

Completed acquisition by Anglo Beef Processors UK of certain assets of Scotbeef Limited

Decision on relevant merger situation and substantial lessening of competition

ME/7066/23

The Competition and Markets Authority's decision on relevant merger situation and substantial lessening of competition under section 22(1) of the Enterprise Act 2002 given on 9 November 2023. Full text of the decision published on 14 December 2023.

The Competition and Markets Authority (CMA) has excluded from this published version of the decision information which the CMA considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range, which are shown in square brackets.

SUMMARY

1. On 30 July 2023, Anglo Beef Processors UK, a wholly owned subsidiary of ABP Food Group (**ABP**), acquired Scotbeef Limited's (**Scotbeef**) business carrying out the slaughter of live cattle and lamb, as well as the processing, packing, storage and sale of cattle and lamb products at Longleys Farm, Bridge of Allan, Stirlingshire and Penston Road, Queenslie, Glasgow (the **Target**) (the **Merger**). ABP and the Target are together referred to as the **Parties** or the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of ABP and the Target is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the turnover test is met. The four-month period for a decision has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the slaughter of live cattle and lamb, as well as the processing, packing, storage and sale of cattle and lamb products. The CMA has therefore assessed the impact of the Merger on the purchase of live cattle for

slaughter and in the supply of fresh beef in (i) the UK; (ii) Scotland and Northern England; and (iii) Scotland only.

4. The CMA believes that the Merged Entity will face competition in relation to (i) the purchase of live cattle for slaughter in Great Britain (as well as in the narrower geographic frames of reference); and (ii) the supply of fresh beef (to retailers and industrial processors in the UK) from large competing purchasers and providers, including Dunbia, Hilton Foods (**Hilton**) and Woodhead Bros (**Woodheads**), as well as smaller competitors.
5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**), in particular, as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

PARTIES

7. ABP is active in the slaughter of cattle, lamb and sheep; the processing and sale of the resultant meat products; and the collection and processing of associated animal by-products. ABP also operates renewable energy and pet food divisions. ABP is headquartered in Ireland with plants across Europe.¹
8. The Target is active in the slaughter of cattle and lamb, and the processing and sale of beef and lamb products in the UK.
 - (a) The Bridge of Allan site operates as an abattoir for live cattle and lamb, and is also active in the processing and sale of beef and lamb products.
 - (b) The Queenslie site is active in the processing, packing, storage and sale of beef and lamb products.²
9. Since the sale of the Target, Scotbeef's retained sites have primarily been active in the supply of processed and value-added lamb, beef and chicken products.³
10. In this decision, references to Scotbeef that relate to pre-Merger activity or circumstances should be read as including the Target. In contrast, references to Scotbeef that relate to post-Merger activity or circumstances should be read as excluding the Target and referring only to the assets and businesses retained by Scotbeef post-Merger.

TRANSACTION

11. Pursuant to the Asset Purchase Agreement signed on 14 June 2023, ABP agreed to acquire the Target. The Merger completed on 30 July 2023.⁴ⁱ
12. The Merger is not subject to review by any other competition authority.⁵

JURISDICTION

13. Each of ABP and the Target is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.

¹ Final Merger Notice submitted on 20 September 2023 (**FMN**), paragraphs 3.1-3.3.

² FMN, paragraphs 3.12 and 3.13.

³ FMN, paragraphs 3.10 and 3.11. See also FMN, footnotes 2 and 3.

⁴ FMN, paragraph 2.2.

⁵ FMN, paragraph 2.7.

14. The UK turnover of the Target exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
15. The Merger completed on 30 July 2023. The four month deadline for a decision under section 24 of the Act is 30 November 2023.
16. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 22 September 2023 and the statutory 40 working day deadline for a decision is therefore 16 November 2023.

COUNTERFACTUAL

18. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁶
19. The Parties submitted that the counterfactual should account for the Target's loss of a significant customer contract in April 2023 and the resulting negative outlook for the Target.⁷ The Parties submitted that the Target was under [§<] prior to completion of the Merger, in particular noting that after the loss of the contract, Scotbeef no longer had sufficient volumes of cattle throughput to run the Bridge of Allan site profitably.⁸ The Parties submitted that had Scotbeef not sold the Target (to ABP or a third party) then Scotbeef would have closed the Queenslie site and either the Bridge of Allan site or another Scotbeef site. However, the Parties did not submit that the CMA should assess the Target as an exiting firm.⁹
20. The CMA considers that a counterfactual of pre-Merger conditions of competition allows for consideration of the Target's weakened competitive position, because the Target's financial difficulties had already impacted its competitive position at the time of the Merger, and because the selection of this counterfactual does not ossify the market at a particular point in time.¹⁰

⁶ See [Merger Assessment Guidelines \(CMA129\)](#), March 2021, from paragraph 3.12.

