to undertake POAO Border Inspections at BCPs across England. The Parties' combined share of supply (**SoS**) exceeds 25% for each of these services in each of these nations in 2022, with the Merger bringing about increments. Specifically, the Parties had an estimated combined share of:
- (a) [40-50]% in the supply of POAO EHCs in Wales in 2022 (to 31 October), with an increment brought about by the Merger of [0-5]%;<sup>28</sup>
  - (b) [30-40]% in the outsourced supply of OVs to undertake POAO Border Inspections at BCPs across England in 2022, with an increment brought about by the Merger of [10-20]% (see paragraph 261); and
  - (c) [20-30]% in the outsourced supply of POAO EHCs in England in 2022 (to 31 October), with an increment brought about by the Merger of [0-5]%.<sup>29</sup>
52. The four-month deadline set out in section 24 of the Act has not elapsed. The Merger completed on 9 September 2022 but was made public on 15 September 2022,<sup>30</sup> and the four-month deadline for a decision under section 24 of the Act is 13 March 2023 (following multiple extensions under section 25(2) of the Act).<sup>31</sup> The initial period for consideration of the Merger under section 34ZA(3) of the Act

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<sup>27</sup> See paragraph 32.

<sup>28</sup> SoS estimates made on the basis of the number of POAO EHCs issued by each of the Parties in Wales in 2022 (to 31 October 2022), based on figures provided by APHA.

<sup>29</sup> SoS estimates made on the basis of the number of POAO EHCs issued by each of the Parties in England in 2022 (to 31 October 2022), based on figures provided by APHA.

<sup>30</sup> This was done via an announcement on E&J's [website](#) and other industry news websites such as [Vettimes](#).

<sup>31</sup> On 8 November 2022, the CMA issued a notice to extend the four-month period mentioned in section 24 of the Act because E&J had not complied with a requirement set out in a notice under section 109 of the Act to provide certain information and documents. On 18 November 2022, the CMA issued a notice terminating this extension. On 11 November 2022, the CMA issued a notice to extend the four-month period mentioned in section 24 of the Act because E&J had not complied with a requirement set out in a notice under section 109 of the Act to provide certain information and documents. On 3 January 2023, the CMA issued a notice terminating this extension. On 28 December 2022, the CMA issued a notice to extend the four-month period mentioned in section 24 of the Act because E&J had not complied with a requirement set out in a notice under section 109 of the Act to provide certain information and documents. On 3 January 2023, the CMA issued a notice terminating this extension. On 28 December 2022, the CMA issued a notice to extend the four-month period mentioned in section 24 of the Act because Vorenta had not complied with a requirement set out in a notice under section 109 of the Act to provide certain information and documents. On 3 January 2023, the CMA issued a notice terminating this extension. On 4 January 2023, the CMA issued a notice to extend the four-month period mentioned in section 24 of the Act because E&J had not complied with a requirement set out in a notice under section 109 of the Act to provide certain information and documents. On 5 January 2023, the CMA issued a notice terminating this extension.

started on 10 January 2023 and the statutory 40 working day deadline for a decision is therefore 6 March 2023.

53. The CMA therefore believes that a relevant merger situation has been created, and that the CMA has jurisdiction to review the Merger under the merger control provisions in the Act.

## COUNTERFACTUAL

54. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>32</sup> The counterfactual may consist of the pre-merger conditions of competition, or conditions of competition that involve stronger or weaker competition between the merging parties than the pre-merger conditions of competition.<sup>33</sup>
55. At a late stage in the process, following receipt of the CMA's Issues Letter and in contrast to Vorenta's earlier submissions to the CMA, [X] submitted that prior and unrelated to the Merger, Vorenta had decided not to bid in future FSA tenders for Meat Official Controls (see from paragraph 112).<sup>34</sup> In addition, after receipt of the CMA's Issues Letter, E&J submitted that Vorenta would no longer be a credible competitor for future FSA tenders for Meat Official Controls due to fundamental changes in the technical and financial requirements to undertake such controls since the last FSA tender in 2019 (see from paragraph 103).<sup>35</sup>
56. The CMA notes that in determining the appropriate counterfactual, the depth of analysis is usually not to the same level as in the CMA's competitive assessment.<sup>36</sup> This is because the counterfactual is not intended to be a detailed description of the conditions of competition that would prevail absent the Merger, with those conditions being better considered in the competitive assessment.<sup>37</sup> Accordingly, the CMA has considered the submissions made by [X] and E&J with respect to whether and to what extent Vorenta would have competed for future FSA tenders in the **Competitive Assessment** section (see from paragraph 100).

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<sup>32</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 3.1.

<sup>33</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 3.2.

<sup>34</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29; [X]'s response of 13 February 2023 to the CMA's Issues Letter; and [X]'s response of 15 February 2023 to the CMA's Issues Letter.

<sup>35</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slides 6-23; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 1-10.

<sup>36</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 3.6.

<sup>37</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 3.7.

57. The CMA believes the relevant counterfactual is the pre-Merger conditions of competition and has considered any possible changes in Vorenta's competitive strength in its competitive assessment.

## COMPETITIVE ASSESSMENT

58. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint (ie an alternative that customers could switch to), allowing the merged entity profitably to raise prices or to degrade non-price aspects of its competitive offering, such as quality, range and innovation, on its own and without needing to coordinate with its rivals.<sup>38</sup>
59. Based on information and evidence provided by the Parties and third parties, the CMA considers the Parties overlap, today and in the foreseeable future, in:
- (a) the outsourced supply of Meat Official Controls (or resources required to undertake such controls) to competent authorities, specifically the FSA in England and Wales (TOH 1.A) and FSS in Scotland (TOH 1.B);<sup>39</sup>
  - (b) the supply of POAO EHCs in Great Britain (TOH 2);
  - (c) the outsourced supply of OVs to undertake POAO Border Inspections at BCPs in England (TOH 3); and
  - (d) the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England (TOH 4).

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<sup>38</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraphs 4.1 and 4.3.

<sup>39</sup> In Northern Ireland, Meat Official Controls are under the remit of the FSA but are delivered by the Department of Agriculture, Environment and Rural Affairs (**DAERA**) ([Northern Ireland Manual for Official Controls](#), item 1.1.1). Vorenta supplied a small number of MHIs to DAERA until 2020, when it was unsuccessful in a tender and ultimately lost the contract to E&J (Vorenta S109 Request Response of 20 December 2022, question 9). DAERA currently employs all OVs and most MHIs to deliver Meat Official Controls. In 2020, E&J entered a three-year contract for the provision of a small number of MHIs to DAERA, currently providing only two MHIs to DAERA. E&J submitted it expects DAERA to fully insource all MHIs to undertake Meat Official Controls in Northern Ireland by the end of October 2023 (E&J Enquiry Letter Response of 24 November 2022, pages 1 and 4). E&J provided evidence indicating that DAERA is in the process of recruiting trainee MHIs to meet its long-term objective of reducing outsourced staff and becoming self-sufficient (E&J Enquiry Letter Response of 24 November 2022, Annex 1.1). The CMA has not received evidence indicating that DAERA may decide to outsource OVs and MHIs to deliver Meat Official Controls in Northern Ireland, in the foreseeable future. On this basis, the CMA considered, at an early stage in its investigation, that no plausible competition concerns would arise in relation to the supply of OVs or MHIs to undertake Meat Official Controls on behalf of DAERA in Northern Ireland.

## **TOH 1: Horizontal unilateral effects in the outsourced supply of Meat Official Controls (or resources required to undertake such controls)**

60. The Parties overlap, today and in the foreseeable future, in the outsourced supply of Meat Official Controls to competent authorities in Great Britain. The concern under this theory of harm is that the removal of one Party as a competitor may reduce competition between suppliers competing in future tenders concerning the outsourced supply of Meat Official Controls (or resources required to undertake such controls) to competent authorities in England, Wales, and Scotland. The CMA believes this may result in worse contractual terms for relevant competent authorities outsourcing these services, and in higher prices for and/or worse quality of the services provided to meat producing establishments in England, Wales, and Scotland. Ultimately, the CMA believes this may lead to higher prices for and/or worse quality of meat products supplied to other food businesses and consumers.
61. Meat Official Controls are currently under the remit of the FSA in England and Wales, and FSS in Scotland. As such, the outsourced supply of Meat Official Controls in these nations is concentrated on two customers: the FSA in England and Wales, and FSS in Scotland. Therefore, the CMA has considered whether the Merger gives rise to a realistic prospect of a SLC in England and Wales and, separately, in Scotland.
62. In its assessment of this theory of harm, the CMA considered:
- (a) industry background;
  - (b) frame of reference;
  - (c) closeness of competition between the Parties; and
  - (d) other constraints on the Merged Entity.

### ***Industry background***

#### ***Early meat inspection and veterinary supervision requirements in meat establishments in England, Wales, and Scotland***

63. In the early 2000s, the UK fully implemented EU food and animal safety regulations, including Regulation (EU) 2017/625 of the European Parliament and of the Council (the **Meat Official Controls Regulation**). This meant, amongst other things, that meat producing establishments across England, Wales, and Scotland required a full-time veterinarian onsite to be able to operate. Around the same time, there was also an increasing need for non-veterinary staff (referred to as **Meat Inspectors**;

today equivalent to MHIs) to inspect meat produced in meat producing establishments and undertake additional controls put in place to address the bovine transmissible spongiform encephalopathy outbreak in previous decades.

64. As such, the Meat Hygiene Service (**MHS**),<sup>40</sup> which was a central government agency previously responsible for meat inspections and the supervision of meat producing establishments in England, Wales, and Scotland, began more frequently to engage specialist suppliers, such as E&J and HallMark (Vorenta), to supply veterinarians and Meat Inspectors (to 'top up' the Meat Inspectors directly employed by the MHS).<sup>41</sup>

#### *Current and future Meat Official Controls requirements in England, Wales, and Scotland*

65. Meat Official Controls relate to document and physical checks of animals, carcasses, and offal to ensure compliance with hygiene, food, and feed law, as well as rules on animal health and welfare in meat producing establishments (eg slaughterhouses, on farm slaughter facilities, game handling establishments, cutting plants, meat products premises which are collocated with cutting plants, slaughterhouses, or game handling establishments) in England, Wales, and Scotland, pursuant to the Meat Official Controls Regulation. Ultimately, Meat Official Controls seek to minimise the potential for unsafe or unregulated meat entering the food chain and to ensure animal welfare is protected.<sup>42</sup>
66. Meat Official Controls are undertaken by OVs and MHIs. Certain Meat Official Controls activities can only be performed by OVs.<sup>43</sup> MHIs perform a more junior and limited role and are not expected to have the training, qualifications, and appointments required for OVs.<sup>44</sup>
67. Competent authorities will typically use a mix of insourcing and outsourcing to obtain OVs and MHIs to undertake Meat Official Controls.<sup>45</sup> Where competent authorities directly employ OVs and MHIs, apart from the required training,

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<sup>40</sup> See <https://www.gov.uk/government/organisations/meat-hygiene-service>.

<sup>41</sup> E&J S109 Request Response of 16 and 20 December 2022, questions 6(b) and (c); and Vorenta S109 Request Response of 20 December 2022, question 9.

<sup>42</sup> Response by a third party to the CMA questions of [redacted], question 1; [FSA Manual for Official Controls – Chapter 1](#), items 1.1.1 and 1.2.1; and [Scottish Manual for Official Controls – Chapter 1](#), items 1.1.1 and 1.2.1.

<sup>43</sup> Enquiry Letter Response, 24 November, Introduction/Summary; Vorenta S109 Request Response of 20 December 2022, question 9; and Note of call with a third party on [redacted], paragraphs 3, 7, 10, 15 and 17.

<sup>44</sup> Note of call with a third party on [redacted], paragraphs 15 and 17.

<sup>45</sup> Enquiry Letter Response, 24 November, Introduction/Summary; Vorenta S109 Request Response of 20 December 2022, question 9; and Note of call with a third party on [redacted], paragraphs 3, 7 and 10.



qualifications, and appointments, these individuals need to meet nationality criteria set out in the Civil Service Nationality Rules.<sup>46</sup>

68. Competent authorities will normally outsource Meat Official Controls (or the OVs and MHIs to undertake such controls) to third-party supplier(s) under two different models: (a) the agency model, and (b) the managed contract services model. Under the agency model, a third-party supplier(s) will supply the OVs and/or MHIs required by the competent authority, which will directly manage the resources supplied as part of its own Meat Official Control personnel. In contrast, the managed contract services model comprises the full outsourcing of the delivery of Meat Official Controls to a third-party supplier(s).<sup>47</sup>
69. Regardless of whether a competent authority insources or outsources Meat Official Controls (or the OVs and MHIs to undertake such controls) and the relevant outsourcing model, meat producing establishments cannot choose which OVs and MHIs will undertake Meat Official Controls at their premises and are typically charged for the Meat Official Controls performed at their facilities.<sup>48</sup>

### **England and Wales**

70. Since 2010, Meat Official Controls in England and Wales have been enforced by the FSA, a non-ministerial government department responsible for food safety and hygiene in England and Wales.<sup>49</sup>
71. To assess the effects of the Merger on competition for the supply of Meat Official Controls (or OVs and MHIs to undertake such controls) in England and Wales, the CMA has examined how the FSA procures Meat Official Controls, any recent tender activity, and the likelihood it will procure Meat Official Controls in the foreseeable future.
- **Past tenders for Meat Official Controls in England and Wales**
72. Historically, the FSA has outsourced the vast majority of the OVs and a material part of the MHIs to undertake Meat Official Controls in England and Wales under

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<sup>46</sup> From 1 January 2021, non-reserved posts in the Civil Service are open to: (a) UK nationals; (b) nationals of Commonwealth countries; (c) nationals of the Republic of Ireland; (d) nationals of the European Economic Area (EEA) with (or eligible for) status under the EU Settlement Scheme; (e) EEA and Turkish nationals who were working in the Civil Service before 31 December 2020; (f) EEA and Turkish nationals who have built up the right to work in the Civil Service; and (g) certain family members of the relevant EU and Turkish nationals. There are very limited exceptions to the general prohibition on the employment of nationals from other countries. See further at [Civil Service recruitment: nationality rules](#).

<sup>47</sup> Response by a third party to the CMA questions of [3<], question 1.

<sup>48</sup> Response by a third party to the CMA questions of [3<], question 2(a); Note of call with a third party on [3<], paragraphs 12-13; and [Charges for Official Controls in England and Wales](#); [Charges for Official Controls in Scotland](#).

<sup>49</sup> [FSA Manual for Official Controls – Chapter 1](#), item 1.1.1.

the managed contract services model.<sup>50</sup> Currently, the FSA requires approximately [200-300] OVs and around [500-600] MHIs to undertake Meat Official Controls in England and Wales. The vast majority of these OVs and around [50-60]% of these MHIs are currently outsourced to E&J through six different contracts (see paragraph 73). The remaining OVs and MHIs are directly employed by the FSA.<sup>51</sup> As such, the FSA is reliant on the open market and competition in that market to provide OVs and MHIs.

73. In outsourcing Meat Official Controls, the FSA will typically run tenders to select a relevant third-party supplier(s). The FSA tenders are often split into different geographic lots. In the past, contracts for Meat Official Controls have been awarded by the FSA for periods of 3 to 5 years. For example:<sup>52</sup>

(a) **2016 FSA Tender:** The FSA ran a tender in 2016 across six geographical lots within England and Wales (the **2016 FSA Tender**). Both E&J and HallMark (Vorenta) bid in the tender. Contracts for each of these six geographical lots were awarded to E&J from 2017 to 2019.

(b) **2019 FSA Tender:** The FSA ran a tender in 2019 across six geographical lots within England and Wales. Both E&J and HallMark (Vorenta) bid in the tender. Contracts for each of these six geographical lots were awarded to E&J originally from 2020 to 2023 and can be extended for up to two years (ie until 2025).<sup>53</sup>

74. In evaluating bids and awarding contracts to third-party suppliers, the FSA has historically considered technical and commercial requirements. Technical requirements have often included the number, qualification, expertise, and location of management and field staff, training and monitoring capabilities, as well as staff retention and recruitment strategies. Commercial requirements have typically focussed on the overall price of the services provided and any multi-lot discounts.<sup>54</sup>

- **Future tenders for Meat Official Controls in England and Wales**

75. In early 2022, the FSA announced a plan to insource approximately 50% of all OVs required to deliver Meat Official Controls in England and Wales. The FSA expected

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<sup>50</sup> E&J S109 Request Response of 16 and 20 December 2022, question 7.

<sup>51</sup> E&J Enquiry Letter Response of 12 December 2022, question 11(a); and Note of call with a third party on [redacted], paragraph 16.

<sup>52</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; E&J s109 Request Response of 16 and 20 December 2022, questions 6(b) and (c) and 7; Vorenta S109 Request Response of 20 December 2022, questions 9 and 10(b); and Note of call with a third party on [redacted], paragraph 18.

<sup>53</sup> E&J Enquiry Letter Response of 24 November 2022, pages 5-6.

<sup>54</sup> Note of call with a third party on [redacted], paragraphs 25 and 29-30.

that around 25% of OVs would be directly employed by the FSA by April 2023, completing the insourcing of the remaining 25% OVs over the following 3-4 years. The FSA also expected that some OVs currently employed by E&J would transfer over to the FSA under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the **TUPE Regulations**) (the **Insourcing Project**).<sup>55</sup> In the event that the FSA decided to fully insource all the OVs and MHIs to deliver Meat Official Controls, there would be no scope for the Parties to compete in future FSA tenders.

76. In connection with the Insourcing Project, the FSA also announced a modified operating model to facilitate the direct employment of OVs by the FSA. The announced model included, amongst other underlying principles, the outsourcing of OVs to cover for directly employed staff due to, for example, planned leave, training, or other deployment and short notice absences.<sup>56</sup>
77. In December 2022, however, the FSA announced that it had decided to pause the Insourcing Project and to extend its ongoing contracts with E&J for at least one year (ie until 2024). The FSA explained that it had encountered various issues with the Insourcing Project, including:<sup>57</sup>
- (a) **Cost.** The FSA's finance modelling indicated that the Insourcing Project would result in a material increase in hourly OV costs of approximately and a material increase in gross operating costs by 2025/26. The FSA would need to find additional resources from within its budget and raise charges to meat establishments in England and Wales.
  - (b) **Civil service pay limitations.** The FSA considered that civil service pay would not likely keep pace with private sector pay, giving it less confidence that the FSA would be able to make a sufficiently attractive offer to attract and retain OVs.
  - (c) **Recruitment difficulties.** The FSA considered that the complexity, costs, and time associated with recruiting veterinary resources from overseas would result in significant overhead costs. In this regard, the FSA noted that E&J currently employs around 95% of its OVs from overseas due to there being insufficient capacity within the UK veterinary profession and the job being perceived as less attractive than other veterinary work. The COVID-19

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<sup>55</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary, Appendix 22.1, pages 4 and 9, Appendix 24.4, pages 3, 14 and 24; and [FSA Priorities and Budget 22-23](#); [FSA veterinary update on 18 June 2022](#).

<sup>56</sup> [FSA veterinary update on 18 June 2022](#); and E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, pages 19 and 23.

