

Anticipated acquisition by Whitby Seafoods Limited of Kilhorne Bay Seafoods Limited

SUMMARY

Overview of the CMA's decision

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Whitby Seafoods Limited (**Whitby**) (via Kilkeel Seafoods Limited) of Kilhorne Bay Seafoods Limited (**Kilhorne Bay**), gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of breaded scampi to foodservice customers in the UK.
2. Whitby has agreed to acquire Bonumcorpus (No. 52) Limited (**Bonumcorpus**) (which owns the whole of the issued share capital of Kilhorne Bay, the operating company for the business to be transferred) pursuant to a Share Purchase Agreement signed on 2 May 2023. The CMA refers to this acquisition as the **Merger**. Whitby and Kilhorne Bay are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
3. As the CMA has found that the Merger gives rise to a realistic prospect of an SLC, the Parties have until 11 October 2023 to offer undertakings in lieu of a reference to phase 2 (**UILs**) to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).

Who are the businesses and what products/services do they provide?

4. Whitby supplies breaded scampi and other coated seafood products to retail and foodservice customers in the UK and Europe.
5. Kilhorne Bay supplies breaded and peeled scampi products to foodservice customers in the UK and Europe. In the UK, Kilhorne Bay supplies foodservice customers directly, and via sales to Pacific West, a third-party supplier. In its competitive assessment of the Merger, the CMA has taken into account both the

loss of Kilhorne Bay as an independent competitor, as well as the potential impact of the Merger on the competitive constraint currently offered by Pacific West.

6. The Parties overlap in the supply of breaded scampi to foodservice customers in the UK, which has been the focus of the CMA's investigation.

Why did the CMA review this merger?

7. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so.
8. Whitby announced in June 2023 that it had agreed to acquire Kilhorne Bay. The CMA has concluded that it has jurisdiction to review this Merger: the CMA believes that it is or may be the case that each of Whitby and Kilhorne Bay is an enterprise and that they will cease to be distinct as a result of the Merger, and that the share of supply test is met.

What evidence has the CMA looked at?

9. In assessing this Merger, the CMA considered a wide range of evidence in the round.
10. The CMA received several submissions and responses to information requests from the Parties. This included information about the nature of the Parties' businesses, their reasons for pursuing the Merger, and data on their sales volumes and revenues across products.
11. The CMA also spoke to and gathered evidence from other market participants, including customers, competitors and suppliers of the Parties, to better understand the competitive landscape and to get their views on the impact of the Merger.

What did the evidence tell the CMA...

...about the effects on competition of the Merger?

12. The CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in the supply of breaded scampi to foodservice customers in the UK. In particular:

- (a) the Merger will strengthen Whitby's already very strong position in the market. The Merged Entity would be by far the largest supplier of scampi to foodservice customers, with a share of supply in excess of 90%;
- (b) the evidence indicates that the Parties are close competitors. The Parties have a similar product offering in breaded scampi and serve a similar customer base (the Parties have certain common customers and Whitby competes to maintain and win new customers against Pacific West (which is supplied by Kilhorne Bay));
- (c) following the Merger, Whitby would face even less competition from other scampi suppliers. In particular, there is considerable uncertainty as to whether Pacific West would be able to maintain its current competitive position (given the limited alternative options for supply). Other competitors, such as Young's, are comparatively small in the foodservice sector, and third-party evidence does not indicate that they are credible alternatives to the Parties. The CMA's investigation also found that Whitby faces limited competition from suppliers of other types of seafood; and
- (d) several third parties raised concerns about the loss of competition that would be brought about by the Merger, particularly within the context of a market that is already highly concentrated.

...about any entry or expansion?

13. The evidence indicates that there are significant barriers to entry and expansion in the supply of breaded scampi in the UK, including access to raw material and the cost of investment in machinery and equipment. The CMA has not received evidence to indicate that any entry or expansion in response to the Merger would be timely, likely and sufficient to prevent the SLC from arising.

What happens next?

14. As a result of these concerns, the CMA believes the merger gives rise to a realistic prospect of SLC in the supply of breaded scampi to foodservice customers in the UK. The Parties have until 11 October 2023 to offer an undertaking to address the SLC. If no such undertaking is offered, or the CMA decides that any undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.