⁷ FMN, paragraphs 11.1 and 11.13.

⁸ FMN, paragraph 11.14.

⁹ FMN, paragraph 11.15.

¹⁰ CMA129, March 2021, paragraph 3.2

21. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual. The Target's pre-Merger competitive position is discussed in more detail in the competitive assessment.
22. As the CMA has not found it necessary to consider the exiting firm scenario, the CMA has not assessed whether the Target would have closed (through failure or otherwise) absent the Merger; or whether there would have been an alternative, less anti-competitive purchaser to ABP.

FRAME OF REFERENCE

23. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹¹
24. The Parties overlap in the slaughter of live cattle and lamb, as well as the processing, packing, storage and sale of cattle and lamb products.¹²

Product scope

Purchase of live cattle for slaughter

25. The Parties submitted that, in previous decisions, the CMA and OFT considered the appropriate frame of reference to be the purchase of live cattle for slaughter, separately from the purchase of live sheep for slaughter. This is due to a lack of supply-side and demand-side substitutability between cattle and sheep.¹³
26. In line with previous decisions, the CMA has assessed the impact of the Merger based on the purchase of live cattle for slaughter.

¹¹ CMA129, March 2021, paragraph 9.4.

¹² In this decision, the CMA focuses on the purchase of live cattle for slaughter and supply of fresh beef. The CMA notes that the Parties both supply other products (such as fresh lamb, processed beef, animal hides and blood). The CMA considered whether the Merger could give rise to a SLC as a result of horizontal unilateral effects or vertical effects (input foreclosure) in relation to the supply of any other product. In relation to horizontal unilateral effects, the CMA found that the Parties have relatively low combined shares for the supply of these other products. Furthermore, the CMA found that there would remain a range of competitors to constrain the Merged Entity post-Merger. In relation to vertical effects, the range of competitors means that customers have alternative suppliers for these products and, therefore, the Merged Entity would not be able to foreclose access to these products. The CMA therefore does not consider these products further in the decision.

¹³ FMN, paragraph 13.1.

Supply of fresh beef

27. Fresh beef is beef that has not undergone processing with external ingredients being added (although it may have been cut or sliced eg carcass, primal cuts, sliced, minced).¹⁴
28. The Parties submitted that, in line with previous decisions, the CMA should assess beef products separately from other meat products (eg lamb products) and the supply of fresh (unprocessed) beef should be considered separately from the supply of processed beef.¹⁵ In relation to segmentations within the supply of fresh beef, the CMA has previously distinguished between supply to retailers, industrial processors and caterers. The Parties submitted that, with the exception of large supermarket customers that may require suppliers to have sufficient scale, none of the variations in demand between these customers prevents all suppliers of fresh beef being able to supply all types of customers. Nevertheless, the Parties submitted that, consistent with previous decisions and for the purposes of assessing the Merger, they adopted a distinction between the supply of fresh beef to different customer channels.¹⁶
29. Previous CMA and OFT decisions support a distinction between beef products and other meat products, as well as a difference between fresh and processed beef, based on lack of both demand and supply side substitution.¹⁷ In previous decisions, the CMA and OFT have also segmented the sale of fresh beef by customer groups.¹⁸
30. In line with previous decisions, the CMA assessed the Merger based on the supply of fresh beef and, on a cautious basis, segmented between supply to (i) retailers (supermarkets and butchers); and (ii) industrial processors.¹⁹

¹⁴ FMN, paragraph 13.10.

¹⁵ FMN, paragraphs 13.18 and 13.19.

¹⁶ FMN, paragraphs 13.20-13.23. Further, the Parties submitted that they only overlap in the supply of fresh beef to retailers and industrial processors given that the Target does not supply fresh beef to any caterers in the UK (FMN, paragraph 15.121).

¹⁷ See decisions on reference in [ME/6699/17 Anticipated joint venture between Dawn Meats and Dunbia \(Dawn Meats/Dunbia\)](#), paragraphs 40 and 44-46 and [ME/5251/11 Completed acquisition by ABP Food Group of RWM Food Group Holdings Limited \(ABP/RWM\)](#), paragraphs 9-11.