<sup>57</sup> Email sent by the FSA to the Partnership Working Group on 6 December 2022 with subject 'OV Resourcing Update – 06 December 2022'; and Note of call with a third party on [redacted], paragraphs 49-50.

pandemic, the UK's exit from the EU, and other resourcing challenges have created a recruitment crisis in the UK veterinary sector, significantly impacting the availability of veterinarians in the UK.<sup>58</sup>

78. The FSA also explained that the industry had raised concerns about any additional costs that meat producing establishments would need to incur as a result of the Insourcing Project. Specifically, some meat producing establishments consulted by the FSA stated they would face closure if they had to pay any additional regulatory costs, while others said that any rise in costs would need to be passed on to consumers.<sup>59</sup>
79. Whilst the FSA noted that it would still consider moving to a hybrid approach in the future (where part of the staff is insourced and another part is outsourced to a third-party supplier(s)), the FSA did not specify when and to what extent it would revisit the Insourcing Project.<sup>60</sup> E&J internal documents indicated that E&J was aware of the challenges the FSA was facing with the Insourcing Project.<sup>61</sup> In addition, the FSA confirmed that it will retender the outsourced supply of Meat Official Controls in England and Wales in around 2024/25 (the **2024/25 FSA Tender**).<sup>62</sup>
- **CMA's view on future FSA tenders for Meat Official Controls in England and Wales**
80. On the basis of the above, the CMA believes there is a material degree of uncertainty on the long-term implementation of the Insourcing Project. In addition, regardless of whether the Insourcing Project is ultimately implemented, the CMA believes the FSA will likely run the 2024/25 FSA Tender and continue to outsource Meat Official Controls in England and Wales on an ongoing basis.
81. Therefore, the CMA considers there is scope for competition, in the foreseeable future and possibly beyond the 2024/25 FSA Tender, for contracts concerning the outsourced supply of Meat Official Controls to the FSA in England and Wales.

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<sup>58</sup> [FSA Veterinary Resourcing Update of 18 June 2022](#).

<sup>59</sup> Email sent by the FSA to the Partnership Working Group on 6 December 2022 with subject 'OV Resourcing Update – 06 December 2022.'

<sup>60</sup> Email sent by the FSA to the Partnership Working Group on 6 December 2022 with subject 'OV Resourcing Update – 06 December 2022.'

<sup>61</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 22.4, page 20; E&J Enquiry Letter Response of 24 November 2022, Appendix 22.5, pages 7 and 19; and E&J Enquiry Letter Response of 24 November 2022, Appendix 22.7, pages 6 and 19.

<sup>62</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; E&J Enquiry Letter of 12 December 2022, questions 11 and 36; E&J S109 Request Response of 16 and 20 December 2022, question 11(a); Vorenta s109 Request Response of 20 December 2022, question 11; and Email sent by the FSA to the Partnership Working Group on 6 December 2022 with subject 'OV Resourcing Update – 06 December 2022.'

## **Scotland**

82. Since 2015, Meat Official Controls in Scotland have been enforced by FSS, an independent government department responsible for the enforcement of food hygiene regulations in the country.<sup>63</sup>
83. To assess the effects of the Merger on competition for the supply of Meat Official Controls in Scotland, the CMA has examined how FSS procures Meat Official Controls (or OVs and MHIs to undertake such controls), any recent tender activity, and the likelihood it will procure Meat Official Controls in the foreseeable future.
84. Until 2019, FSS (and its predecessor competent authorities) outsourced many OVs and some MHIs to deliver Meat Official Controls in Scotland under the managed contract services model. FSS would typically run tenders to appoint a third-party supplier(s). For instance, in 2017 FSS ran a tender for the supply of approximately 30 OVs and 15 MHIs to undertake Meat Official Controls in Scotland. Both E&J and HallMark (Vorenta) bid in the tender. The underlying contract was awarded to HallMark from April 2018 to March 2021 (the **2017 FSS Tender**).<sup>64</sup>
85. Since September 2019, however, FSS has directly contracted all OVs and MHIs to undertake Meat Official Controls in Scotland.<sup>65</sup> As noted in paragraph 43, this followed a request from Vorenta to be released early from its then ongoing contract with FSS, in circumstances where FSS declined to provide additional funding to HallMark.<sup>66</sup> Vorenta explained that for reasons largely resulting from the UK's exit from the EU (eg a sharp decrease in the number of veterinarians followed by a sharp increase in salaries), HallMark supplied Meat Official Controls [redacted].<sup>67</sup> Upon termination of this contract, all OVs and MHIs previously engaged by HallMark in the delivery of Meat Official Controls in Scotland were transferred to FSS under the TUPE Regulations.<sup>68</sup>
86. FSS currently requires approximately 35 OVs and 75 MHIs to undertake Meat Official Controls in Scotland. During its investigation, the CMA has not seen

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<sup>63</sup> [Scottish Manual for Official Controls – Chapter 1](#), item 1.1.1.

<sup>64</sup> E&J S109 Request Response of 16 and 20 December 2022, questions 7 and 8; Vorenta S109 Request Response of 20 December 2022, questions 1 and 9; Framework Agreement between FSS and Vorenta of 29 March 2018 regarding the supply of OVs and MHIs to undertake Meat Official Controls on behalf of FSS.

<sup>65</sup> E&J Enquiry Letter Response, Introduction/Summary; Vorenta S109 Request Response of 20 December 2022, questions 1(a) and 9(b); and Response by a third party to CMA questions of [redacted], question 1.

<sup>66</sup> Vorenta S109 Request Response of 20 December 2022, questions 1 and 9; E&J Enquiry Letter Response of 12 December 2022, question 11(a); and Note of call with a third party on [redacted], paragraph 16.

<sup>67</sup> Vorenta S109 Request Response of 20 December 2022, questions 1 and 9. This is supported by E&J Enquiry Letter Response, Appendix 23 – Parsons Due Diligence Report, table under paragraph 3.2.5.

<sup>68</sup> Vorenta's email to the CMA on 30 January 2023.

evidence indicating that FSS has any plans to outsource many of such OV and/or MHIs in the foreseeable future.

87. However, the CMA has received evidence that FSS has been considering outsourcing a very low percentage (ie less than 5%) of its OV and MHI requirements under an agency model to accommodate temporary gaps in its directly contracted personnel.<sup>69</sup> The CMA understands this tender may occur in around 2023/24.<sup>70</sup>
88. On the basis of the above, the CMA believes FSS is likely to run a tender for the outsourced supply of a few OV and MHIs to undertake Meat Official Controls in Scotland in around 2023/24 (the **2023/24 FSS Tender**).<sup>71</sup> Accordingly, the CMA considers there is scope for competition, in the foreseeable future, for contracts concerning the outsourced supply of OV and MHIs to undertake Meat Official Controls on behalf of FSS in Scotland.

## **Frame of reference**

### *Parties' submissions*

89. E&J submitted the outsourced supply of Meat Official Controls is not an area of overlap between the Parties. First, the main competitor to the outsourcing of Meat Official Controls in England and Wales would be the FSA itself, as it may decide to insource these services at any point in time.<sup>72</sup> Second, FSS currently insources all OV and MHIs to undertake Meat Official Controls and no relevant market would therefore exist in Scotland.<sup>73</sup>
90. However, as noted in paragraph 79, E&J also submitted the Insourcing Project would not result in the insourcing of all OV and MHIs the FSA requires to deliver Meat Official Controls in England and Wales, the FSA has temporarily paused the

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<sup>69</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary, Appendix 22.5, page 8; Appendix 22.6, page 17; E&J S109 Request Response of 16 and 20 December 2022, question 8; E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slides 6 and 24; Response by a third party to CMA questions of [redacted], questions 1 and 2(a) and (b); Response by a third party to CMA questions of [redacted], question 3; and Response by a third party to CMA questions of [redacted], question 2.

<sup>70</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary, Appendix 22.5, page 8; Appendix 22.6, page 17; E&J S109 Request Response of 16 and 20 December 2022, question 8; E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slides 6 and 24; Response by a third party to CMA questions of [redacted], questions 1 and 2(a)-(b); and Response by a third party to CMA questions of [redacted], question 3.

<sup>71</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary, Appendix 22.5 (page 8) and Appendix 22.6 (page 17); E&J S109 Request Response of 16 and 20 December 2022, question 8; Response by a third party to CMA questions of [redacted], questions 1 and 2(a) and (b); and Response by a third party to CMA questions of [redacted], question 3.

<sup>72</sup> E&J S109 Request Response of 16 and 20 December 2022, question 10; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 8-9

<sup>73</sup> E&J S109 Request Response of 16 and 20 December 2022, question 10.

Insourcing Project without specifying when and to what extent it would revisit the Insourcing Project, and the FSA is likely to run the 2024/25 FSA Tender for the outsourced supply of Meat Official Controls in England and Wales. Similarly, as noted in paragraphs 87-88, E&J submitted that despite currently insourcing most of its OV and MHI requirements, FSS is expected to run the 2023/24 FSS Tender.

### *Product scope*

91. The CMA considered the extent to which it is appropriate to distinguish between the outsourcing and insourcing of Meat Official Controls. (or the resources to undertake such controls). Given that E&J and Vorenta are or have been active in the outsourced supply of Meat Official Controls, the CMA took this service as a starting point (ie excluding insourcing by competent authorities).<sup>74</sup>
92. Evidence received by the CMA indicated that there are material differences between the insourcing and outsourcing of Meat Official Controls. These differences include, amongst others, costs, total number of OVs and MHIs required to undertake Meat Official Controls, the eligibility of individuals who can perform the role of OVs and MHIs, and the internal capabilities competent authorities would need to have.<sup>75</sup>
93. As a result of these differences, evidence received by the CMA indicated that insourcing and outsourcing of Meat Official Controls have been employed as complementary rather than competing strategies by competent authorities. This evidence also indicated that both insourcing and outsourcing are expected to continue to coexist in the foreseeable future, in each of England and Wales (see paragraph 79) and in Scotland (see paragraphs 87-88).
94. On this basis, the CMA believes there is limited demand-side substitution between insourcing and outsourcing and does not consider it appropriate to widen the relevant product frame of reference to include the insourcing of OVs and MHIs to undertake Meat Official Controls in each of England and Wales and Scotland. This

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<sup>74</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 9.6.

<sup>75</sup> For example, the FSA's finance modelling indicated that the Insourcing Project would result in an increase in the hourly OV costs and an increase of annual gross operating costs (see paragraph 77). In addition, as part of the Insourcing Project, the FSA had to submit a business case to Cabinet Office to seek approval for Alien Exemption Certificates for candidates to the OV role who do not meet the nationality requirements set out in the Civil Service Nationality Rules ([FSA Veterinary Resourcing Update of 18 June 2022](#)). These requirements do not apply to private practice veterinarians, even when they undertake statutory work on behalf of competent authorities such as the FSA and FSS. Moreover, as part of the operating model the FSA announced that in order to facilitate the direct employment of OVs by the FSA, the FSA had been developing an OV management structure to ensure that FSA directly contracted OVs have the required level of support and supervision in place ([FSA Veterinary Resourcing Update of 18 June 2022](#)). Third-party evidence also indicated that civil servants are entitled to greater pension and leave benefits, meaning that the FSA would likely need to recruit more individuals to provide the same Meat Official Controls in England and Wales (Note of call with a third party on [REDACTED], paragraph 50).

notwithstanding, the CMA has taken into account in its assessment of the effects of the Merger, the insourcing of OV's and MHIs to deliver Meat Official Controls by competent authorities, where appropriate.

### *Geographic scope*

95. The CMA considers the relevant geographic frames of reference are each of England and Wales, and Scotland. This is because Meat Official Controls are enforced by and are under the statutory remit of different competent authorities in each of these UK nations. In addition, each competent authority has different requirements for Meat Official Controls, implementing different strategies to insource and outsource these controls (or resources to undertake such controls).

### *CMA's view on frame of reference*

96. The CMA has assessed the effects of the Merger in relation to:
- (a) the outsourced supply of Meat Official Controls to the FSA in England and Wales; and
  - (b) the outsourced supply of OV's and MHIs to undertake Meat Official Controls on behalf of FSS in Scotland.

## **TOH 1.A: Horizontal unilateral effects in the outsourced supply of Meat Official Controls to the FSA in England and Wales**

### ***Closeness of competition between the Parties***

97. Horizontal unilateral effects are more likely when the merging parties are close competitors.<sup>76</sup> This is because the merged entity will recapture a more significant share of the sales to customers who would have switched to the products or services of the other merged entity in response to a price increase (or another worsening in the offering), making the price rise more profitable.<sup>77</sup>
98. Closeness of competition is a relative concept, and closeness of competition between merging firms must be assessed in the context of the other constraints that would remain post-merger.<sup>78</sup> Merging parties need not be each other's closest competitors for unilateral effects to arise.<sup>79</sup> It is sufficient that they compete closely and that remaining competitive constraints are not sufficient to offset the loss of

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<sup>76</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraphs 4.7-4.8.

<sup>77</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.8.

<sup>78</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.10.

<sup>79</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.8.



competition between them resulting from the merger.<sup>80</sup> As such, where, as in the present case, there are only a handful of firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.<sup>81</sup>

99. In assessing the closeness of competition between the Parties, the CMA considered how closely the Parties have competed in the past, whether they are likely to compete for the outsourced supply of Meat Official Controls to the FSA in the foreseeable future (ie how likely it is that, absent the Merger, E&J and Vorenta would compete for the 2024/25 FSA Tender and any future FSA tenders), and whether there are verifiable reasons to consider that previous competition between the Parties is not a good indicator of the strength of competition in any future competitive interactions. To this effect, the CMA have considered:

- (a) the Parties' submissions;
- (b) evidence relating to the 2019 FSA Tender; and
- (c) evidence relating to the 2024/25 FSA Tender.

#### *Parties' submissions*

##### **E&J**

100. E&J submitted it was established to supply Meat Official Controls and for decades has held contracts concerning the outsourced supply of these controls to competent authorities in England and Wales, including the FSA.<sup>82</sup> E&J won all six lots in the 2016 FSA Tender, becoming the sole supplier of Meat Official Controls to the FSA in 2017.<sup>83</sup> E&J was also the winning bidder on all six lots in the 2019 FSA Tender and is currently the sole supplier of Meat Official Controls to the FSA.<sup>84</sup>
101. E&J also submitted that by the time its ongoing contracts with the FSA end in April 2025 (at the latest), it will have been the sole supplier of Meat Official Controls to the FSA for 8 years.<sup>85</sup> E&J considers it has the expertise, track record, infrastructure, operating model, field and central support staff, overseas recruitment

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<sup>80</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.8.

<sup>81</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.10.

<sup>82</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>83</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>84</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>85</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; and E&J's response of 13 February 2023 to the CMA's Issues Letter, page 4.

pipeline, and the financial strength to bid for and to continue supplying Meat Official Controls to the FSA in England and Wales.<sup>86</sup>

102. In response to the CMA's Issues Letter, E&J submitted that in each of the 2016 FSA Tender and the 2019 FSA Tender, the FSA's preference was to award Meat Official Controls contracts to a single supplier of OV's and MHIs.<sup>87</sup> E&J stated the FSA would not likely adopt a different approach in the 2024/25 FSA Tender.<sup>88</sup> These submissions are described and assessed from paragraph 135.
103. In response to the CMA's Issues Letter, E&J also submitted that in its view Vorenta would not have the operational capability, financial strength, or expertise to be considered a competitor for the 2024/25 FSA Tender (or any potential lot within it).<sup>89</sup> Specifically, E&J stated that since the 2019 FSA Tender there have been changes to the Meat Official Controls delivery model as a result of both the classification of each FSA Meat Official Controls contract as a 'Gold' standard government contract and the UK's exit from the EU.<sup>90</sup> These changes would have increased the technical complexity and financial requirements (including costs for implementing and delivering one or more underlying contracts) to compete for future FSA Meat Official Controls contracts, such that Vorenta would be unable to compete for the 2024/25 FSA Tender or any lot within it.<sup>91</sup> These submissions are described and assessed in further detail from paragraph 136.
104. Notwithstanding the above, E&J stated the Sellers have significant experience in the outsourced supply of Meat Official Controls in England and Wales and have contacts within the FSA.<sup>92</sup>

### **Vorenta / [X]**

105. The CMA understands that submissions relating to the Vorenta business made before the CMA's Issues Letter were prepared by the Sellers involved in the

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<sup>86</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slides 9, 19-21; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 8-9.

<sup>87</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 23; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 4-5.

<sup>88</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 23; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 4-5.

<sup>89</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; Parties' response of 13 February 2023 to the CMA's Issues Letter, slides 6, 10-21; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 1-8.

<sup>90</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slides 6, 10-21; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 1-8.

<sup>91</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slides 6, 10-21; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 1-8.

<sup>92</sup> E&J Response to S109 Request of 4 January 2023, question 2.

operation of Vorenta (ie Mr Opperman and Mr Peace) with input from the Vorenta senior management team. These submissions are referred to as **Vorenta submissions**. In contrast, submissions relating to the Vorenta business after the CMA's Issues Letter were prepared by and reflect the views of [X] only. These submissions are referred to as [X]'s **submissions**.

106. Vorenta submitted its subsidiary HallMark was established to supply Meat Official Controls. For many years until 2017, Vorenta held various contracts for the outsourced supply of Meat Official Controls to competent authorities in England and Wales, including the FSA.<sup>93</sup> Vorenta also bid for all lots in each of the 2016 FSA Tender and the 2019 FSA Tender and considered that E&J was its main competitor in each of these tenders. For instance, the financial modelling Vorenta used to bid on the 2019 FSA Tender was based on speculations about E&J's pricing and Vorenta's knowledge of the veterinary market.<sup>94</sup>
107. Vorenta also submitted that in bidding for the 2016 FSA Tender and 2019 FSA Tender it was keen to expand and/or reinstate its outsourced supply of Meat Official Controls in England and Wales, and was not expecting the FSA to award all lots to a single supplier in both tenders.<sup>95</sup> Due to its track record, competitive prices (for [X]), and investments to diversify its business activities and improve staff retention, Vorenta considered it had a reasonable chance of being awarded some of the lots in each of those tenders.<sup>96</sup> Vorenta considered it would had been in a strong position to perform well under past FSA contracts because: (a) TUPE Regulations would apply and staff delivering Meat Official Controls would be transferred over to Vorenta; (b) Vorenta's senior management team has knowledge of Meat Official Controls due to the contracts Vorenta held in England and Wales until 2017; (c) diversification gave Vorenta additional strength and a margin mix that further added to its financial stability; (d) Vorenta had developed a closer relationship with [X] if Vorenta secured Meat Official Controls contracts with the FSA; and (e) Vorenta had made significant investments in technology.<sup>97</sup>
108. In regard to future tenders, Vorenta submitted that, prior to the Merger, it was part of its ordinary course of business to monitor any actions planned and/or taken by the FSA concerning the outsourced supply of Meat Official Controls in England and Wales.<sup>98</sup> Vorenta explained that whilst there had been a difference in opinion between [X] as regards bidding in future FSA tenders, no conclusion had been

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<sup>93</sup> Vorenta S109 Request Response of 20 December 2022, questions 1(a) and 9.

<sup>94</sup> Vorenta S109 Request Response of 20 December 2022, question 1(a) and 9-10(a) and (d).

<sup>95</sup> Vorenta S109 Request Response of 20 December 2022, questions 10(b) and (d).

<sup>96</sup> Vorenta S109 Request Response of 20 December 2022, questions 10(b)-(c).

<sup>97</sup> Vorenta S109 Request Response of 20 December 2022, questions 10(b)-(d) and 11(a)(i).