¹⁷ FMN, paragraph 15.21.

¹⁸ See Dawn Meats/Dunbia, paragraphs 47-49 and ABP/RWM, paragraphs 12-16.

¹⁹ Given that the Parties overlap in Scotland, the CMA also considered whether any concerns could arise in relation to a narrower category of fresh beef, namely Scotch Beef. Scotch Beef is a protected food name with Protected Geographical Indication and refers only to beef that is derived from cattle born, reared for the entirety of their lives, slaughtered and dressed (ie partially butchered) in Scotland. (See [Scotch Beef - GOV.UK \(www.gov.uk\)](#)). The evidence from retailers indicates that there are a range of competitors who could supply Scotch Beef such that there was no realistic prospect of a SLC in the supply of Scotch Beef. The CMA therefore does not consider Scotch Beef further in the decision below.

Geographic scope

Purchase of live cattle for slaughter

31. The Parties submitted that live cattle are not transported across the Irish Sea and that the appropriate geographic scope would be the purchase of live cattle within Great Britain.²⁰ The Parties noted that in previous decisions the purchase of live cattle has also been assessed at a regional level. However, the Parties submitted that using regional borders (ie Scotland) in this Merger investigation would be an arbitrary delineation, as a large proportion of the Target's cattle suppliers are located in England.²¹ Nevertheless, to demonstrate that concerns do not arise even on a narrower geographic basis, the Parties provided shares of supply estimates for Scotland, which they stated would not be materially different from those within 100 mile radii around each Party's site given the 100 mile radius covers the large majority of Scotland.²²
32. In ABP/RWM, the OFT found that live cattle is typically transported 100 to 200 miles. In Dawn Meats/Dunbia, third parties indicated that the typical distance travelled by livestock was up to 150 miles.²³ In these decisions, the OFT and the CMA considered the purchase of live cattle for slaughter with reference to two geographic markets: (i) Great Britain; and (ii) a regional basis, depending on the location of the Parties' respective abattoirs.²⁴
33. As part of this Merger investigation, a third party told the CMA that cattle travel up to approximately 100 miles or two hours.²⁵ In line with the Parties' submissions, the CMA considers that using 100 mile radii around the Parties' abattoirs in Scotland would not lead to materially different shares of supply to those estimated for Scotland.
34. Given the location of the Parties and their cattle suppliers, on a cautious basis, the CMA has considered the purchase of live cattle in: (i) Great Britain; (ii) Scotland and Northern England (ie North East England, North West England, and Yorkshire and the Humber); and (iii) Scotland only.

Fresh beef

35. The Parties submitted that the Merger should be assessed on a UK-wide basis in line with previous decisions.²⁶ In previous decisions, the CMA and the OFT have also considered whether the geographic scope for supply of fresh beef is wider than

²⁰ FMN, paragraph 13.5-13.10.

²¹ FMN, paragraph 13.11.

²² FMN, paragraphs 13.12, 15.72 and 15.74; and Table 15.6.

²³ See Dawn Meats/Dunbia paragraph 58 and ABP/RWM, paragraph 18.

²⁴ FMN, paragraph 13.4. See also Dawn Meats/Dunbia paragraphs 56-62 and ABP/RWM, paragraph 17-19.

²⁵ Note of call with third party.

²⁶ FMN, paragraphs 13.24 and 13.25.

Great Britain due to imports but have not concluded on this point.²⁷ On a cautious basis, the CMA has considered the impact of the Merger on a UK-wide basis.

Conclusion on frame of reference

36. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference.
- (a) The purchase of live cattle for slaughter in: (i) Great Britain; (ii) Scotland and Northern England; and (iii) Scotland only.
 - (b) The supply of fresh beef to each of (i) retailers and (ii) industrial processors, in the UK.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

Purchase of live cattle for slaughter

37. The Parties are both active in the purchase of live cattle. As discussed in previous decisions, an increase in buyer power does not often raise a competition concern based on unilateral effects and buyer power can lead to lower prices for customers.²⁸ Nevertheless, the CMA has assessed whether the Merger could give rise to increased buyer power vis-à-vis suppliers of cattle that could result in harm in the downstream supply of beef.