<sup>98</sup> Vorenta S109 Request Response of 20 December 2022, questions 11(a)(iii) and 13.

agreed by the Sellers nor confirmed with the Vorenta senior management and operations teams.<sup>99</sup> As such, Vorenta's strategy or intention to bid for future FSA Meat Official Controls tenders had not changed and it would still be willing to bid for this work absent the Merger.<sup>100</sup> Vorenta also explained that it would ultimately decide on whether to bid for the 2024/25 FSA Tender after attending engagement meetings with the FSA, receiving tender documents, and understanding FSA's specification requirements, future plans, and preferences.<sup>101</sup>

109. In this regard, Vorenta noted that it would be more motivated to bid in the 2024/25 FSA Tender if, for example, the FSA would [redacted] lots that could be [redacted] and/or included in the scope of the tender [redacted] with Vorenta's other operations.<sup>102</sup>
110. In addition, Vorenta submitted that while there are potential barriers for Vorenta (or any other company) to win the entire outsourced supply of Meat Official Controls in England and Wales, it understands that the FSA may want to introduce new suppliers to increase competition in future tenders.<sup>103</sup>
111. Related to this, Vorenta stated it has staff with expertise on bidding for and delivering FSA Meat Official Controls. For instance, Vorenta has retained its management team with experience in delivering Meat Official Controls on behalf of the FSA as well as its veterinary recruitment pipeline (given that it carries out other VPH work), and considers that staff could be redeployed in the event of securing future FSA contracts.<sup>104</sup> Vorenta also stated it has good contacts with veterinary faculties and official colleges [redacted], and believes it would be able to [redacted] recruitment [redacted] to deliver Meat Official Controls to the FSA.<sup>105</sup> Further, Vorenta provided examples of actions it had been taking prior to Merger and ahead of the 2024/25 FSA Tender to make Vorenta more attractive for future FSA tenders, explaining that it did not invest further due to market uncertainties and the FSA's decision to extend its ongoing Meat Official Controls contracts with E&J:<sup>106</sup>
  - (a) Vorenta approached an [redacted] organisation (ie [redacted])<sup>107</sup> with a proposal of working together to form a credible alternative to E&J in the outsourced supply of Meat

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<sup>99</sup> Vorenta S109 Request Response of 20 December 2022, question 11(a).

<sup>100</sup> Vorenta S109 Request Response of 20 December 2022, question 13.

<sup>101</sup> Vorenta S109 Request Response of 20 December 2022, questions 11(a)(iii) and 12.

<sup>102</sup> Vorenta S109 Request Response of 20 December 2022, question 1; and E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 30.

<sup>103</sup> Vorenta S109 Request Response of 20 December 2022, questions 11(a)(iii) and 12.

<sup>104</sup> Vorenta S109 Request Response of 20 December 2022, question 11(a)(v).

<sup>105</sup> Vorenta S109 Request Response of 20 December 2022, question 11(a)(v).

<sup>106</sup> Vorenta S109 Request Response of 20 December 2022, question 11(a)(iii)-(v).

<sup>107</sup> See <https://www.nsf.org/gb/en/about-nsf>.

Official Controls to the FSA in England and Wales. This [X] organisation would have agreed to consider a collaboration with Vorenta in the future.

- (b) Vorenta has recruited key staff from E&J with important knowledge of FSA Meat Official Controls contracts.
- (c) Members of the Vorenta [X] have held informal discussions with different FSA staff for updates on any developments on the 2024/25 FSA Tender.

112. In response to the CMA's Issues Letter, [X] submitted that the UK's exit from the EU had an impact on the [X] that can be generated from the outsourced supply of Meat Official Controls to the FSA. As such, the potential of Vorenta bidding in the 2024/25 FSA Tender (particularly for serving all underlying contracts) would be unlikely unless [X] could be achieved.<sup>108</sup>
113. In addition, in contrast to Vorenta's earlier submissions, in response to the CMA's Issues Letter, [X] submitted that, absent the Merger, Vorenta would not have bid for future FSA Meat Official Controls contracts due to the time and resources required to bid, as well as the [X] impact that earlier unsuccessful bids had on Vorenta and its [X].<sup>109</sup> Notwithstanding the above, [X] noted that some members of the Vorenta [X] would wish to bid for future FSA Meat Official Controls contracts, and that the decision on whether Vorenta would bid in future FSA tenders could lead to disagreements amongst the Vorenta [X].<sup>110</sup>
114. The CMA notes that there are inconsistencies between the positions set out in, on the one hand, Vorenta's earlier submissions, and, on the other hand, [X]'s submissions in response to the CMA's Issues Letter. These submissions and the inconsistency between them are described and assessed from paragraph 130.

### *2019 FSA Tender*

115. The CMA has reviewed a range of information and documents relating to the 2019 FSA Tender. The CMA sought to understand the features of and the competitive landscape in the last tender round organised by the FSA for the outsourced supply of Meat Official Controls in England and Wales.<sup>111</sup>

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<sup>108</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29.

<sup>109</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29; [X]'s response of 13 February 2023 to the CMA's Issues Letter; and [X]'s response of 15 February 2023 to the CMA's Issues Letter.

<sup>110</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29; [X]'s response of 13 February 2023 to the CMA's Issues Letter; and [X]'s response of 15 February 2023 to the CMA's Issues Letter.

<sup>111</sup> This includes: (a) third-party submissions and internal documents relating to pre-tender engagement efforts by the FSA ahead of the 2019 FSA Tender; (b) the invitation to tender and respective specifications documents; (c) the Parties'

116. The evidence received by the CMA indicated that the FSA actively tried to promote competition in the 2019 FSA Tender. For example:
- (a) The FSA split the 2019 FSA Tender into six different geographical lots to encourage interest, provide a potential opportunity for multiple suppliers to bid, and mitigate the risks of potential service failures.<sup>112</sup> Accordingly, interested bidders were asked to submit individual technical and commercial bids for each lot,<sup>113</sup> and the FSA scored each lot individually.<sup>114</sup>
  - (b) The FSA organised pre-tender and broader market engagements to encourage competition in the 2019 FSA Tender. As part of these efforts, the FSA reached out to and held bilateral pre-tender engagement meetings with a number of entities, organised a wider market engagement event, and held bilateral meetings with each of the Parties and two other entities that also attended the wider market engagement event (Capita plc/Fera Science Ltd and Menter a Busnes).<sup>115</sup>
117. The evidence received by the CMA also indicated that at most four entities ultimately bid in each lot, with each of the Parties bidding in each lot in the 2019 FSA Tender. These did not include all entities with whom the FSA engaged as part of its outreach efforts ahead of the 2019 FSA Tender.<sup>116</sup>
118. **Table 1** summarises each of the six lots in the 2019 FSA Tender, the bidders in each of these lots, as well as the Parties' and other bidders' scores and ranking:

**Table 1: 2019 FSA Tender (England and Wales)**

	Lot 1	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6
Region	North Areas 1 and 3	North Areas 2 and 4	East Areas 1 and 3	East Areas 2 and 4	Wales and West Areas 1 and 2	Wales and West Areas 3 and 4

submissions and internal documents outlining their strategies in the 2019 FSA Tender; and (d) the Parties' and third-party submissions and internal documents relating to outcome of the 2019 FSA Tender.

<sup>112</sup> Vorenta S109 Request Response of 20 December 2022, question 10(b); Note of call with a third party on [redacted], paragraphs 18-19 and 34-35; Internal document provided by a third party in relation to the lots in the 2019 FSA Tender.

<sup>113</sup> Note of call with a third party on [redacted], paragraphs 29-30.

<sup>114</sup> Response by E&J on 1 February 2023 to the CMA questions of 1 February 2023 (**E&J Response of 1 February 2023**); Response by Vorenta on 1 February 2023 to the CMA questions of 1 February 2023 (**Vorenta Response of 1 February 2023**); Vorenta S109 Request Response of 20 December 2022, question 12; Note of call with a third party on [redacted], paragraphs 29, 31 and 33.

<sup>115</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary and Appendix 1.2; Vorenta S109 Request Response of 20 December 2022, question 10(d); Note of a call with a third party on [redacted], paragraphs 22-24.

<sup>116</sup> Note of a call with a third party on [redacted], paragraph 23; Internal document provided by a third party relating to the 2019 FSA Tender; and Internal document provided by a third party relating to the 2019 FSA Tender.

	Lot 1	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6
<b>Bidders</b>	E&J Vorenta	E&J Vorenta	E&J Vorenta Other(s)	E&J Vorenta	E&J Vorenta Other(s)	E&J Vorenta
<b>E&amp;J ranking and score</b>	Winner [90-100]%	Winner [90-100]%	Winner [90-100]%	Winner [90-100]%	Winner [90-100]%	Winner [90-100]%
<b>Vorenta ranking and score</b>	2 <sup>nd</sup> place [90-100]%	2 <sup>nd</sup> place [90-100]%	2 <sup>nd</sup> place [90-100]%	2 <sup>nd</sup> place [90-100]%	2 <sup>nd</sup> place [90-100]%	2 <sup>nd</sup> place [90-100]%
<b>'Other' ranking and score</b>	3 <sup>rd</sup> place [<] lower score/ no score					

Source: Parties<sup>117</sup> and third parties.<sup>118</sup>

119. **Table 1** shows that the Parties were the only two bidders to bid in all six lots in the 2019 FSA Tender, with third-party bidder(s) submitting bids in only two lots (ie lots 3 and 5). Each of the Parties were able to demonstrate the technical capabilities required and offer competitive prices for each of the six lots, and therefore were scored by the FSA for each lot. In contrast, not all third-party bidder(s) were scored for the bids submitted. The FSA ranked the Parties first and second place in all lots in the 2019 FSA Tender, and their scores were always similar and significantly higher than the score of the next ranked bidder (where one was present). This evidence strongly indicates that the Parties were close competitors in the 2019 FSA Tender.
120. Consistent with the information in **Table 1**, E&J's internal documents discussing the 2019 FSA Tender indicated that the Parties were close competitors. These documents show that E&J offered a [ ] to increase the likelihood of being awarded all (or at least most) lots in the tender in light of competition from Vorenta.<sup>119</sup> E&J's internal documents also note that E&J's strategy of winning FSA contracts through [ ] successfully removed competitors from the market.<sup>120</sup>
121. As noted in paragraph 106, Vorenta similarly considered that E&J was its main competitor in the 2019 FSA Tender and therefore included in its financial modelling speculations about E&J's pricing.

<sup>117</sup> E&J Response of 1 February 2023, Tender Notification Letters – Lots 1 to 6; and Vorenta Response of 1 February 2023, Tender Notification Letters – Lots 1 to 6.

<sup>118</sup> Internal document provided by a third party relating to the 2019 FSA Tender.

<sup>119</sup> E&J Enquiry Letter Response, Appendix 24.1; and E&J S109 Request Response of 16 and 20 December 2022, Appendix E14.

<sup>120</sup> E&J Enquiry Letter Response, Appendix 24.1.

122. The CMA considers the evidence outlined above shows that in the most recent tender round, E&J and Vorenta competed head-to-head for FSA Meat Official Controls contracts (indeed, for these contracts, they were each other's closest competitor). Furthermore, competition from Vorenta led directly to the FSA receiving lower prices from E&J and vice-versa.

#### *2024/25 FSA Tender*

123. While all merger assessments are prospective, there can be a higher degree of uncertainty in some markets, such as those characterised by potentially significant changes in competitive conditions.<sup>121</sup> E&J and [X] made submissions suggesting that the outsourced supply of Meat Official Controls in England and Wales is characterised by potentially significant changes in competitive conditions since the 2019 FSA Tender. In particular, E&J and [X] have submitted that Vorenta is unlikely to bid for the 2024/25 FSA Tender. E&J also submitted that if Vorenta were to bid, it would be a substantially weaker competitor than it was in the 2019 FSA Tender. The CMA has therefore assessed these submissions.

#### **E&J**

124. E&J's internal documents indicated that, pre-Merger, bidding for (and potentially winning) the 2024/25 FSA Tender was a key strategic priority to E&J.<sup>122</sup>
125. In addition, all entities active in the VPH industry that responded to the CMA's question on future competition in the 2024/25 FSA Tender listed E&J as the most well-placed company to bid in any future FSA Meat Official Controls tender. These third parties cited E&J's incumbent position in England since 2012 and in Wales since 2016, expertise and track record, access to qualified staff, logistical capabilities, and financial strength as key reasons for its competitive strength.<sup>123</sup>

#### **Vorenta**

126. As already noted, Vorenta submitted that prior to the Merger:
- (a) its strategy or intention to bid for future FSA Meat Official Controls tenders had not changed, and it would still be willing to bid for this work (although would make the decision on whether to bid once it had the relevant information) (paragraph 108);

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<sup>121</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 2.10.

<sup>122</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, pages 5 and 6; E&J Enquiry Letter Response of 24 November 2022, Appendix 24.1, pages 7, 13, 29 and 41

<sup>123</sup> Responses by third parties [X] to the CMA competitor questionnaire, question 5(c).



- (b) Vorenta would be more likely to bid if the FSA tendered [redacted] lots and [redacted] lots that could be [redacted] (paragraph 109);
  - (c) Vorenta has relevant staff expertise and can recruit more (paragraph 111; and
  - (d) Vorenta had been taking actions to make Vorenta more attractive for future FSA Meat Official Controls tenders (paragraph 107).
127. Vorenta's internal documents indicated that, pre-Merger, Vorenta considered that a potential combination of the Parties would create a '[redacted]' competitor for Meat Official Controls.<sup>124</sup> For example, in a slide deck used by Vorenta in September 2021 to approach private equity firms to fund a potential combination of E&J and Vorenta, it was noted that the Merged Entity would become the largest supplier of Meat Official Controls to the FSA. It was also noted that the key field staff responsible for performing these services are OVs and MHIs and that the Merged Entity is the largest recruiter for these roles in the UK. The CMA considers that these documents indicate that Vorenta considered it had a material position in the supply of OVs and MHIs prior to the Merger.
128. E&J's internal documents also indicated that, prior to the Merger, E&J considered Vorenta a credible competitor for the 2024/25 FSA Tender.<sup>125</sup> In addition, The SPA and other Merger documents indicate that E&J considered Vorenta as a potential competitor for the FSA Meat Official Controls contracts. In particular, E&J sought contractual protections that would prevent Vorenta senior staff from participating in the next FSA tender either directly or through supporting a third party. E&J told the CMA that it included a [redacted] because the Sellers have significant sector expertise and contacts with the FSA, and E&J wanted to ensure it could obtain the full value of the acquired Vorenta business. E&J also entered into [redacted] with two of the Sellers, and internal E&J documents show that E&J senior management saw a benefit in having the Sellers tied into E&J during the 2024/25 FS tender.<sup>126</sup>
129. Similarly, almost all entities active in the VPH industry that responded to the CMA's question on future competition for the 2024/25 FSA Tender listed Vorenta as a well-placed company to bid in any future FSA Meat Official Controls tender. They cited Vorenta's previous experience in the outsourced supply of Meat Official Controls,

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<sup>124</sup> E&J S109 Request Response of 24 November 2022, page 22.

<sup>125</sup> For example, in a strategy document for an off-site gathering of the E&J Board of Directors in July 2022 (before the Merger was agreed), E&J noted that Vorenta were a main competitor but failed to win the 2016 FSA Tender and the 2019 FSA Tender. This notwithstanding, E&J noted that it should not discount the possibility that Vorenta could bid against E&J again in the future (E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, page 32).

<sup>126</sup> SPA clauses 12.2.1 and 12.2.2; E&J S109 Request Response of 4 January 2023, question 2; E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 48; and E&J S109 Request Response of 16 and 20 December 2022, Appendix C, page 33.

expertise in the field, and access to qualified staff (through the TUPE Regulations or recruitment) as key reasons for its competitive strength.<sup>127</sup>

- **[X]'s veto right**

130. In contrast to Vorenta's earlier submissions and internal documents, in response to the CMA's Issues Letter, [X] submitted that, absent the Merger, Vorenta would not have bid in the 2024/25 FSA Tender (see paragraph 113). Specifically, [X] stated [X] believed that, prior to the Merger, the Sellers had agreed not to bid in future FSA Meat Official Controls tenders.<sup>128</sup> [X] also stated [X] would have used [X] veto right to prevent Vorenta from bidding in the 2024/25 FSA Tender.<sup>129</sup>
131. However, the CMA notes that [X] confirmed that [X] was involved in the preparation of earlier responses that Vorenta submitted to the CMA which did not include any reference to this stated agreement between the Sellers not to participate in future FSA Meat Official Controls tenders or planned veto.<sup>130</sup>
132. [X] was also unable to provide evidence of the stated agreement between the Sellers not to bid in the 2024/25 FSA Tender and of the planned veto. Rather, [X] stated [X] believed [X] and [X] were in agreement as regards bidding in the 2024/25 FSA Tender up until around November 2022.<sup>131</sup> [X] also stated [X] has not previously exercised [X] veto right.<sup>132</sup>
133. In addition, [X] stated some members of the Vorenta [X] would wish to bid for future FSA Meat Official Controls contracts, and that the decision on whether Vorenta would bid in future FSA tenders could lead to disagreements amongst the Vorenta [X].<sup>133</sup>
134. The CMA notes, following the approach to the assessment of evidence set out in its published guidelines, that [X]'s submissions after the CMA's Issues Letter are only one piece of evidence that falls to be considered alongside other pieces of evidence

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<sup>127</sup> Responses by third parties [X] to the CMA competitor questionnaire, question 5(c).

<sup>128</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29; [X]'s response of 13 February 2023 to the CMA's Issues Letter; [X]'s response of 15 February 2023 to the CMA's Issues Letter.

<sup>129</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29; [X]'s response of 13 February 2023 to the CMA's Issues Letter; [X]'s response of 15 February 2023 to the CMA's Issues Letter; and Shareholders' agreement between Vorenta Ltd and each of the Sellers of 7 August 2018, clause 4 and schedule 4.

<sup>130</sup> [X]'s response of 13 February 2023 to the CMA's Issues Letter; and [X]'s response of 15 February 2023 to the CMA's Issues Letter.

<sup>131</sup> [X]'s response of 13 February 2023 to the CMA's Issues Letter; and [X]'s response of 15 February 2023 to the CMA's Issues Letter.

<sup>132</sup> [X]'s response on 15 February 2023 to the CMA's Issues Letter.

<sup>133</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 29; [X]'s response of 13 February 2023 to the CMA's Issues Letter; and [X]'s response of 15 February 2023 to the CMA's Issues Letter.

gathered by the CMA during its investigation,<sup>134</sup> including the evidence summarised in paragraphs 126-129. Accordingly, in considering the weight that should be attached to [X]'s submissions, the CMA has taken into account the inconsistencies between these submissions and other evidence including earlier Vorenta's submissions that were prepared by Vorenta senior management team together with [X].<sup>135</sup>

- **Lots and multiple suppliers**

135. Although E&J has argued that it considers that the FSA has a preference for having a single supplier of OVs and MIHs, the FSA told the CMA that it [X] more than one supplier for Meat Official Controls in England and Wales and will likely split the 2024/25 FSA Tender into lots to encourage interest, provide a potential opportunity for multiple suppliers to bid, and mitigate the risks of potential service failures.<sup>136</sup> The FSA also told the CMA that the selection model in the 2024/25 FSA Tender will likely be similar to that used by the FSA in previous tenders and will allow the FSA to select multiple suppliers even if the second (and third, fourth) supplier(s) did not have the strongest bids, provided minimum technical and financial standards are met.<sup>137</sup>

- **'Gold' tier classification of FSA Meat Official Controls contracts and the UK's exit from the EU**

136. As noted in paragraph 103, E&J submitted that due to the classification of FSA Meat Official Controls contracts as 'Gold' tier government contracts and the UK's exit from the EU, Vorenta could not be considered a competitor for the 2024/25 FSA Tender. Specifically, E&J explained that:

(a) After the 2019 FSA Tender, the FSA implemented a UK government contract tiering tool to categorise government contracts.<sup>138</sup> Each FSA Meat Official

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<sup>134</sup> In particular, the CMA does not normally consider specific pieces of evidence in isolation when considering the question of an SLC, although it is common for the CMA to weight pieces of evidence differently. [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 2.23.

<sup>135</sup> By analogy, the CMA's published guidelines state that where internal documents support claims made by merger firms of third parties that have an interest in the outcome of the CMA's investigation, the CMA may be likely to attach more evidentiary weight to such documents if they were generated prior to the period in which those firms were contemplating or aware of the merger, or if they are consistent with other evidence. [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 2.29(a).

<sup>136</sup> Note of call with the FSA on [X], paragraphs 17-18. Vorenta similarly told the CMA that it understands that in the 2024/25 FSA Tender the FSA may want to introduce new suppliers to increase competition and may not award Meat Official Controls contracts to a single supplier (Vorenta S109 Request Response of 20 December 2022, question 11(a)(iii)).

<sup>137</sup> Note of call with the FSA on [X], paragraph 17.

<sup>138</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slides 7 and 14-15; E&J's response of 13 February 2023 to the CMA's Issues Letter, page 1.

Controls contract is now classified as a 'Gold' tier government contract and the 'Gold' classification will continue for the next tender.<sup>139</sup> Bidders in future FSA Meat Official Controls tenders will need to meet new economic and financial standing (**EFS**) criteria to be successful. Bidders' EFS for 'Gold' contracts is subject to a high level of scrutiny in terms of the financial thresholds that bidders are required to meet, the financial information and documents that bidders are required to provide as evidence of their EFS, and the measures bidders may be required to put in place to mitigate any risks identified.<sup>140</sup> For example, to assess E&J's EFS to deliver the ongoing Meat Official Controls contracts, E&J had to provide the FSA with an [redacted].<sup>141</sup> In addition, to mitigate [redacted] risks identified in relation to the ongoing Meat Official Controls contracts, the FSA required E&J to provide a [redacted].<sup>142</sup>

- (b) Prior to the UK's exit from the EU, the Meat Official Controls delivery model was not very complex and relied on i) OV's and MHI's recruited from the EU with no visa requirements and short recruitment lead times. These staff often held EU driving licenses and drove their own vehicles to meat producing establishments; and ii) the Royal College of Veterinary Surgeons (**RCVS**) had an automatic registration regime of OV's from the EU with no English language assessment requirements.<sup>143</sup> The UK's exit from the EU added complexity to the Meat Official Controls delivery model, which now relies on i) OV's and MHI's recruited from many different countries with specific visa requirements and longer recruitment lead times. These individuals also often require assistance with the visa application process, transport to and accommodation in the UK; and ii) the introduction of the RCVS temporary registration regime with additional English language assessment and fortnightly technical supervisory requirements.<sup>144</sup>
- (c) The classification of each FSA Meat Official Controls contract as a 'Gold' tier government contract and the UK's exit from the EU have increased the costs for implementing and delivering one or more FSA Meat Official Controls contracts. Increased costs for implementing and delivering one or more FSA

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<sup>139</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slides 6, 11 and 14; E&J's response of 13 February 2023 to the CMA's Issues Letter, page 1.

<sup>140</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slides 9 and 14-15; and E&J's response of 13 February 2023 to the CMA's Issues Letter, page 1.

<sup>141</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 9.

<sup>142</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 9; and E&J's response of 13 February 2023 to the CMA's Issues Letter, page 7.

<sup>143</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 7; and E&J's response on 13 February 2023 to the CMA's Issues Letter, pages 4 and 7-8.

<sup>144</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 8; and E&J's response on 13 February 2023 to the CMA's Issues Letter, pages 4 and 7-8.

Meat Official Controls contracts have been driven by, for example, higher OV and MHIs salaries (eg due to the shortage of veterinarians in the UK), additional operational costs such as visas for foreign OV and MHIs (including staff that would be transferred from E&J under the TUPE Regulations and new staff to replace existing OV and MHIs), increased [redacted] team (eg [redacted]), [redacted], and increased [redacted] (eg [redacted]).<sup>145</sup>

- (d) Whilst FSA Meat Official Controls contracts historically have generated low [redacted], increased implementation and delivery costs have led to even lower [redacted]. For example, E&J's forecast [redacted] for the third year of its ongoing FSA Meat Official Controls contracts have been reduced by approximately [redacted]% relative to the tendered [redacted].<sup>146</sup> As noted in paragraph 112, in response to the CMA's Issues Letter, [redacted] submitted that the UK's exit from the EU impacted the margins that can be generated from the outsourced supply of Meat Official Controls to the FSA.

137. Evidence gathered by the CMA confirmed that the FSA Meat Official Controls contracts have been categorised as 'Gold' tier government contracts, and as a result of this classification, bidders will be subject to EFS scrutiny. Public information indicates that EFS assessments should be proportionate, flexible, contract specific and not overly risk adverse.<sup>147</sup> Further, the UK government recommends that small and medium sized enterprises should not be inadvertently disadvantaged by EFS assessments, and there may be opportunities for bidders to address any concerns raised by an EFS assessment or even to proceed despite being categorised as medium or high risk.<sup>148</sup>
138. Whilst the FSA is likely to introduce EFS requirements for bidders as a result of FSA Meat Official Controls contracts being classified as 'Gold' tier government contracts, these will not be exclusive to Vorenta but will also apply to all bidders (including E&J).
139. In relation to the increased costs for implementing and delivering FSA Meat Official Controls contracts resulting from these contracts being classified as 'Gold' tier government contracts and the UK's exit from the EU as well as related lower [redacted],

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<sup>145</sup> For instance, E&J estimated that the costs for delivering its ongoing FSA Meat Official Controls contracts increased by approximately 14% due to the UK's exit from the EU. E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 8; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages 4 and 6-8.

<sup>146</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slides 7 and 13; and E&J's response of 13 February 2023 to the CMA's Issues Letter, pages -9.

<sup>147</sup> [Guidance note on assessing and monitoring the economic and financial standing of bidders and suppliers](#), May 2021, paragraphs 2.2.1-2.2.2.

<sup>148</sup> [The Sourcing Playbook – Government guidance on service delivery, including outsourcing, insourcing, mixed economy sourcing and contracting](#), May 2021, page 46; and [Guidance note on assessing and monitoring the economic and financial standing of bidders and suppliers](#), May 2021, paragraph 2.4.12.

estimates were presented by E&J only after the CMA's Issues Letter without any supporting evidence. The CMA was therefore unable to verify the estimates provided by E&J.

140. In addition, the CMA notes that costs for implementing and delivering Meat Official Controls contracts in England and Wales and respective margins will be open to negotiation with the FSA in the 2024/25 FSA Tender. Moreover, all bidders (including E&J) may face increased costs for delivering FSA Meat Official Controls contracts as a result of such contracts being classified as 'Gold' tier government contracts and the current challenges in recruiting OVs and MHIs. Moreover, all bidders (other than E&J), including Vorenta, may face increased implementation costs as a result of challenges in recruiting OVs and MHIs. The CMA also notes that some of the implementation costs that E&J submitted were, to a certain extent, present in previous FSA tender rounds (eg [redacted] provision).<sup>149</sup> It is therefore unclear to the CMA why these costs would have changed significantly since Vorenta's competitive bid in the 2019 FSA Tender.

#### **Potential effects of the Merger on the 2024/25 FSA Tender**

141. Third parties involved in the Meat Official Controls market told the CMA that they consider the Parties to be close competitors for the outsourced supply of Meat Official Controls in England and Wales and that they are two of a very limited number of companies with the ability to bid in the 2024/25 FSA Tender.<sup>150</sup> One third party submitted that, as a result of the Merger, there is a strong possibility the 2024/25 FSA Tender will take place in a monopolised market and specifically that the Merger removes one of a very limited number of potential alternatives to E&J. This third party also stated that relative to other potential bidders, due to its previous experience, Vorenta is uniquely positioned to put itself in a better position in future FSA tenders.<sup>151</sup>

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<sup>149</sup> For transparency, the CMA notes that E&J explained that post-UK exit from the EU, foreign OVs and MHIs come primarily from non-EU countries. According to E&J, this meant that the proportion of staff requiring a company car has increased, as staff are no longer able to drive their own vehicle from their home country to the UK. E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 21; and E&J's response of 13 February 2023 to the CMA's Issues Letter, page 8.

<sup>150</sup> Note of a call with a competitor on [redacted], paragraphs 7-8, 16 and 19; and Note of a call with a competitor on [redacted], paragraphs 8 and 13; and.

<sup>151</sup> Note of call with a third party on [redacted], paragraphs 4, 40, 44, 51 and 56-57.

### *CMA's view on closeness of competition*

142. Based on the evidence outlined in paragraphs 97-141, the CMA considers that the Parties have historically been close competitors in the outsourced supply of Meat Official Controls to the FSA in England and Wales.
143. With respect to future Meat Official Controls tenders, while Vorenta may face additional costs and scrutiny as a result of the FSA Meat Official Controls contracts being classified as 'Gold' tier government contracts and the challenges in recruiting OVAs and MHIs, the evidence received by the CMA does not support a conclusion that Vorenta would be unable to bid for such contracts or that it would be a significantly weaker competitor. Furthermore, there is substantial evidence that Vorenta would have given serious consideration to bidding on the 2024/25 FSA Tender and future FSA Meat Official Controls tenders and likely would have been a material constraint on E&J in such tenders; this assessment is supported by the Parties' submissions and internal documents. The CMA does not consider that any significant weight can be placed on the submissions made by [X] at a late stage in the process that contradict Vorenta's earlier submissions, are inconsistent with the Parties' internal documents and are unsupported by any evidence.
144. Therefore, the CMA believes that absent the Merger, the Parties would continue to closely compete in future FSA tenders for the outsourced supply of OVAs and MHIs to undertake Meat Official Controls in England and Wales.

### ***Other constraints on the Merged Entity***

145. Having found that the Parties are close competitors who constrain each other, today and in the foreseeable future, the CMA has considered whether there are alternatives that would provide a competitive constraint to the Merged Entity in the 2024/25 FSA Tender and any future FSA tenders for the outsourced supply of Meat Official Controls in England and Wales. In its assessment, the CMA has considered:
  - (a) the Parties' submissions;
  - (b) the Parties' and third parties' internal documents; and
  - (c) third-party views.

### *Parties' submissions*

146. E&J submitted that there are two principal constraints over E&J in respect of the outsourced supply of Meat Official Controls in England and Wales: insourcing of Meat Official Controls by the FSA and new entrants.<sup>152</sup>
147. E&J submitted that its main competitor is the FSA itself, as it may decide to insource Meat Official Controls at any point in time.<sup>153</sup> E&J explained that the FSA has acknowledged that the cost of insourcing is between 7% and 10% and that this is unacceptable to meat producing establishments. This would suggest that if the market price for the outsourced supply of Meat Official Controls increased by as much as 7%, it would become financially viable for the FSA to insource these controls in England and Wales.<sup>154</sup> E&J also explained that the FSA Meat Official Controls contracts account for over [X]% of its revenue and are therefore critical contracts to E&J. Insourcing would reduce its revenue and profit opportunity, and would increase the cost of [X]. It is therefore important that E&J remains competitive against the threat of insourcing.<sup>155</sup>
148. In relation to new entrants, E&J submitted that it is difficult to anticipate the potential bidders in the 2024/25 FSA Tender before the FSA releases the scope of the next tender, which may not happen before March/April 2024 (if the FSA decides to further extend its ongoing contracts with E&J until April 2025). This notwithstanding, E&J has told the CMA that it expects to face competition from large outsourcing providers outside the veterinary sector, and with/without existing government contracts in the 2024/25 FSA Tender.<sup>156</sup>
149. E&J only cited Capita plc (**Capita**) (including Fera Science Ltd (**Fera**)).<sup>157</sup> E&J explained that Capita/Fera attended the market engagement meeting for the 2019 FSA Tender and has recently won some VPH contracts. On the one hand, E&J noted that Capita/Fera would have [X] to be a credible bidder in the 2024/25 FSA Tender and any future FSA tenders. On the other hand, E&J noted that Capita/Fera has never provided Meat Official Controls to the FSA (or any other competent authority) and has not held in the past, and does not currently hold, any VPH

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<sup>152</sup> E&J's response of 13 February 2023 to the CMA's Issues Letter.

<sup>153</sup> E&J S109 Request Response of 16 and 20 December 2022, question 10; E&J's response of 13 February 2023 to the CMA's Issues Letter.

<sup>154</sup> E&J's response of 13 February 2023 to the CMA's Issues Letter.

<sup>155</sup> E&J's response of 13 February 2023 to the CMA's Issues Letter.

<sup>156</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; E&J Enquiry Letter Response of 12 December 2022, question 33; and E&J's response of 13 February 2023 to the CMA's Issues Letter.

<sup>157</sup> The CMA notes that Capita is a consulting, transformation, and digital services business (<https://www.capita.com>). In 2015, Capita acquired a shareholding in Fera from Defra. Prior to the transaction, Fera was an agency linked to Defra (ie the Food Environment Research Agency) (see [Capita to take over Fera food and environment agency](#)). In May 2021, Capita announced its intention to sell Fera ([Fera Science up for sale as part of Capita restructure](#)).



contracts of comparable size and complexity to that of the FSA Meat Official Controls contracts.<sup>158</sup>

150. In earlier submissions, E&J noted that it does not expect to face competition in the 2024/25 FSA Tender or any future FSA tenders from large veterinary groups, such as IVC and Vet Partners Ltd (**VetPartners**). E&J considered that these groups have never expressed an interest in FSA contracts for Meat Official Controls in the past and would not find the complexity of delivery and the low margin appealing. E&J also considered it unlikely that these groups would have a desire to divert veterinary resources away from higher margin clinical work into Meat Official Controls work, especially in light of current veterinary shortages.<sup>159</sup> In response to the CMA's Issues Letter, however, E&J submitted that it sees an increasing competitive threat from large veterinary groups.<sup>160</sup>
151. In response to the CMA's Issues Letter, E&J submitted that new entrants such as outsourcing providers and large veterinary groups may be better placed than Vorenta to bid for future FSA Meat Official Controls contracts because they: (a) will pass the EFS assessment resulting from the classification of such contracts as 'Gold' tier government contracts; (b) will already have a significant central support resource base which will be available to support the FSA Meat Official Controls contract(s); (c) will have financial resources to bear applicable contract implementation and delivery costs; and (d) will have significant turnover, so that the share of central support costs charged to the FSA will be kept low.<sup>161</sup>
152. Vorenta submitted that during the process of the 2019 FSA Tender, it considered whether Capita and XL Farmcare would bid. Vorenta was aware that Capita attended the market engagement meeting held by the FSA in March 2019 but stated that Capita ultimately decided not to bid. Further, Vorenta thought that XL Farmcare was the only company other than E&J and Vorenta that would have the required knowledge to bid in the 2019 FSA Tender.
153. Vorenta also submitted that there are a number of potential barriers for any company to be successful in any future FSA Meat Official Controls tender, especially as a single supplier. According to Vorenta, these barriers include:

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<sup>158</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction Summary; E&J Enquiry Letter Response of 12 December 2022, question 33; and E&J S109 Request Response of 16 and 20 December 2022, questions 11(a)-(c).

<sup>159</sup> E&J S109 Request Response of 16 and 20 December 2022, question, 11(a).

<sup>160</sup> E&J's response of 13 February 2023 to the CMA's Issues Letter.

<sup>161</sup> E&J's response of 13 February 2023 to the CMA's Issues Letter.

- (a) scale, both to deliver under the contract and to compete against E&J's economies of scale when bidding in an FSA Tender (which reflect in, for example, E&J's ability to offer multi-lot discounts);
- (b) recruitment pipeline, which became more challenging after the UK's exit from the EU; and
- (c) the presence of an incumbent, which has the ability to achieve a higher technical score relative to other bidders and will not require any transition arrangements to implement any FSA contracts awarded to it.<sup>162</sup>

### *Insourcing*

154. The evidence received by the CMA indicated that insourcing and outsourcing have been employed as complementary rather than competing strategies by the FSA and are expected to continue to coexist in England and Wales in the foreseeable future (see paragraph 79).
155. In addition, there are other challenges to the insourcing of Meat Official Controls by the FSA in England and Wales in addition to costs, such as the large number of OV's and MHIs to undertake these controls (relative to the number of personnel required to deliver such controls in other UK nations), civil service pay limitations, recruitment difficulties, and civil service nationality requirements (see paragraphs 72, 77 and 79).
156. On this basis, the CMA believes that the extent to which insourcing represents a constraint on the outsourced supply of Meat Official Controls in England and Wales is limited. Additionally, the CMA considers that E&J's submission implies that, if insourcing is the main competitive constraint, then the Merged Entity will face a very limited constraint from alternative suppliers.

### *New entrants*

#### **Parties' and third parties' internal documents**

157. Other than references to the other Party (see paragraphs 127-128), the CMA has not seen references in the Parties' internal documents to other potential suppliers of Official Controls to the FSA. Instead, the Parties' internal documents describe a market with limited competition and high barriers to entry. Where the Parties' internal documents refer to other entities active in the veterinary space, this is to acknowledge that those entities are not alternative suppliers of Meat Official

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<sup>162</sup> Vorenta S109 Request Response of 20 December 2022, question 12.

Controls to the FSA. For example, in a strategy document for an off-site gathering of the E&J Board of Directors in July 2022, it was stated that E&J does not consider the large veterinary groups (eg [S&K]) as a competitive threat.<sup>163</sup>

158. In addition, E&J's and third-party internal documents indicated that ahead of previous tenders, the FSA took action to improve competition levels for the outsourced supply of Meat Official Controls ahead of tenders. For example, in designing previous tenders, the FSA decided to split tenders in different lots to encourage interest and provide a potential opportunity for multiple providers to bid (see paragraphs 116 and 135). Similarly, ahead of the 2019 FSA Tender the FSA reached out to a number of third parties and held various outreach events to promote the tender and encourage interest (see paragraph 116).
159. However, the Parties' and third-party internal documents indicated that, despite the actions taken to promote competition in previous tenders, the FSA has been unsuccessful in encouraging more entities to bid. For example, only four (or fewer) entities ultimately bid in the 2019 FSA Tender (see also **Table 1**).<sup>164</sup>

### **Third-party views**

160. Four entities stated that they may consider bidding in the 2024/25 FSA Tender, while noting that no final decision has been made.<sup>165</sup> The CMA notes the following in relation to these four entities:
- (a) Two of these entities submitted they would only bid in the 2024/25 FSA Tender if the FSA split the tender into different lots.<sup>166</sup> For one of these entities, the size of any lots would need to be smaller than the lots in the 2016 FSA Tender and 2019 FSA Tender.<sup>167</sup> Another third party noted that it would require a significant increase in staff to bid in the 2024/25 FSA Tender.<sup>168</sup>
  - (b) Only some of these entities bid in previous FSA Meat Official Controls tenders, including the 2019 FSA Tender.<sup>169</sup> When asked about the reasons for being unsuccessful in earlier FSA tenders, these third parties cited the lack of track

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<sup>163</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, page 23.

<sup>164</sup> E&J Response on 1 February 2023, Tender Notification Letter Lots 1 to 6; Vorenta Response on 1 February 2023, Tender Notification Letter Lots 1 to 6; Internal document provided by a third party relating to the 2019 FSA Tender; and Internal document provided by a third party relating to the 2019 FSA Tender.

<sup>165</sup> Responses by third parties to the CMA competitor questionnaire, question 5(a).

<sup>166</sup> Responses by third parties to the CMA competitor questionnaire, question 5(a).

<sup>167</sup> Response by a third party to the CMA competitor questionnaire, question 5(a).

<sup>168</sup> Response by a third party to the CMA competitor questionnaire, question 5(a).