Parties' views

38. The Parties submitted that at any geographic level, including narrow catchment areas around each Party's abattoirs, there is no concern due to the Parties' modest position and the presence of a range of large competitors.²⁹ The Parties also submitted that there are a large number of small abattoirs that will continue to compete strongly for the purchase of live cattle post-Merger.³⁰

Shares of purchase

39. The Parties estimated that their combined share of the purchase of live cattle for slaughter in Great Britain is [20-30]% with a [0-5]% increment based on volumes in 2022.³¹ The Parties also estimated that Dunbia, Kepak, Woodheads and Foyle each

²⁷ See Dawn Meats/Dunbia, paragraphs 63-66 and ABP/RWM, paragraphs 20 and 21.

²⁸ See decisions on reference in Dawn Meats/Dunbia, paragraph 70 and ABP/RWM, paragraph 32.

²⁹ FMN, paragraph 15.21.

³⁰ FMN, paragraph 15.43.

³¹ FMN, table 15.3. The CMA used volumes for the shares of purchase because accurate value figures are not as readily available and prices are standardised across the industry (see FMN, paragraph 15.63).

have a significant share of purchase of live cattle for slaughter ([10-20]%, [5-10]%, [5-10]% and [5-10]% respectively) in Great Britain.³²

40. As discussed in paragraph 31 above (when discussing the geographic frame of reference for the purchase of live cattle), the Parties compete for the purchase of live cattle in Scotland. The Parties estimated that their combined share of purchase of live cattle for slaughter in Scotland is [20-30]% with a [10-20]% increment based on volumes in 2022.³³ Similar to the shares at a national level discussed above, the Parties also estimate that Kepak, Dunbia and Woodheads each have a significant share of purchase of live cattle for slaughter ([10-20]%, [10-20]% and [5-10]% respectively) in Scotland.³⁴

Third parties' views

41. Some third parties expressed concerns about the position of the Merged Entity post-Merger, including that the Merger could lead to farmers receiving a lower price for cattle because ABP would be able to dictate and manipulate pricing.³⁵ In particular, one third party told the CMA that it was concerned about the rapid expansion of ABP, the consolidation of abattoirs and the supply of cattle.³⁶ Another third party expressed a similar concern and told the CMA that [redacted].³⁷ However, both these third parties also told the CMA that, given the number of recent abattoir closures in the area, they welcomed that the Merger would lead to the Bridge of Allan abattoir remaining open under ABP ownership. Some customers of the Target also told the CMA that they welcomed the Bridge of Allan abattoir remaining open.³⁸

Assessment

42. The CMA considers that the Merger is unlikely to lead to a significant increase in the Parties' buyer power. The CMA has taken into account the concerns from third parties but considers that some of the concerns expressed were not merger-specific and instead related to broader industry trends. Moreover, the CMA considers that the Merged Entity will face competition from three other large purchasers of live cattle, including at a regional level, which will constrain its ability to reduce the prices it pays for cattle.

³² The Parties estimated their own and their competitors shares based on the total market size of the purchase of live cattle in the UK. The Parties used data from the Agriculture and Horticulture Development Board (AHDB) and the Department of Agriculture and Rural Development (DARD) to estimate the market size.

³³ FMN, table 15.7.

³⁴ The Parties also estimated shares of purchase in Scotland and Northern England, The CMA has not presented these shares, as these lead to a lower combined share of purchase and lower increment than Scotland only.

³⁵ Response to CMA's invitation to comment; notes of call with third parties; and third parties' responses to competitor questionnaire, question 7.

³⁶ Note of call with third party.

³⁷ Note of call with third party.

³⁸ Notes of calls with third party.

43. The CMA notes that, in any event, as observed in previous decisions in this sector, an increase in buyer power for merging firms does not often raise a competition concern based on unilateral effects.³⁹ Moreover, the Merged Entity may pass on some benefits of its greater buyer power to its customers, for example in the form of lower prices.
44. Buyer power could result in a reduction in consumer welfare, for example if the Merged Entity had an incentive to reduce upstream purchasing to reduce prices paid to farmers, because it could recoup the subsequent loss in retail sales through higher prices in the downstream supply of beef. The CMA considers this unlikely as the Merged Entity will continue to face sufficiently strong downstream competition in the supply of beef, as discussed further below.⁴⁰

Conclusion on horizontal unilateral effects in the purchase of live cattle for slaughter

45. For the reasons set out above, the CMA considers that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the purchase of live cattle for slaughter.

Supply of fresh beef

46. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.⁴¹ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of fresh beef.