<sup>169</sup> Responses by third parties to the CMA competitor questionnaire, question 4(a).

record, expertise, capability to manage a large contract/multiple contract(s), and tender writing skills.<sup>170</sup>

- (c) Only one of these entities appears to have been taking some sort of action in preparation to the 2024/25 FSA Tender, including establishing certain arrangements that may allow it to scale its headcount, creating awareness amongst its staff in relation to Meat Official Controls, and establishing relationships with tender writers.<sup>171</sup>
- (d) None of these entities were cited by either of the Parties as alternative suppliers of Meat Official Controls to the FSA in England and Wales. Only two of the third parties consulted by the CMA cited one of these other third parties as being well placed to bid in the 2024/25 FSA Tender.<sup>172</sup>

161. The CMA has also received evidence that, ahead of the 2024/25 FSA Tender, the FSA has been holding discussions with one potential interested supplier. However, discussions have been very high-level and focussed on [redacted] and not on the delivery of the main contract.<sup>173</sup>

162. Many third parties stated that there are significant barriers to entry that would prevent them submitting a competitive bid in future FSA Meat Official Controls tenders including the lack of track record, challenges in developing veterinary recruitment pipelines, and the required financial strength.<sup>174</sup>

#### *CMA's view on alternative suppliers*

163. Based on the evidence outlined in paragraphs 146-162, the CMA considers that there are very few potential suppliers who might bid in any future FSA Meat Official Controls tenders and there is considerable uncertainty about the extent of any constraint these suppliers would impose on the Merged Entity. Further, third parties identified significant barriers to entry, which negatively impact both alternative suppliers' interest to ultimately bid in the 2024/25 FSA Tender and any future FSA tender, as well as the actual ability of new suppliers to undertake FSA Meat Official Controls contracts.

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<sup>170</sup> Response by third parties to the CMA competitor questionnaire, question 4(c).

<sup>171</sup> Response by a third party, question 5(b).

<sup>172</sup> Responses by third parties to the CMA competitor questionnaire, question 5(c).

<sup>173</sup> Response by a third party to the CMA questions of [redacted].

<sup>174</sup> Responses by third parties to the CMA competitor questionnaire, question 6; and Note of a call with a third party on [redacted], paragraphs 36-37.

164. Therefore, the CMA does not believe that alternative suppliers would exert a competitive constraint on the Merged Entity comparable to the constraint posed by each of the Parties on the other Party pre-Merger.

### ***CMA's view on TOH 1.A***

165. The evidence that the CMA has examined indicated that the Parties have competed very closely in tenders for the outsourced supply of Meat Official Controls to the FSA in England and Wales and that they will continue to compete closely future FSA tenders. Although they have faced, and might face in future tenders, competition from third-party suppliers, this competition is limited, which is recognised in the Parties' internal documents and by third parties.

166. Therefore, the CMA believes the Merger results in a realistic prospect of an SLC as a result of horizontal unilateral effects in the outsourced supply of Meat Official Controls in England and Wales.

167. The CMA is concerned that the Merger will result in worse contractual terms for the FSA, and in higher prices for and/or worse quality of the services provided to meat producing establishments in England and Wales. Ultimately, the CMA believes this will lead to higher prices for and/or worse quality of meat products supplied to other food businesses and consumers.

### **TOH 1.B: Horizontal unilateral effects in the outsourced supply of OVs and MHIs to undertake Meat Official Controls in Scotland**

#### ***Closeness of competition***

168. To assess the closeness of competition between the Parties, the CMA has considered how likely it is that, absent the Merger, each of E&J and Vorenta would bid in competition to each other in the 2023/24 FSS Tender, and any future tenders for the outsourced supply of OVs and MHIs to undertake Meat Official Controls on behalf of FSS in Scotland.

169. The Parties' submissions indicated that the Parties competed closely for past FSS tenders. Vorenta submitted that historically it has considered E&J as its main competitor in the outsourced supply of OVs and MHIs to undertake Meat Official Controls.<sup>175</sup> The Parties' internal documents and third-party documents similarly

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<sup>175</sup> Vorenta S109 Request Response of 20 December 2022, question 10(d).

show that the Parties were the only two bidders in the 2017 FSS Tender, and had significantly similar technical, commercial, and total scores.<sup>176</sup>

170. E&J's submissions and internal documents provided strong evidence that it was likely to bid in future FSS tenders. E&J submitted it had been having [redacted].<sup>177</sup> E&J also submitted that it has the expertise, track record, infrastructure, operating model, and recruitment pipeline to supply OVs and MHIs to undertake Meat Official Controls on behalf of competent authorities.<sup>178</sup> E&J's internal documents further indicated that E&J believed the FSS may require some OVs and MHIs to be outsourced and was proactively planning how to become the supplier of these.<sup>179</sup>
171. Vorenta's submissions indicated that it would also be interested in bidding in future tenders for the outsourced supply of OVs and MHIs to deliver Meat Official Controls on behalf of competent authorities.<sup>180</sup> Vorenta also provided examples of actions it had been taking prior to Merger and ahead of the 2024/25 FSA Tender, which the CMA considers would also apply to the 2023/24 FSS Tender (see paragraph 107).
172. However, the CMA notes that Vorenta's difficulties delivering the previous FSS contract could impact on its ability to compete for future FSS tenders. As noted in paragraphs 43 and 85, Vorenta submitted that HallMark and FSS agreed on an early termination of their ongoing contract for outsourced Meat Official Controls in Scotland in 2019.<sup>181</sup> Vorenta also submitted that the circumstances leading to the termination of such contract had [redacted] its [redacted].<sup>182</sup>
173. Based on the evidence outlined above, the CMA believes that the Parties have historically competed closely in tenders carried out by FSS. Consistent with their approach over the last decades, the CMA believes that, prior to the Merger, both E&J and Vorenta were likely to have bid for future FSS tenders, although Vorenta's willingness to bid may have been tempered by its recent FSS contract termination. Overall, the CMA believes, that absent the Merger, the Parties would continue to compete closely in future tenders for the outsourced supply of OVs and MHIs to undertake Meat Official Controls on behalf of FSS in Scotland.

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<sup>176</sup> E&J Response of 1 February 2023; Vorenta S109 Request Response of 20 December 2022, question 9; and Internal document provided by a third party relating to the 2017 FSS tender.

<sup>177</sup> E&J S109 Request Response of 16 and 20 December 2022, question 8.

<sup>178</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>179</sup> E&J Enquiry Letter Response of 24 November 2022, Appendix 22.5, page 8; E&J Enquiry Letter Response of 24 November 2022, Appendix 22.6, page 25; and E&J Enquiry Letter Response of 24 November 2022, Appendix 24.2, slide 27.

<sup>180</sup> Vorenta S109 Request Response of 20 December 2022, question 13.

<sup>181</sup> Vorenta S109 Request Response of 20 December 2022, questions 1(a) and 9.

<sup>182</sup> Vorenta S109 Request Response of 20 December 2022, Annex 8 – Ian MC Watt.

### ***Constraints from alternative suppliers***

174. Neither of the Parties provided submissions in respect of alternative suppliers who would constrain the Merged Entity specifically in the outsourced supply of OV's and MHIs to undertake Meat Official Controls in Scotland, beyond the general submissions made in relation to outsourced Meat Official Controls in England and Wales summarised above (see from paragraph 146).
175. In relation to future FSS tenders, including the 2023/24 FSS Tender, two entities contacted by the CMA stated that they may consider bidding.<sup>183</sup> Of these two entities, one submitted that some of its staff have been involved in the outsourced supply of OV's and MHIs in Scotland in the past and that its values are aligned with FSS.<sup>184</sup> The other third party submitted that it might be easier for it to submit a competitive bid for the outsourced supply of Meat Official Controls in Scotland (relative to England and Wales) because it has staff in Scotland, and its management have knowledge of meat producing establishments in the country.<sup>185</sup>
176. The CMA notes that the resource requirement for a future FSS tender would be for a very small number of OV's and MHIs (approximately five OV's and MHIs). The CMA considers that this small resource requirement can be much more easily met by alternative suppliers than the delivery of a completely outsourced service. Subsequently, the CMA believes that alternative providers (possibly even including those not contacted by the CMA) are likely to pose a strong competitive constraint on the Merged Entity for the outsourced supply of OV's and MHIs to undertake Meat Official Controls on behalf of FSS in Scotland.

### ***Conclusion on TOH 1.B***

177. The evidence examined by the CMA indicated that the Parties have competed closely with each other in past FSS Meat Official Controls tenders. E&J and Vorenta were the only two bidders in the 2017 FSS Tender and their bid scores were very similar. However, due to the very small resource requirement, alternative competitors will remain to constrain the Merged Entity.
178. Accordingly, the CMA does not believe that the Merger results in a realistic prospect of an SLC as a result of horizontal unilateral effects in the outsourced supply of OV's and MHIs to undertake Meat Official Controls on behalf of FSS in Scotland.

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<sup>183</sup> Responses by third parties to the CMA competitor questionnaire, question 5(a).

<sup>184</sup> Response by a third party to the CMA competitor questionnaire, question 5(a).

<sup>185</sup> Response by a third party to the CMA competitor questionnaire, question 5(a).

## **TOH 2: Horizontal unilateral effects in the supply of POAO EHCs in Great Britain**

179. The concern under this theory of harm is that the removal of one Party as a competitor may reduce competition between suppliers of POAO EHCs in Great Britain. The CMA considers that this may result in higher prices and/or worse quality of the services provided to customers of POAO EHCs in Great Britain.
180. In its assessment, the CMA has considered:
- (a) industry background;
  - (b) frame of reference;
  - (c) shares of supply;
  - (d) closeness of competition between the Parties; and
  - (e) constraints from alternative suppliers.

### ***Industry background***

181. POAO includes meat, dairy products, honey, pet food and animal feed, fish and shellfish, skins and hides, embryos, germplasm, and live animals.<sup>186</sup>
182. An EHC is required for the export or movement of POAO from Great Britain to the EU and certain non-EU countries. It ensures that the POAO being exported or moved complies with the laws and regulations of the destination country, or country that it transits through.<sup>187</sup> Exporters in Great Britain requiring POAO EHCs vary from small individual traders with a single export site and ad hoc POAO EHC requirements to large multi-national corporations with multiple export sites and regular POAO EHC requirements.<sup>188</sup>
183. POAO EHC must be supplied by OV, who cannot be employed directly by the exporter (rather, they must be independent and approved by APHA).<sup>189</sup> To issue POAO EHCs, OVs must obtain two further Official Controls Qualifications from APHA's contracted training provider, Improve International. E&J submitted that

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<sup>186</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>187</sup> See <https://www.gov.uk/guidance/get-an-export-health-certificate>.

<sup>188</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; Note of a call with a competitor on [redacted], paragraph 22; and Responses by customers to the CMA customer questionnaire, question 3.

<sup>189</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.



these qualifications can be completed online after approximately 20 hours, at a cost of around £600.<sup>190</sup> To issue a POAO EHC, OV's must attend exporters' premises.<sup>191</sup>

184. E&J submitted that there are currently approximately 520 exporters of POAO to the EU (ie POAO EHC customers) and 525 suppliers of POAO EHCs (including corporate suppliers and individual OV's) in England and Wales.<sup>192</sup> E&J submitted that this includes at least 19 corporate suppliers, including each of the Parties, that have OV's based across England and Wales, and can therefore service exporters that require a POAO EHC supplier with a national presence.<sup>193</sup>
185. In October 2020, the UK Government announced that all POAO exported into the EU would require an EHC from 1 January 2021.<sup>194</sup> E&J submitted that following this announcement, there was a sudden and significant expansion in the demand for POAO EHCs.<sup>195</sup> E&J also submitted there is uncertainty as to whether POAO EHCs will be required for EU exports in future, due to the ongoing political debate around the UK's continued trading relationship with the EU. If this debate is resolved, E&J submitted there is a strong possibility that POAO EHCs will no longer be required for EU exports, and that if this happens, a significant portion of the existing POAO EHC market would cease to exist.<sup>196</sup> Given the CMA is not aware of any imminent change in EHC requirements, it has conducted its assessment on the basis of POAO EHCs being required for EU exports for the foreseeable future.

## ***Frame of reference***

### ***Product scope***

186. The Parties overlap in the supply of POAO EHCs to exporters.<sup>197</sup> The CMA considered the merits of narrower product frames of reference by (a) category of POAO, such as meat or meat and dairy, and (b) customer groups.
187. Regarding a potential distinction by category of POAO, the CMA considered whether the supply of POAO EHCs for meat and/or dairy products should constitute separate product frames of reference. Whilst the CMA will typically pay particular regard to demand-side factors, the CMA may also consider supply-side factors.<sup>198</sup> On the demand-side, the CMA believes there is no substitutability between on the

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<sup>190</sup> E&J S109 Request Response of 16 and 20 December 2022, Question 14.

<sup>191</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>192</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>193</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>194</sup> See <https://www.gov.uk/guidance/get-an-export-health-certificate>.

<sup>195</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>196</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>197</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>198</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 9.6.

one hand POAO EHCs for meat or POAO EHCs for meat and dairy products, and on the other hand POAO EHCs for other products (excluding live animals). However, evidence received by the CMA indicated that from a supply-side standpoint, there are no significant differences in terms of OV's expertise, qualification, and accreditation for the supply of EHCs for different types of POAO, with the Parties and their main competitors routinely using the same assets and staff to supply EHCs in relation to different types of POAO (excluding live animals).<sup>199</sup> Accordingly, the CMA has not found it necessary to adopt a narrower product frame of reference by reference to POAO category, excluding live animals.

188. In relation to a potential segmentation by customer groups, E&J submitted that there are broadly two types of customers for POAO EHCs: (a) "category 1 customers" who export POAO from a single export site, or from multiple sites located close together; and (b) "category 2 customers" who often have more than one export site, spread over a non-commutable geographic area, and would typically look for an POAO EHC supplier with a regional or national presence.<sup>200</sup> Vorenta submitted that there are three main types of customers: (a) "category 1 customers" who require POAO EHCs on an ad hoc basis; (b) "category 2 customers" who require POAO EHCs on a regular basis in one export site; and (c) "category 3 customers" who require POAO EHCs on a regular basis in multiple export sites.<sup>201</sup>
189. The CMA considers there is a spectrum of customers with different requirements in terms of, for example, the types of POAO EHCs, the volume of POAO EHCs, and the number of export sites.<sup>202</sup> The Parties and their overlapping activities are the starting point for market definition.<sup>203</sup> On the supply-side the evidence indicates that large, national suppliers, like E&J and Vorenta, can and do supply all customer groups. The CMA notes that the reverse is not true and smaller suppliers cannot supply all customer groups (see paragraphs 238-243). On the basis of this evidence, the CMA has considered it appropriate to adopt a frame of reference encompassing the supply of POAO EHCs to all customer groups and, where appropriate, has taken the different competitive constraints for each customer group into account in its competitive assessment.

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<sup>199</sup> E&J S109 Request Response of 16 and 20 December 2022, question 18(b); and Note of a call with a competitor on [redacted], paragraph 19. See also [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 9.8.

<sup>200</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>201</sup> Vorenta's comments to the draft request for documents and information made by the CMA on 14 December 2022.

<sup>202</sup> Note of a call with a competitor on [redacted], paragraph 22; and Responses by customers to the CMA customer questionnaire, question 3.

<sup>203</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 9.6.

## *Geographic scope*

190. The Parties' activities overlap in Great Britain.<sup>204</sup>
191. The CMA considers there is an element of regional/local competition in the supply of POAO EHCs. On the demand-side, evidence received by the CMA indicated that there are a mix of customers requiring POAO EHC suppliers with a local/regional presence and customers requiring POAO EHC suppliers with a national presence.<sup>205</sup> On the supply-side, the evidence indicated that there is a continuum of national, regional, and local suppliers in Great Britain, with regional and local providers being unable to provide services outside of their regions and local areas, respectively.<sup>206</sup> Specifically, as OV's need physically to inspect the POAO and consignments to be exported, suppliers need to have local operations to service any given customer (eg E&J's OV's travel, on average, [X] miles to visit a customer).<sup>207</sup>
192. However, evidence received by the CMA also indicated that, from the supply-side, the requirements to supply POAO EHCs are standardised across Great Britain and the Parties do not make distinctions between regions within Great Britain.<sup>208</sup> In addition, each of E&J, Vorenta, and their main competitors can provide, to different extents, services throughout Great Britain (see paragraphs 218-231).
193. Accordingly, the CMA has considered the impact of the Merger in Great Britain and has taken into account in its assessment the different competitive strength of local, regional and national suppliers of POAO EHCs.

## ***Shares of supply***

194. E&J provided SoS estimates based on three metrics<sup>209</sup>:
- (a) in terms of the revenue earned from issuing POAO EHCs in Great Britain from May 2021 to April 2022, E&J estimated that the Parties' combined SoS is 8.8%, with an increment of 1.2% brought about by the Merger;

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<sup>204</sup> E&J Enquiry Letter Response of 24 November 2022, question 18.

<sup>205</sup> Note of a call with a competitor on [X], paragraph 22; and Responses by customers to the CMA customer questionnaire, question 3.

<sup>206</sup> Responses by customers to the CMA customer questionnaire, question 6; and Responses by competitors to the CMA competitor questionnaire, question 10.

<sup>207</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>208</sup> For example, E&J Enquiry Letter Response of 24 November 2022, Annexes 24.1, 24.2 and 24.3, which each discuss E&J's future strategy for the supply of POAO EHCs in Great Britain, do not make any distinctions between regions.

<sup>209</sup> E&J Enquiry Letter Response of 24 November 2022, question 11.

- (b) in terms of number of qualified OV's to issue POAO EHCs in Great Britain in 2022 (until September 2022), E&J estimated that the Parties' combined SoS is 15.1%, with an increment of 2.4% brought about by the Merger; and
- (c) in terms of number of POAO EHCs issued in Great Britain in 2022 (based on figures provided by APHA until September 2022), E&J estimated that the Parties' combined SoS is 23.1%, with an increment of 7.5% brought about by the Merger.
195. The CMA does not consider E&J's revenue-based SoS estimates to be reliable. These SoS, which are derived from the total value of POAO exports,<sup>210</sup> rely on significant assumptions about (a) the average value per load of POAO exports; (b) the time taken to certify a load; and (c) the costs charged per vet hour. In addition, E&J's estimates of the total value of POAO exports and Vorenta's revenue data do not cover the same time period.
196. Similarly, the CMA considers the 'number of qualified OV's to issue POAO EHCs' is not a reliable basis for estimating SoS. First, not all qualified OV's will necessarily be engaged to issue of POAO EHCs. For example, E&J submitted that a number of OV's hold the qualification, but their role is not to undertake EHC work.<sup>211</sup> Second, qualified OV's employed by different suppliers are likely to issue very different amounts of POAO EHCs. For example, one competitor submitted that small suppliers typically issue POAO EHCs in addition to their routine veterinary work.<sup>212</sup>
197. The CMA therefore considers that the number of POAO EHCs issued is the most reliable available measure of SoS. The CMA believes this metric better reflects the market position of POAO EHC suppliers and notes that it is officially recorded by APHA.
198. As discussed in paragraphs 232-237, evidence received from the Parties and third parties indicated that there are a number of customers with multiple export sites across Great Britain and who prefer to use POAO EHC suppliers with a wide geographic coverage. E&J identified 19 suppliers, including each of the Parties, that have a national presence in England and Wales, and the capacity to meet the requirements of such customers.<sup>213</sup> APHA also publishes on its website a list of

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<sup>210</sup> Value of export of POAO per the Office of National Statistics (May 21 – April 22)

<sup>211</sup> E&J Enquiry Letter Response of 24 November 2022, question 11.

<sup>212</sup> Response by a competitor to the CMA competitor questionnaire, question 10(b).

<sup>213</sup> Apart from each of the Parties, these include: (1) AIO Partners; (2) IVC (including Vet Exports, AmiVet, Barrowhill and other veterinary practices); (3) Associated Vet Services; (4) ATD – Veterinary Services; (5) VetPartners; (6) Airport Export Vet; (7) Fast Forward Vets; (8) Meadows Farm Vets; (9) Mistev Export Health Certification; (10) Poultry Health Services, (11) CVS/Slate Hall, (12) Access Vet Exports, (13) Daleside Vets, (14) Export Vets, (15) XL Vets, (16) Longbridge Vets and (17) OWL, E&J Enquiry Letter Response of 24 November 2022, Appendix 1.6.

suppliers with coverage to all of Great Britain.<sup>214</sup> **Table 2** includes the CMA SoS estimates for all suppliers with a wide geographic coverage (based on information provided by E&J and APHA) as well as for the tail of regional and local suppliers based on volume data provided by the Parties, third parties and APHA.

**Table 2: POAO EHCs issued in Great Britain in 2021 and 2022 (to 31 October)<sup>215</sup>**

Supplier	2021		2022 (to 31 October)	
	POAO EHCs (no.)	SoS (%)	POAO EHCs (no.)	SoS (%)
E&J	[X]	[10-20]	[X]	[10-20]
Vorenta	[X]	[0-5]	[X]	[5-10]
<b>Parties combined</b>	<b>[X]</b>	<b>[20-30]</b>	<b>[X]</b>	<b>[20-30]</b>
IVC (including Amivet Ltd and Barrowhill) <sup>216</sup>	[X]	[10-20]	[X]	[10-20]
AIO	[X]	[5-10]	[X]	[5-10]
Advance Export Certification Ltd	[X]	[0-5]	[X]	[0-5]
A&H Veterinary Services (Export Vets)	[X]	[0-5]	[X]	[0-5]
Associated Veterinary Services Limited	[X]	[0-5]	[X]	[0-5]
Assured Veterinary Certification	[X]	[0-5]	[X]	[0-5]
ATD Veterinary Services	[X]	[0-5]	[X]	[0-5]
Daleside Vets	[X]	[0-5]	[X]	[0-5]
David Cuffe Ltd	[X]	[0-5]	[X]	[0-5]
Export for All	[X]	[0-5]	[X]	[0-5]

<sup>214</sup> <https://www.gov.uk/government/publications/find-a-professional-to-certify-export-health-certificates/professionals-in-england-scotland-or-wales-who-can-certify-export-health-certificates>.

<sup>215</sup> The list of suppliers provided by E&J and those listed on APHA's website as providing POAO EHC coverage across Great Britain does not overlap completely. In line with E&J's submissions, the CMA excluded Pass Pets Ltd and MVA Veterinary Services, which specialise in EHCs for live small animals, and Pharmaq Analytiq, which specialises in EHCs for the aquaculture industry (E&J Enquiry Letter Response of 24 November 2022, Appendix 1.6). The CMA has also added figures for two additional suppliers listed by E&J, namely Daleside Vets and A&H Veterinary Services Ltd. The CMA has been unable to obtain volume data for XL Vets, Access Vet Exports or OWL, but the CMA seen no evidence to suggest that any of these suppliers would have a material SoS. For instance, E&J stated that XL Vets is not a 'super chain' but independent franchises (E&J S109 Request Response of 16 and 20 December 2022, question 24). APHA provided the CMA with the number of POAO EHCs issued by suppliers in Great Britain in 2021 (from 1 January to 31 December) and in 2022 (from 1 January to 31 October). The CMA has also asked the Parties and third parties for the number of POAO EHCs issued in 2021 (from 1 January to 31 December) and 2022 (from 1 January to 1 December 2022) and revenue data, recognising that data provided by APHA may underestimate the number of POAO EHCs issued by suppliers operating under multiple trade names or names not listed on APHA's website. E&J stated that it relies on APHA for the number of POAO EHCs it issued. Vorenta and some third parties provided the CMA with the number of POAO EHCs they issued in 2021 (from 1 January to 31 December) and 2022 (from 1 January to 1 December). Vorenta's and third-party responses were broadly in line with APHA data. On a cautionary basis, the CMA used figures provided directly by Vorenta and third parties when the figures provided by them was materially higher than the figures provided by APHA. In relation to revenue recorded from POAO EHCs issued, the Parties and third parties provided revenue figures for 2021 (from 1 January to 31 December) and 2022 (from 1 January to 1 December). This revenue data indicated that the Parties would have a higher combined SoS based on revenue than on number of POAO EHCs issued. However, the CMA considers that the SoS presented in **Table 2** are broadly indicative of the market position held by the Parties and other POAO EHC suppliers in Great Britain.

<sup>216</sup> The CMA notes that IVC is active in the supply of POAO EHCs through different veterinary practices but primarily through Amivet Ltd and Barrowhill. The figures in **Table 2** include POAO EHCs issued by Amivet Ltd and Barrowhill and do not include POAO EHCs issued by other veterinary practices owned by IVC. Based on the evidence received during its investigation, the CMA believes that POAO EHCs issued by other veterinary practices owned by IVC would be minimal and would not materially change the SoS estimates set out in **Table 2**.

Supplier	2021		2022 (to 31 October)	
	POAO EHCs (no.)	SoS (%)	POAO EHCs (no.)	SoS (%)
Fast Forward Vets	[3<]	[0-5]	[3<]	[0-5]
Longbridge Certification Limited	[3<]	[0-5]	[3<]	[0-5]
Meadows Farm Vets Ltd	[3<]	[0-5]	[3<]	[0-5]
Mistev Export Health Certification Limited	[3<]	[0-5]	[3<]	[0-5]
MVA Veterinary Services Ltd	[3<]	[0-5]	[3<]	[0-5]
Poultry Health Services	[3<]	[0-5]	[3<]	[0-5]
Rosemullion Vets	[3<]	[0-5]	[3<]	[0-5]
Slate Hall Veterinary Services	[3<]	[0-5]	[3<]	[0-5]
VetPartners	[3<]	[0-5]	[3<]	[0-5]
Other	[3<]	[40-50]	[3<]	[40-50]
<b>Total market</b>	<b>257,163</b>	<b>100</b>	<b>224,282</b>	<b>100</b>

Note: POAO EHC suppliers with SoS belonging to the same ranges are listed in alphabetical order.

199. As shown in **Table 2**, the CMA estimates that the Parties' combined SoS of POAO EHCs issued in 2022 was 21.6% in Great Britain, with an increment of 6.3%. The CMA however notes that the Merger would reduce the number of the main large, national suppliers of POAO EHCs from four to three.<sup>217</sup> The Merged Entity would become the market leader, and IVC and AIO would be the only rival suppliers with a SoS over 5%.
200. **Table 2** also includes a long tail of regional and local supplier without national coverage (see the 'Other' entry), making up almost half of the total supply by number of POAO EHCs issued. As discussed in paragraphs 232-237, evidence received from the Parties and third parties indicated that based on the preferences of the relevant customers, these regional and local providers cannot meet the requirements of a number of customers. When excluding these regional and local providers from the CMA's SoS estimates, the Merged Entity would have a combined SoS of almost 40%, and only IVC ([20-30]%), AIO ([10-20]%) and Longbridge Certification Ltd (**Longbridge**) ([5-10]%) would have a SoS over 5%.

### ***Closeness of competition***

201. As already noted, the Parties represent two of the four main large, national suppliers of POAO EHCs in Great Britain. Where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between them

<sup>217</sup> This excludes FSS, which is the largest supplier of POAO EHCs in Scotland and the fourth largest supplier in Great Britain. All FSS' operations are in Scotland. Accordingly, the CMA considers that FSS does not supply POAO EHCs on a national basis.

would raise competition concerns, subject to evidence to the contrary.<sup>218</sup> The smaller the number of significant players, the stronger the prima facie expectation that any of the two firms are close competitors.<sup>219</sup> In such a scenario, the CMA will require persuasive evidence that merging firms are not close competitors in order to allay any competition concerns.<sup>220</sup>

202. In this context, the CMA has examined the closeness of competition between the Parties by considering within its assessment:

- (a) the Parties' submissions and tender data;
- (b) the Parties' internal documents; and
- (c) third-party views.

#### *Parties' submissions and tender data*

203. The Parties did not provide any submissions on closeness of competition in relation to the supply of POAO EHCs in Great Britain. E&J submitted that E&J and Vorenta are two of 19 suppliers that have the capacity to compete for the supply of POAO EHCs to all customer groups, including customers which require suppliers with a national coverage.<sup>221</sup>

204. E&J told the CMA that some customers may run tenders or ask multiple suppliers to submit supply offers.<sup>222</sup> In order to assess how closely the Parties compete, the CMA has examined the Parties' tender bidding data.

205. The Parties provided tender bidding data for the period from 1 January 2020 to 1 December 2022. Over that period, E&J bid for [X] contracts<sup>223</sup> and Vorenta bid for [X] contracts.<sup>224</sup> E&J and Vorenta overlapped in [X] of those tenders, with E&J winning each of the overlap tenders. In other words, Vorenta competed against E&J for half of the contracts that E&J bid for ([X] out of [X]) and E&J competed against Vorenta in 75% of the contracts that Vorenta bid for ([X] out of [X]). The CMA considers this strong evidence that E&J and Vorenta compete for similar customers.

206. The CMA notes that Vorenta submitted that the market for POAO EHCs is not characterised by formal open tenders and therefore the list of tenders bid for by

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<sup>218</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.10.

<sup>219</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.10.

<sup>220</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.10.

<sup>221</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>222</sup> Response provided by E&J on 20 October 2022 to the CMA request for information of 17 October 2022, question 2.

<sup>223</sup> E&J S109 Request Response of 16 and 20 December 2022, Appendix J.

<sup>224</sup> Vorenta S109 Request Response of 20 December 2022, question 18.

Vorenta is very limited and represents only a small percentage of POAO EHC customers. Vorenta submitted it has grown its POAO EHC business mainly through active marketing and referrals from other clients.<sup>225</sup> This lack of formal tenders has also been reflected in customer feedback received by the CMA.<sup>226</sup> Notwithstanding this, the overlaps in the Parties' tender activity suggest that they competed to a significant extent for the same tender opportunities.

### *Parties' internal documents*

207. The CMA considers that the Parties' internal documents show that the Parties compete closely in the supply of POAO EHCs in Great Britain. For example, in relation to E&J's internal documents:
- (a) Many E&J Board of Directors materials indicate that E&J closely monitors gains and losses of POAO EHC business from and to Vorenta. For instance, in a slide deck for an E&J Board of Directors meeting of 24 March 2022, it was noted that Vorenta had been successful in taking POAO EHC clients from E&J, including one large client despite E&J being [redacted] into a [redacted] contract.<sup>227</sup> Similarly, in a slide deck for an E&J Board of Directors meeting on 9 June 2022, it was noted that a large customer moved its sites to Vorenta for [redacted] reasons. In the same document, it was further noted that a different customer had asked E&J, Vorenta and [redacted] for a quote on their POAO EHC business.<sup>228</sup> In a slide deck for an E&J Board of Directors meeting on 22 September 2022, it was noted in relation to another POAO EHC tender that Vorenta was in with a higher chance of replacing the incumbent provider, although both E&J and Vorenta had active bids on the table.<sup>229</sup>
  - (b) In a strategy slide deck for an off-site gathering of the E&J Board of Directors in July 2022, E&J listed Vorenta as one of five large suppliers in the POAO EHC space after the UK's exit from the EU, while noting that the rest of the market remained highly fragmented. The same document listed [redacted] in POAO EHCs as one of the main opportunities from acquiring Vorenta.<sup>230</sup>
  - (c) A Merger-specific E&J due diligence report dated September 2022 describes Vorenta as planning a significant increase in POAO EHC turnover during

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<sup>225</sup> Vorenta S109 Request Response of 20 December 2022, question 18.

<sup>226</sup> Note of call with a customer on [redacted], paragraphs 9-11; and Responses by customers to the CMA customer questionnaire, question 4.

<sup>227</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 22.2, page 8.

<sup>228</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 22.4, page 37.

<sup>229</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 22.7, page 5.

<sup>230</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 24.2, pages 23 and 32.



FY23.<sup>231</sup> Similarly, an E&J internal strategy document dated June 2021 describes E&J's ambition to grow POAO EHC revenue from [§<] % of income in FY20 to [§<] % by FY25.<sup>232</sup> The CMA considers that both companies' ambitions for POAO EHC growth imply their continued close competition in the future.

208. Vorenta submitted that it does not produce significant internal documents as part of its ordinary course of business.<sup>233</sup> However, the CMA considers that a Vorenta document dated September 2021, which was prepared for a potential private equity funded combination of E&J and Vorenta, indicated that the Parties are close competitors in the supply of POAO EHCs. In this document, it was noted that together [§<]. This document also recognised the recruitment strength of the Parties, stating that together they have the [§<], and that the Merged Entity could take advantage of its strategic position as the largest recruiter of veterinary and non-veterinary staff in a restrictive market.<sup>234</sup>

#### *Third-party views*

209. Most customers of E&J and Vorenta consulted by the CMA submitted that E&J and Vorenta compete closely for the supply of POAO EHCs in Great Britain.<sup>235</sup> One of these customers stated that other suppliers were 'slow to offer the full day to day cover we require'.<sup>236</sup>
210. One customer submitted that market choice is already limited and expressed a concern that the Merger would further reduce the choice businesses have.<sup>237</sup> Another customer submitted that it was concerned about the reduction in choice, especially as a result of negative previous experiences from working with E&J.<sup>238</sup>
211. However, one customer did not consider the two companies to be close competitors,<sup>239</sup> while two customers were unaware of one of the Parties.<sup>240</sup> In addition, one customer submitted that there are other companies that it can (and would) go to if it could not arrange a deal with E&J or Vorenta.<sup>241</sup>

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<sup>231</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 23, page 41.

<sup>232</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 24.1, page 13.

<sup>233</sup> Vorenta S109 Request Response of 20 December 2022, question 6.

<sup>234</sup> Vorenta S109 Request Response of 20 December 2022, Annex 2, pages 8 and 12

<sup>235</sup> Responses by customers to the CMA customer questionnaire, question 8.

<sup>236</sup> Response by a customer to the CMA customer questionnaire, question 8.

<sup>237</sup> Response by a customer to the CMA customer questionnaire, question 11.

<sup>238</sup> Response by a customer to the CMA customer questionnaire, question 11.

<sup>239</sup> Response by a customer to the CMA customer questionnaire, question 8.

<sup>240</sup> Responses by customers to the CMA customer questionnaire, question 8.

<sup>241</sup> Response by a customer to the CMA customer questionnaire, question 11.

212. Every competitor that expressed a view submitted that E&J and Vorenta are two of the largest suppliers of POAO EHCs in Great Britain. When ranking the strength of POAO EHC suppliers, each competitor ranked both E&J and Vorenta at least among the top three competitors in Great Britain.<sup>242</sup> All competitors that expressed a view submitted that E&J and Vorenta compete strongly in the supply of POAO EHCs in Great Britain.<sup>243</sup> One competitor submitted that E&J is the market leader ‘by some way’ and that Vorenta has a strong and growing presence through aggressive marketing and growth plans.<sup>244</sup>

#### *Conclusion on closeness of competition*

213. Based on the above evidence, the CMA considers that the Parties are close competitors for the supply of POAO EHCs in Great Britain.

#### *Alternative suppliers*

214. Horizontal unilateral effects are more likely where customers have little choice of alternative supplier.<sup>245</sup> The CMA has considered whether there are alternative suppliers which would provide a competitive constraint on the Merged Entity.

215. E&J submitted that the Parties face competition from 17 POAO EHC suppliers possessing national coverage, and that would be able to effectively compete for contracts with customers requiring suppliers with a national presence.<sup>246</sup> From this list, E&J identified IVC (which owns Amivet Ltd (**Amivet**), Barrowhill and a number of other veterinary practices) and VetPartners as strong competitors due to their large network of practices across Great Britain.<sup>247</sup> Based on the SoS estimates in **Table 2**, AIO is the other large national POAO EHC provider alongside IVC.

216. E&J also submitted that there are 525 registered suppliers able to supply POAO EHCs in Great Britain, which will continue to constrain the Merged Entity.<sup>248</sup>

217. Accordingly, the CMA has assessed the constraint from:

- (a) IVC, Vet Partners and AIO;

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<sup>242</sup> Responses by competitors to the CMA competitor questionnaire, question 12.

<sup>243</sup> Responses by competitors to the CMA competitor questionnaire, question 13.

<sup>244</sup> Response by a competitor to the CMA competitor questionnaire, question 13.

<sup>245</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 4.3.

<sup>246</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; Annex 1.6.

<sup>247</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>248</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

- (b) the other national suppliers that E&J submits are able to supply POAO EHCs to customers requiring suppliers with a national coverage; and
- (c) the tail of small, local or regional suppliers.

*IVC, Vet Partners, and AIO*

218. As set out in **Table 2**, IVC was the first or second largest supplier and AIO was the third largest supplier of POAO EHCs in Great Britain in 2021 and 2022.<sup>249</sup> Specifically, when focusing on the supply of POAO EHCs by suppliers identified as having a national presence, IVC had a SoS of [20-30]%, while AIO's SoS was [10-20]% in 2022. Both have a lower SoS than that of the Merged Entity (almost 40%).
219. VetPartners issues POAO EHCs through a veterinary practice it owns, Cedar Vets. The CMA estimates VetPartners' SoS to be [0-5]% in Great Britain, both in total and when removing the tail of local or regional providers.
220. E&J's internal documents indicated that it considers IVC and AIO to be competitors for POAO EHC business. For example, one internal document refers to IVC as a large competitor that has emerged in the POAO EHC space after the UK's exit from the EU and describes AIO as a specialist national provider of POAO EHCs.<sup>250</sup> The CMA has not seen any references in the Parties' internal documents to VetPartners as a competitor for POAO EHCs.
221. E&J submitted that it has lost business to both IVC and AIO in recent years. Specifically, E&J submitted that it lost a [X] tender to IVC and lost both an [X] tender and a [X] contract to AIO, in [X] 2020 and [X] 2021 respectively.<sup>251</sup>
222. Third party competitor feedback indicated that IVC and AIO are two of the Parties' closest competitors in the supply of POAO EHCs in Great Britain.<sup>252</sup>
223. Some competitors did comment that AIO and IVC may be relatively less strong competitors than E&J or Vorenta.<sup>253</sup> Two of these submitted that neither IVC nor AIO can compete, on a larger scale, with either of the Parties.<sup>254</sup> Another submitted that E&J's competitors have a much smaller pool of OVs on which they can call.<sup>255</sup>

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<sup>249</sup> The CMA obtained data on POAO EHCs for 2021 and 2022 up to October 31. The figures cited in this section refer to the indicative shares of supply for 2022. For 2021 figures please see **Table 2**.

<sup>250</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 24.2, slide 23.

<sup>251</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 1.6.

<sup>252</sup> Responses by competitors to the CMA competitor questionnaire, question 12.

<sup>253</sup> Responses by competitors to the CMA competitor questionnaire, question 13.

<sup>254</sup> Responses by competitors to the CMA competitor questionnaire, question 13.

<sup>255</sup> Response by a competitor to the CMA competitor questionnaire, question 13.

224. There was limited mention of IVC, AIO, or VetPartners in customer feedback, although two large customers did list both IVC and AIO as competitors to the Parties.<sup>256</sup>
225. Based on this evidence, the CMA considers that IVC and AIO compete closely with the Parties and expects that they will continue to do so after the Merger. However, the CMA considers that the evidence above shows that VetPartners would provide only a limited constraint on the Merged Entity.

*Other competitors for customers requiring suppliers with a national coverage*

226. As shown in **Table 2**, the other suppliers that E&J submitted are able to supply POAO EHCs to customers requiring suppliers with a national coverage are far smaller than either E&J or Vorenta. The largest, by indicative SoS to customers requiring suppliers with a national coverage in 2022, is Longbridge with a [5-10]% SoS; no other alternative supplier had a SoS above 5%.
227. Other than Longbridge, none of these alternative suppliers are mentioned as a competitor for POAO EHCs in the Parties' internal documents. Longbridge is mentioned in one E&J internal strategy document dated July 2022, where it is described as a specialist national provider of POAO EHCs.<sup>257</sup>
228. E&J also submitted that it has lost customers to some of these competitors, including [X], [X], and [X].<sup>258</sup> However, the CMA's own research indicated that all but one of these customers were small to medium sized businesses with a single export site. The remaining customer, which E&J lost to [X], was a large customer with three export sites, but these three export sites were located within an hour of each other.
229. Some competitors and one customer listed alternative suppliers as competitors for POAO EHCs when asked to identify the top ten suppliers of POAO EHCs in Great Britain and in particular mentioned Longbridge, Meadows Farm Vets Ltd, A&H, and Mistev. However, they were consistently ranked as less strong competitors than the Parties, IVC and AIO.
230. No customers or competitors listed any other national suppliers as a top ten competitor or ranked any other suppliers as strong as either of the Parties.

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<sup>256</sup> Responses by customers to the CMA customer questionnaire, question 5(b).

<sup>257</sup> E&J Enquiry Letter Response of 24 November 2022, Intro/Summary; Annex 24.2, slide 23.

<sup>258</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 1.6.

231. The CMA considers that the evidence above indicates that only some of these national suppliers identified by E&J may provide a constraint on the Parties, and that this constraint would be limited post-Merger.

*Small, regional and local providers*

232. There is a long tail of small, regional and local suppliers, which account for [40-50]% of the total POAO EHCs issued in Great Britain, in 2022. In its assessment, the CMA has considered the extent to which these suppliers constrain the Parties (and therefore the Merged Entity) in the supply of POEO EHCs to (a) customers without a national requirement and (b) customers with a national requirement in Great Britain. The CMA has also assessed the ability of these supplier to expand.

**Suitability of small, regional and local suppliers for customers without a national requirement**

233. E&J submitted that the Merged Entity would continue to face strong competition for local or regional customers from the long tail of regional and local POAO EHC suppliers.<sup>259</sup>

234. Several smaller customers of POAO EHCs submitted that regional and local supplier are a viable alternative to large suppliers.<sup>260</sup> One single-site customer submitted that regional and local suppliers can be more flexible in relation to time and availability.<sup>261</sup>

235. Several competitors also submitted that when requirements are small, smaller veterinary practices provide a competitive constraint.<sup>262</sup> For example, one large competitor submitted that 'most sites we work only require 1-2 vets so easily a smaller veterinary practice could service these contracts'.<sup>263</sup> Another competitor submitted that small veterinary practices are vital for customers requiring smaller volumes or ad hoc certification.<sup>264</sup>

236. However, one competitor submitted that when tenders are awarded on price, it would be very difficult for a local veterinary practice to supply POAO EHCs at the same costs as suppliers supplying wider POAO services.<sup>265</sup> Another competitor submitted that capacity may be an issue for smaller suppliers to compete for

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<sup>259</sup> E&J Enquiry Letter Response of 24 November 2022, Intro/Summary.

<sup>260</sup> Response provided by three customers to the CMA customer questionnaire, question 6(b).

<sup>261</sup> Response by a customer to the CMA customer questionnaire, question 6(b).

<sup>262</sup> Responses by competitors to the CMA competitor questionnaire, question 10(b).

<sup>263</sup> Response by a competitor to the CMA competitor questionnaire, question 10(b).

<sup>264</sup> Response by a competitor to the CMA competitor questionnaire, question 10(b).

<sup>265</sup> Response by a competitor to the CMA competitor questionnaire, question 10(b).

customers with more significant POAO EHC requirements, even where they operate in only one location. For example, smaller suppliers tend to complete EHC work in addition to their routine veterinary work and may not have the ability to provide 24-hour cover.<sup>266</sup>

237. Based on this evidence, the CMA considers that smaller, regional and local suppliers are likely to provide some competitive constraint on the Parties (and therefore the Merged Entity) with regards to competition for smaller customers without a national coverage requirement, but this constraint would be more limited for customers with significant POAO EHC requirements.

### **Suitability of small, regional and local suppliers for national customers**

238. The Parties submitted that a national presence is not required to service customers that operate nationally, as long as the supplier has staff located within a commutable distance from the relevant export site.<sup>267</sup> E&J provided examples of large customers that multisource their EHC provision from multiple different suppliers.<sup>268</sup>
239. However, E&J also submitted that some national customers prefer to have the same supplier to issue POAO EHCs on all (or most) of their export sites, to provide consistency of approach and a single point of contact for any issues.<sup>269</sup> Such customers would accordingly require a POAO EHC supplier with a significant regional or national presence. In addition, for each of the multi-sourcing examples submitted by E&J, each of the alternative suppliers had a national presence.
240. Several customers submitted that geographical coverage was a key factor in determining whether a POAO EHC supplier was appropriate.<sup>270</sup> For this reason, several customers stated that smaller, regional and local suppliers without a broad geographic coverage would not be appropriate for their business needs,<sup>271</sup> and/or would be only appropriate if their POAO EHC requirement was low,<sup>272</sup> or based out of one location.<sup>273</sup>

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<sup>266</sup> Response by a competitor to the CMA competitor questionnaire, question 10(b).

<sup>267</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 34.

<sup>268</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 34.

<sup>269</sup> E&J Enquiry Letter Response of 24 November 2022, Intro/Summary.

<sup>270</sup> Responses by customers to the CMA customer questionnaire, question 6(a).

<sup>271</sup> Responses by customers to the CMA customer questionnaire, question 6(b).

<sup>272</sup> Responses by customers to the CMA customer questionnaire, question 6(b).

<sup>273</sup> Responses by customers to the CMA customer questionnaire, question 6(b).

241. A large customer submitted that it sources EHCs from multiple suppliers.<sup>274</sup> However, the vast majority of customers submitted that they use a single supplier of EHCs and those that do multisource often do it on an ad hoc basis.<sup>275</sup>
242. Several competitors confirmed that geographical coverage was an important factor for larger customers with a national requirement.<sup>276</sup>
243. Based on this evidence, the CMA considers that smaller, regional and local suppliers do not materially constrain the Parties (and therefore the Merged Entity) with regards to competition for customers requiring national coverage.

#### **Ability of small, regional and local suppliers to expand**

244. E&J submitted that barriers to expansion in the supply of POAO EHCs in Great Britain are virtually non-existent.<sup>277</sup> E&J submitted that the qualification required to provide POAO EHCs is cheap (around £600) and quick to obtain (a 20-hour online course) (see paragraph 183).<sup>278</sup> E&J provided Fast Forward Vets as an example of a supplier that started small (with a single OV) and is now winning business [redacted].<sup>279</sup>
245. However, feedback from competitors indicated that while it is easy to set up a new business aimed at servicing a small number of customers, it is far more complicated to develop the logistical capabilities, recruitment pipeline, marketing capabilities, technical knowledge and financial strength required to expand to a national level.<sup>280</sup>
246. Based on this evidence, the CMA considers that there are significant barriers to expansion that prevent smaller, regional and local suppliers from being able to expand quickly and compete with national suppliers, such as the Parties.

#### *Conclusion on alternative suppliers*

247. Based on the evidence set out above, the CMA considers that there are limited alternative suppliers that will continue to constrain the Merged Entity, particularly in relation to customers with a national coverage requirement.

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<sup>274</sup> Note of call with customer on [redacted], paragraphs 6, 17.

<sup>275</sup> Responses by customers to the CMA customer questionnaire, question 3.

<sup>276</sup> Responses by competitors to the CMA competitor questionnaire, question 10(a).

<sup>277</sup> E&J Enquiry Letter Response of 24 November 2022, question 33.

<sup>278</sup> E&J Enquiry Letter Response of 24 November 2022, question 33.

<sup>279</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 1.6.

<sup>280</sup> Responses by competitors to the CMA competitor questionnaire, question 14.

## ***CMA's view on TOH 2***

248. Based on the evidence received during its investigation, the CMA considers that the Parties are two of four main, large suppliers of POAO EHCs in Great Britain. They have competed closely for contracts and are expected to continue to do so in future. The CMA has also found that customers, particularly those requiring national coverage, have limited alternatives.
249. The CMA therefore believes that the Merger results in a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of POAO EHCs in Great Britain. The CMA is concerned that customers of POAO EHCs, especially those with national requirements, will experience higher prices and/or a decrease in the quality of the service as a result of the Merger.

## **TOH 3: Horizontal unilateral effects in the outsourced supply of OVs to undertake POAO Border Inspections in England**

250. The concern under this theory of harm is that the removal of one Party as a competitor may reduce competition between suppliers of OVs to undertake POAO Border inspections at BCPs in England. The CMA considers this may result in worse contractual terms for BCPs, and ultimately in higher prices and/or worse quality of service for importers of POAO in the UK.
251. In its assessment, the CMA has considered:
- (a) industry background;
  - (b) frame of reference;
  - (c) shares of supply;
  - (d) closeness of competition;
  - (e) constraints from alternative suppliers; and
  - (f) out of market constraints.

### ***Industry background***

252. Border Inspections are required to ensure that POAO imported into the UK meet UK standards on safety and quality. They are conducted at BCPs, which are the land, sea, and air entry points for POAO imports. Specifically, Border Inspections ensure



that POAO imports are free from any zoonotic diseases, and that they comply with the UK's welfare and safety standards.<sup>281</sup>

253. POAO Border Inspections are undertaken by OVs. Besides completing a short online training course administered by the Department for Environment, Food & Rural Affairs (**Defra**), there is no specific qualification required for an OV to be able to undertake POAO Border Inspections.<sup>282</sup> However, evidence received from BCPs indicated that new OVs require significant practical training from BCPs, which can take between 3 to 12 months, depending on the prior experience of the OV.<sup>283</sup> OVs can be directly employed by the BCP to undertake POAO Border Inspections, or outsourced to third-party suppliers.<sup>284</sup>
254. Currently, the UK government has not implemented laws or regulations that require Border Inspections for POAO imported from the EU. There were expectations that these requirements would be implemented in early 2022, resulting in some BCPs signing contracts in 2021 to outsource significant numbers of OVs to undertake POAO Border Inspections. However, the UK government announced in April 2022 that the requirement for POAO Border Inspections on EU imports would be delayed until the end of 2023 at the earliest.<sup>285</sup> There remains considerable uncertainty about the future target operating model that will determine the UK border control regime. Until the target operating model is published,<sup>286</sup> the future requirement for POAO Border Inspections is unknown.

## ***Frame of reference***

### *Product scope*

255. E&J submitted that the Parties overlap in the outsourced supply of OVs to undertake POAO Border Inspections at BCPs. E&J also submitted that the relevant product frame of reference should include BCP insourcing,<sup>287</sup> noting that insourcing is currently utilised by most BCPs in the UK.<sup>288</sup>

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<sup>281</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>282</sup> E&J S109 Request Response of 16 and 20 December 2022, question 30(b).

<sup>283</sup> Note of call with a BCP on 13 December 2022, paragraph 11; and Note of call with a BCP on [redacted], paragraph 9.

<sup>284</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>284</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>285</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

<sup>286</sup> A draft target operating model is scheduled to be published in early 2023, with a final target operating model scheduled to be published later in early 2023 (<https://planthealthportal.defra.gov.uk/latest-news/update-on-the-publication-of-the-target-operating-model-tom/>).

<sup>287</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary; question 11.

<sup>288</sup> E&J Enquiry Letter Response of 24 November 2022, question 36(ii).

256. The CMA considered the extent to which it is appropriate to distinguish between the outsourcing and insourcing of OV's to undertake POAO Border Inspections. Given that E&J and Vorenta are or have been active in outsourcing, the CMA has taken this service as a starting point (ie excluding insourcing by BCPs).<sup>289</sup>
257. As discussed in paragraphs 282-288, the CMA believes that while insourcing OV's to undertake POAO Border Inspections is an option for some BCPs, feedback from BCPs suggests that demand is likely to remain for the outsourced supply of OV's to undertake POAO Border Inspections<sup>290</sup>. Subsequently, the CMA does not consider it appropriate to widen the relevant product frame of reference to include insourcing. Nevertheless, the out of market constraint provided by insourcing has been taken into account in its competitive assessment.

### *Geographic scope*

258. All current customers of the Parties for the outsourced OV's that undertake POAO Border Inspections are based in England.<sup>291</sup> The CMA notes that there are BCPs in Wales and Northern Ireland currently insourcing OV's to undertake POAO Border Inspections, which could outsource their requirements in future. In addition, there are BCPs throughout the UK (including in Scotland) that may have increased POAO Border Inspection requirements if the UK government implements regulation requiring POAO Border Inspections imports from the EU.<sup>292</sup>
259. However, the CMA considers England to be the appropriate geographic scope. While OV requirements may change in the future, this is highly uncertain.

### *Shares of supply*

260. There are currently nine BCPs across England, Wales and Northern Ireland that require regular POAO Border Inspections, and therefore have a permanent OV requirement.<sup>293</sup> Of these, six BCPs (all in England) currently source some or all their OV requirements from external providers, including the Parties.<sup>294</sup>
261. The CMA notes that there is no publicly available information on the total size of the outsourced market in England. Estimates of market size have therefore been based on information provided by the Parties and third parties on OV provision by third-

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<sup>289</sup> [Merger Assessment Guidelines \(CMA129\)](#), paragraph 9.6.

<sup>290</sup> Responses by BCPs to the CMA customer questionnaire, question 4.

<sup>291</sup> E&J Enquiry Letter Response of 24 November 2022, question 18.

<sup>292</sup> Vorenta S109 Request Response of 9 January 2023, question 4.

<sup>293</sup> These BCPs are Southampton (seaport), Manchester (airport), East Midlands (airport), London (seaport), Stansted (airport), Mersey (seaport), Felixstowe (seaport), Heathrow (airport), and Belfast / Larne (sea & airport), Enquiry Letter Response, 24 November, Introduction/Summary.

<sup>294</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

party suppliers and BCPs as at the end of 2022. On this basis, the current market is very small, the CMA estimates the total outsourced demand for OV's to undertake POAO Border Inspections in England is approximately 13.3 OV FTEs. The CMA estimates the Merged Entity has a SoS of 39.8% (5.3 OV FTEs) with an increment of 18.8% (2.5 OV FTEs) brought about by the Merger.<sup>295,296</sup>

262. Senlac is the only other current supplier of OV's to undertake POAO Border Inspections, and the Merger therefore reduced from three to two the number of suppliers for the outsourced supply of OV's to undertake POAO Border Inspections at BCPs in England. On this basis, the CMA considers market concentration to be high enough to raise prima facie competition concerns in respect to the Merger.
263. The CMA also notes that the total demand for POAO Border Inspections in England (and across the UK) remains uncertain whilst the UK's new EU import control regime is still being developed. A number of significant contracts were awarded in 2021 in anticipation of EU import controls. These include 3-year contracts won by Vorenta at BCPs in Dover and Ashford, which would together make up around twice the current outsourced market demand.<sup>297</sup> However, when the UK government announced that the requirement for POAO Border Inspections on EU imports would be delayed, these contracts were terminated.<sup>298</sup>
264. Vorenta submitted that if planned POAO Border Inspections for EU imports were reintroduced, at least [~~3~~] BCPs in England would likely outsource their OV requirements, as they planned to do in 2021.<sup>299</sup> Vorenta further submitted that one of these BCPs recently indicated to Vorenta that if EU POAO Border Inspections were required in future, it intended to outsource OV's to Vorenta, and asked Vorenta to continue employing relevant OV's for this purpose.<sup>300</sup>
265. The CMA therefore considers that the Parties' SoS could change significantly in the coming years, although the CMA has not seen evidence to indicate that the overall firm concentration in the market will substantially alter (ie the Parties and Senlac are the only three current suppliers while another third party has bid, largely unsuccessfully).

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<sup>295</sup> As measured by proportion of OV FTEs.

<sup>296</sup> The Parties submitted that, as of February 2023, they no longer contract an OV to London BCP, reducing the Parties' share of FTEs by one. The CMA has not reflected this change in the shares of supply data. Accounting for only this change, the Parties' combined SoS reduces to 36.6% with an increment of 12.2%.

<sup>297</sup> Vorenta S109 Request Response of 20 December 2022, Q20.

<sup>298</sup> Vorenta S109 Request Response of 20 December 2022, question 20.

<sup>299</sup> The six BCPs are Dover, North Tyneside, North East Lincolnshire, Ashford, Teesport, and Poole Ports. Vorenta S109 Request Response of 9 January 2023, question 5.

<sup>300</sup> Vorenta S109 Request Response of 9 January 2023, question 5.

## ***Closeness of competition***

### *Parties' submissions (including recent tender bidding data)*

266. The Parties did not provide specific submissions on closeness of competition. They did, however, provide details of recent tenders that they have bid for. Since 2021, the Parties have bid for the same [redacted] tenders for the outsourced supply of OVVs to undertake POAO Border Inspections at BCPs in England. For each tender, the winner has been one of either Vorenta or E&J.<sup>301</sup> The CMA considers this to be strong evidence that the Parties are close competitors for the supply of OVVs to undertake POAO Border Inspections in England.

### *Parties' internal documents*

267. E&J's internal documents indicated that it views Vorenta as its closest competitor in the outsourced supply of OVVs to undertake POAO Border Inspections in England, and specifically note that Vorenta is looking to expand its offering. For example:

- (a) A slide deck for an E&J Board of Directors meeting on 22 September 2022 records losing a POAO Border Inspection tender to Vorenta at a rate that was more price competitive than E&J's offer.<sup>302</sup>
- (b) An E&J Merger-specific financial due diligence report records Vorenta as planning a significant increase in POAO Border Inspections during FY23.<sup>303</sup>
- (c) A slide deck for a strategic off-site gathering of the E&J Board of Directors in July 2022 records that most POAO Border Inspections contracts are delivered by either Vorenta, E&J, or by BCPs recruiting their own vets. The same document notes Vorenta significantly expanding its Border Inspections revenue stream and winning significant contracts with [redacted] and [redacted] BCPs.<sup>304</sup>

### *Third-party views*

268. Two customers submitted that E&J and Vorenta compete closely for the outsourced supply of OVVs to undertake POAO Border Inspections.<sup>305</sup> One of these customers explained that it was unaware of any other supplier and that E&J and Vorenta are experienced supplier with access to qualified staff, logistical capabilities, and a good

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<sup>301</sup> E&J S109 Request Response of 20 December 2022, Appendix J; Vorenta S109 Request Response of 20 December 2022, question 20.

<sup>302</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 22.7, slide 31.

<sup>303</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 23, slide 41.

<sup>304</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 24.2, slide 23, slide 33.

<sup>305</sup> Responses by BCPs to the CMA customer questionnaire, question 7.

track record.<sup>306</sup> Of customers that listed competitors, a majority listed E&J and Vorenta as two of the five strongest suppliers in the market.<sup>307</sup>

269. Several competitors of the Parties also submitted that E&J and Vorenta were the closest competitors in the market. Of the six potential supplier of POAO Border Inspections that expressed a view, only one listed any supplier other than E&J or Vorenta as current competitors in the market.<sup>308</sup>
270. Based on the above, the CMA considers that the Parties are very close competitors for the provision of POAO Border Inspections.

### ***Alternative suppliers***

271. The CMA has considered whether there are alternative suppliers which would provide a competitive constraint on the Merged Entity.
272. E&J submitted that the Parties face competition from Senlac Associates, Mistev, and any veterinary surgeon registered with the RCVS that could undertake POAO Border Inspections at BCPs.
273. Accordingly, the CMA has assessed the constraint from:
- (a) Senlac Associates and Mistev; and
  - (b) any other supplier.

### ***Senlac Associates and Mistev***

274. Other than the Parties, Senlac Associates is the only other private supplier of OV's to undertake POAO Border Inspections with an active contract in England. While it has approximately a 52% SoS by number of OV's, all its OV's are located at one BCP (ie London, Heathrow).
275. The Parties' internal documents make no reference to Senlac Associates or Mistev as competitors for the outsourced supply of POAO Border Inspections in England.
276. Third party feedback also indicated that Senlac Associates and Mistev are limited competitors to the Parties. Of the BCPs and potential competitors that expressed a

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<sup>306</sup> Response by a BCP to the CMA customer questionnaire, question 6(b).

<sup>307</sup> Responses by BCPs to the CMA customer questionnaire, question 6(b).

<sup>308</sup> Response by a competitor to the CMA competitor questionnaire, question 20.

view, Senlac<sup>309</sup> and Mistev<sup>310</sup> were each only twice listed as competitors and were generally considered to be less close competitors than each of the Parties.

277. Three BCPs submitted specific concerns about the Merger, including that it would lead to the outsourced supply of OVs to undertake POAO Border Inspections becoming monopolised, that it would stifle effective competition, making it harder for smaller supplier to compete, and that it would give the Merged Entity the ability to charge higher prices to BCPs in England.<sup>311</sup>
278. Based on this evidence, the CMA considers that neither Senlac Associates or Mistev are close competitors to the Parties and are unlikely to significantly constrain the Merged Entity.

#### *Other suppliers*

279. There is currently no other active private supplier of OVs to undertake POAO Border Inspections in England. The CMA is aware of three veterinary practices that have submitted bids for tenders, other than the Parties.<sup>312</sup> Of these, one third party has bid for five tenders for the outsourced supply of OVs to undertake POAO Border Inspections in the last two years. This third party won one contract in 2021, which has since been terminated due to uncertainty around the future target operating model. No other bids by this third party or any other third parties have been successful.
280. Third-party evidence also indicated that there are significant barriers to these suppliers successfully tendering for contracts. Lack of expertise, experienced staff, and relevant training were cited as the most significant barriers to their success.<sup>313</sup>
281. Based on this evidence, the CMA considers that other suppliers are unlikely to significantly constrain the Merged Entity.

#### ***Out of market constraints***

282. The CMA estimates that BCPs directly employ 23.8 out of 37.1 OV FTEs currently undertaking POAO Border Inspections in England. E&J submitted that it is easy for BCPs to completely insource or increase their proportion of insourced vets.<sup>314</sup> The

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<sup>309</sup> Responses by a BCP and a competitor to the CMA customer and competitor questionnaires, questions 6(b) and 20 respectively.

<sup>310</sup> Responses by BCPs to the CMA customer questionnaire, question 6(b).

<sup>311</sup> Responses by BCPs to the CMA customer questionnaire, question 11.

<sup>312</sup> Responses by competitors to the CMA competitor questionnaire, question 17.

<sup>313</sup> Responses by competitors to the CMA competitor questionnaire, question 21.

<sup>314</sup> E&J Enquiry Letter Response of 24 November 2022, Introduction/Summary.

Parties' submitted that insourcing is a substantial constraint, noting that BCPs with the largest demand for vets all fully insource their supply.<sup>315</sup>

283. However, the Parties' internal documents have not referenced a constraint posed by BCPs insourcing.
284. In addition, BCPs expressed mixed views about the extent to which they could insource their OV requirements for POAO Border Inspections in England. Most BCPs contacted by the CMA cited a preference for outsourcing,<sup>316</sup> with the primary reason being that outsourcing provided greater flexibility at a lower cost, in response to variable demand for services. This flexibility requirement has been exacerbated by the uncertainty around the UK's future EU import control requirements. The CMA considers this flexibility requirement for some BCPs means that outsourced OVs are, to some extent, a complement to insourced OVs rather than a substitute.
285. Some BCPs also submitted that it can be difficult for them to insource OVs for POAO Border Inspections quickly, particularly in large numbers. Specifically, two BCPs submitted that OVs require significant training and induction before they are able to effectively undertake POAO Border Inspections, even if they have prior Border Inspection experience.<sup>317</sup> Another expressed concerns regarding the availability of appropriately qualified and competent OVs who wish to work on POAO Border Inspections.<sup>318</sup>
286. A minority of BCPs contacted by the CMA described a preference for insourcing,<sup>319</sup> while one BCP cited an initial preference for outsourcing followed by appointing a permanent employee if demand requires.<sup>320</sup> Another BCP submitted that, aside from the time required to be proficient in the role, sourcing OVs would not be challenging. The same BCP submitted that while it takes time to become proficient, the only qualification required is a one-day online course run by Defra.<sup>321</sup> The technical barriers to insourcing individual veterinarians therefore appear to be relatively small.

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<sup>315</sup> E&J's and [redacted]'s response of 13 February 2023 to the CMA's Issues Letter, slide 38.

<sup>316</sup> Response by BCPs to the CMA customer questionnaire, question 4.

<sup>317</sup> Note of call with a BCP on [redacted], paragraph 11; and Note of call with a BCP on [redacted], paragraph 9.

<sup>318</sup> Response by a BCP to the CMA customer questionnaire, question 10(b).

<sup>319</sup> Responses by BCPs to the CMA customer questionnaire, question 4.

<sup>320</sup> Response by a BCP to the CMA customer questionnaire, question 4.

<sup>321</sup> Note of call with a BCP on [redacted], paragraphs 8 and 24.

287. In addition, while the CMA notes that there may be challenges to fully insourcing supply of OV's for POAO Border Inspections in England, the market requirement is currently very small which makes insourcing requirements more feasible.
288. Based on the evidence above, the CMA considers that insourcing OV's to undertake POAO Border Inspections is an option for some BCPs in England and will provide some constraint on the Parties (and therefore on the Merged Entity). However, given the expressed preference by a significant number of BCPs to outsource some or all their OV requirements, particularly noting the uncertainty around future POAO Border Inspections requirements and the flexibility required to respond to variability in demand, the CMA considers that significant demand is likely to remain for the outsourced supply of OV's to undertake POAO Border Inspections in England.

### ***CMA's view on TOH 3***

289. Based on the evidence received during its investigation, the CMA considers that the Parties are close competitors. The Parties bid in the same six tenders in recent years and either E&J or Vorenta have had the winning bid in each of these tenders. There is currently only one other active private supplier, and the CMA has found that the Merged Entity would face limited future constraint from both alternative suppliers and BCP insourcing.
290. Accordingly, the CMA believes that the Merger results in a realistic prospect of an SLC as a result of horizontal unilateral effects in the outsourced supply of OV's to undertake POAO Border Inspections in England. The CMA is concerned that BCPs will experience worse contractual terms, and ultimately that POAO importers, will experience higher prices and/or a decrease in the quality of the service, as a result of the Merger.

### **TOH 4: Horizontal unilateral effects in the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England**

291. The concern under this theory of harm is that the removal of one Party as a competitor may reduce competition between suppliers bidding for future contracts for the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England. The CMA considers that this may result in worse contractual terms for the RPA, including higher prices and or/worse quality of the services provided.
292. In its assessment, the CMA has considered:
- (a) industry background.



- (b) frame of reference;
- (c) closeness of competition between the Parties;
- (d) constraints from alternative suppliers; and
- (e) out of market constraints.

### **Industry background**

293. The RPA is an executive agency of Defra that is responsible for paying over £2 billion in payments each year to farmers, traders and landowners under UK domestic and legacy EU funding schemes.<sup>322</sup>
294. A range of Agricultural Inspections form part of the verification process prior to the issue of a payment or grant under such schemes. Agricultural Inspections are conducted on farms and other establishments across all regions in England to determine compliance either with regulatory (legal) requirements or scheme (funding) requirements.<sup>323</sup>
295. Agricultural inspections are carried out by a range of Inspectors.<sup>324</sup> Vorenta submitted that its Inspectors are required to obtain qualifications and complete various training, which can take from around 1 week to around 2 months to complete.
296. In 2014, the RPA awarded Vorenta a contract for the outsourced supply of Inspectors to undertake Agricultural Inspections in parts of England with resource shortages.<sup>325</sup>
297. In 2021, after running a competitive tender (**2021 RPA Tender**), the RPA awarded Vorenta another contract for the outsourced supply of Inspectors to undertake Agricultural Inspections in England, which runs until 2024. E&J also submitted a bid for the 2021 RPA Tender. The total value of the contract is £[X], and it runs for [X] years with the option to extend for a further [X] years.<sup>326</sup> Vorenta submitted that in 2022 it provided [X] active Inspectors to undertake [X] Agricultural Inspections

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<sup>322</sup> Vorenta S109 Request Response of 9 January 2023, question 20.

<sup>323</sup> Response by a third party on [X], question 1.

<sup>324</sup> Vorenta S109 Request Response of 9 January 2023, question 22.

<sup>325</sup> Response by a third party on [X], question 2.

<sup>326</sup> Response by a third party on [X], question 3.

across England.<sup>327</sup> The RPA continues to insource the majority of its Agricultural Inspections.<sup>328</sup>

### ***Frame of reference***

#### *Product scope*

298. E&J submitted that the Parties overlap in the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA, within the scope of bidding for RPA contracts.<sup>329</sup> The CMA considers this the appropriate product frame of reference.
299. The CMA notes that the RPA insources the majority of the Inspectors it requires to undertake Agricultural Inspections. The CMA has considered the extent to which insourcing represents an out of market competitive constraint from paragraph 319.

#### *Geographic scope*

300. Vorenta submitted that the Agricultural Inspections undertaken under the current RPA contract are only located in England.<sup>330</sup>
301. The CMA did not receive any evidence indicating that the geographic scope is wider than England. As such, the CMA considers that England is the appropriate geographic frame of reference.

### ***Closeness of competition***

302. Vorenta, as the incumbent and sole supplier since 2014, submitted that it is a strong competitor for the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA. Vorenta submitted that it may be considered to have an incumbent advantage in future tenders, due to knowledge gained under the current contract, and because transition arrangements would not be required for the RPA to continue to outsource Inspectors to Vorenta.<sup>331</sup>
303. However, Vorenta submitted that neither E&J nor Vorenta is in a particularly unique competitive position. Specifically, Vorenta submitted that neither Vorenta or E&J are

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<sup>327</sup> Vorenta S109 Request Response of 9 January 2023, question 23(b).

<sup>328</sup> Response by a third party on [redacted], questions 2 and 4.

<sup>329</sup> E&J Enquiry Letter Response of 22 December 2022, question 12.

<sup>330</sup> Vorenta S109 Request Response of 9 January 2023, question 23(c).

<sup>331</sup> Vorenta S109 Request Response of 9 January 2023, question 25.

uniquely placed in terms of their access to qualified staff, geographical coverage, or recruitment.<sup>332</sup>

304. Similarly, E&J submitted that the Parties are not particularly close competitors. E&J described its bid for the 2021 RPA Tender as [X] and noted that it was [X] that it has submitted for this work.<sup>333</sup> E&J also submitted that it was a [X] and limited competitor and there had been a significant gap between E&J's score (58.89) and Vorenta (78.21) in the last tender round.<sup>334</sup>
305. The CMA notes that competition is a relative concept and rivals might be relatively close if they face few competitors.<sup>335</sup> The CMA will consider the overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger. For example, where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary.
306. The CMA also noted that E&J submitted that it was keen to become involved in RPA work in order [X].<sup>336</sup> E&J also submitted that it has the related sector experience, capacity, capability, infrastructure, and quality management processes to deliver Agricultural Inspections.<sup>337</sup> This was reflected in a strategy document from July 2022, where E&J noted that the RPA's farm inspection work is a service line that E&J is trying to break into.<sup>338</sup>
307. Third-party feedback indicated that the Parties are close competitors. In the 2021 RPA Tender round, E&J and Vorenta were each other's closest competitor. During the tender evaluation, while Vorenta scored higher than E&J, E&J still exceeded the RPA's technical requirements.<sup>339</sup> The evidence seen by the CMA indicated that the Parties did not face strong competition relative to the competition that they impacted on each other. The CMA considers this strong evidence that E&J was both a close competitor to Vorenta and a credible competitor capable of fulfilling the contract.
308. Of the third parties that submitted a view, most potential suppliers submitted that E&J and Vorenta were uniquely well placed to undertake this work. Third parties

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<sup>332</sup> Vorenta S109 Request Response of 9 January 2023, question 25.

<sup>333</sup> E&J Enquiry Letter Response of 22 December 2022, question 12; E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter.

<sup>334</sup> E&J's and [X]'s response of 13 February 2023 to the CMA's Issues Letter, slide 42.

<sup>335</sup> [Merger Assessment Guidelines \(CMA129\)](#), 18 May 2021, paragraph 4.10

<sup>336</sup> E&J S109 Request Response of 4 January 2023, question 10.

<sup>337</sup> E&J Enquiry Letter Response of 22 December 2022, question 29.

<sup>338</sup> E&J Enquiry Letter Response of 24 November 2022, Annex 24.2.

<sup>339</sup> Response by a third party on [X], question 5(b)

specifically referenced the Parties' geographic coverage and the number of OVs they have available to undertake this work.<sup>340</sup>

309. Based on the evidence above, the CMA considers that E&J and Vorenta are close competitors for the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England.

### ***Alternative suppliers***

310. The Parties' submitted that there are a number of alternative suppliers that would constrain the Parties in any future RPA tender.
311. Vorenta submitted that there are multiple suppliers with the access to qualified staff, geographical coverage, and recruitment capacity required to service the contract.<sup>341</sup> Specifically, Vorenta submitted a list of five businesses that it described as capable of managing the RPA contract, and stated that there are a number of additional businesses which could attempt to enter the sector.<sup>342</sup> Similarly, E&J submitted that any large supplier of veterinary services would be a credible alternative to E&J and Vorenta.
312. However, evidence received from third parties has shown that there are very limited alternative competitors to the Parties.
313. Vorenta and E&J competed closely for the 2021 RPA Tender. CMA analysis indicated that the strength of competition that they encountered was weaker than might be first apparent. Although approximately 15 companies submitted an expression of interest (including the Parties) not all, or even most, submitted a formal bid. The Parties were far and away the strongest and most credible bidders.<sup>343</sup>
314. CMA analysis further indicated that not all, or even most, of the 21 suppliers listed by Vorenta or E&J as strong or credible alternatives submitted an expression of interest or bid in the 2021 RPA Tender. Accordingly, the CMA does not consider that any of these companies represent credible competitors to the Merged Entity for future RPA tenders.
315. The reasons given by companies not expressing an interest or declining to submit a bid in the 2021 RPA Tender included: (a) capacity – the RPA required more

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<sup>340</sup> Responses by competitors to the CMA competitor questionnaire, question 8.

<sup>341</sup> Vorenta S109 Request Response of 9 January 2023, question 25.

<sup>342</sup> Vorenta S109 Request Response of 9 January 2023, question 26.

<sup>343</sup> Response provided by a third party [redacted] on [redacted], question 5(b).

Agricultural Inspections than some businesses could provide; (b) tender difficulties – capacity and other commitments made it difficult for some suppliers to submit a bid, noting the complexity of the tender process; and (c) specialist product – one livestock veterinary business submitted that it would find it hard to separate its interests sufficiently to be able to provide the services.<sup>344</sup>

316. The CMA considers that these barriers to entry are not easily overcome, at least in the short term, and subsequently considers there is limited prospect of entry.
317. Two potential competitors submitted to the CMA that they were well placed to deliver the RPA contract and would consider submitting a bid for the next tender.<sup>345</sup> However, the CMA notes that neither of these potential competitors has expressed an interest in bidding for prior RPA contracts. Based on available information, the CMA is not in a position to assess how likely it is that these potential competitors would submit bids for future RPA contracts, or how credible they would be as bidders if they were to do so.
318. Based on the evidence above, the CMA considers there to be limited alternative suppliers that will serve to constrain the Merged Entity.

### ***Out of market constraints***

319. The CMA notes that the RPA insources the majority of the Inspectors it requires to undertake Agricultural Inspections in England. In this regard, Vorenta submitted that the RPA could potentially insource all or a material part of the Inspectors currently outsourced to Vorenta.<sup>346</sup>
320. The CMA notes that there is some uncertainty over the scope of any future RPA tender. In response to a lack of interest from competitors in the next tender, it is feasible that the RPA could increase insourced supply due to the relatively small numbers of staff required (in 2022, Vorenta provided [redacted] active Inspectors to undertake Agricultural Inspections in England).
321. However, third-party evidence has shown that the RPA would incur significant additional costs to insource all the Inspectors currently outsourced to Vorenta, including recruitment and training costs.<sup>347</sup> As a result, the evidence received by the CMA indicated that insourcing and outsourcing have been employed as

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<sup>344</sup> Internal document provided by a third party [redacted] relating to the 2021 RPA Tender.

<sup>345</sup> Response provided by two competitors to the CMA follow up questionnaire, question 7.

<sup>346</sup> Vorenta S109 Request Response of 9 January 2023, question 24.

<sup>347</sup> Response provided by a third party [redacted] on [redacted], question 2.

complementary rather than competing strategies, and that this approach is expected to continue in the foreseeable future.

322. On this basis, the CMA considers insourcing to provide only a limited constraint on the Merged Entity.

#### ***CMA's view on TOH 4***

323. On the basis of the evidence set out above, the CMA has found that the Parties have been close competitors in the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England and are likely to face limited future constraint from both alternative suppliers and RPA insourcing.
324. The CMA therefore believes that the Merger results in a realistic prospect of an SLC as a result of horizontal unilateral effects in the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England. The CMA is concerned that the RPA will experience worse contractual terms, including higher prices and/or a decrease in the quality of the service, as a result of the Merger.

### **CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION**

325. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of:
- (a) horizontal unilateral effects in the outsourced supply of Meat Official Controls to the FSA in England and Wales;
  - (b) horizontal unilateral effects in the supply of POAO EHCs in Great Britain;
  - (c) horizontal unilateral effects in the outsourced supply of OVs to undertake POAO Border Inspections in England; and
  - (d) horizontal unilateral effects in the outsourced supply of Inspectors to undertake Agricultural Inspections on behalf of the RPA in England.
326. The CMA found that the Merger does not give rise to a realistic prospect of an SLC in any other markets in the UK.

## DECISION

327. Consequently, the CMA believes that it is or may be the case that (a) a relevant merger situation has been created; and (b) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
328. The CMA therefore believes that it is under a duty to refer under section 22(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.<sup>348</sup> E&J has until 13 March 2023<sup>349</sup> to offer an undertaking to the CMA.<sup>350</sup> The CMA will refer the Merger for an in-depth Phase 2 investigation<sup>351</sup> if: (a) E&J does not offer an undertaking by this date; (b) E&J indicates before this date that it does not wish to offer an undertaking; or (c) the CMA decides<sup>352</sup> by 20 March 2023 that there are no reasonable grounds for believing that it might accept any undertaking offered by E&J, or a modified version of it.
329. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 13 March 2023. For the avoidance of doubt, the CMA hereby gives E&J and Vorenta notice pursuant to section 25(4) of the Act that it is extending the statutory four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by E&J and Vorenta and will end with the earliest of the following events: (a) the giving of the undertaking concerned; (b) the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from E&J stating that it does not intend to give any undertaking; or (c) the cancellation by the CMA of the extension.

**Sorcha O’Carroll**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**6 March 2023**

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<sup>348</sup> Section 22(3)(b) of the Act.

<sup>349</sup> Section 73A(1) of the Act.

<sup>350</sup> Section 73(2) of the Act.

<sup>351</sup> Sections 22(1) and 34ZA(2) of the Act.

<sup>352</sup> Section 73A(2) of the Act.