Shares of supply

Parties' views

47. The Parties told the CMA that the Target's current position and prospective competitive strength is overstated in their 2022 shares of supply estimates due to the ongoing operational challenges it faces and the loss of a large customer contract.⁴² The Parties also submitted that prior to losing this large contract, another large customer reduced its supply from Scotbeef following a price benchmarking exercise.⁴³

³⁹ See, for example, ABP/RWM, paragraph 32.

⁴⁰ As set out in footnote 13, the CMA also considered that the Merger would not give rise to a SLC as a result of horizontal unilateral effects in processed beef.

⁴¹ CMA129, March 2021, paragraph 4.1.

⁴² FMN, paragraph 15.94.

⁴³ FMN, paragraph 11.10

Share estimates and CMA assessment

48. The CMA considers that fresh beef is a largely undifferentiated product meaning that the products offered by suppliers are typically similar and substitutable.⁴⁴ Consequently, the CMA considers that shares of supply are an informative measure of the competitive constraints in the market and the degree of market concentration.
49. Typically, the CMA will look to the most recently available market share data for a full year, or several full years, prior to the transaction being considered in order to assist in its assessment of the degree of market concentration and alternative competitive constraints.⁴⁵ However, as outlined in the Parties' submissions and confirmed by third party market testing, in the present case, the CMA had to consider, and account for, known market developments since the most recent full year in which market share data was available.
50. The Parties estimated that their combined shares of supply of fresh beef to supermarkets in the UK in the most recent full year in which data was available (2022) was [40-50]% with a [5-10]% increment based on volume and [40-50]% with a [10-20]% increment based on value. The Parties submitted that the combined shares of supply of fresh beef to butchers and industrial processors in the UK in 2022 were small.⁴⁶

⁴⁴ CMA129, March 2021, paragraph 4.35 to 4.39.

⁴⁵ CMA Merger Notice Template, Guidance Note to question 14.

⁴⁶ The Parties' combined share in the supply to butchers is [10-20]% by volume and [10-20]% by value, with a [0-5]% increment. The Parties' combined share for industrial processors is [10-20]% by volume and [10-20]% by value, with a [0-5]% increment. FMN, paragraph 15.118 and paragraph 15.122.

Table 1: Parties' estimates of share of supply of fresh beef to supermarkets in the UK in 2022.

	<i>Volume</i>	<i>Value</i>
ABP	[30-40]%	[30-40]%
Target	[5-10]%	[5-10]%
Combined	[40-50]%	[40-50]%
Hilton	[20-30]%	[20-30]%
Dunbia	[10-20]%	[10-20]%
Woodheads	[10-20]%	[10-20]%
Dovecote Park	[0-5]%	[0-5]%
Foyle	[0-5]%	[0-5]%
Total	100%	100%

Source: The Parties estimates based on the Parties' data.⁴⁷

51. Based on these unadjusted estimates, ABP is the largest supplier of fresh beef to supermarkets in the UK with an appreciable market share increment as a result of the Merger, but three large competitors are also active in the supply of fresh beef (Hilton, Dunbia and Woodheads),⁴⁸ as well as two smaller competitors (Dovecote Park and Foyle).
52. The CMA focused on shares of supply to supermarkets, as these result in the largest increment and combined shares in comparison to the other segments (supply to butchers and industrial processors). The CMA collected evidence from the Parties' competitors of fresh beef, which confirms that the market structure is similar to that estimated by the Parties. This third-party evidence also indicates that the Parties may have underestimated their competitors' shares in 2022.
53. However, the CMA considers that 2022 shares of supply may significantly overstate the Target's position at the time of the Merger as one of the Target's significant customers terminated its large contract and supply relationship with the Target, and another customer significantly reduced its volumes from the Target in 2023. [3<].⁴⁹
54. The Parties adjusted their 2022 share of supply estimates to account for those known volume losses. They estimated that when the lost volumes are re-allocated, the Parties' combined share decreases to [30-40]% with a [0-5]% increment based on volume and [30-40]% with a [0-5]% increment based on value in 2022.⁵⁰ Unlike their 2022 volume estimates, the Parties' updated estimates also included Kepak.

⁴⁷ FMN, table 15.11.

⁴⁸ The CMA recognises that Woodheads is vertically integrated with the retailer Morrisons. Consequently, Woodheads might not be as strong a competitive constraint on the Parties because it might not be a credible alternative for some customers.

⁴⁹ [3<].

⁵⁰ FMN, table 15.12.

The Parties estimated that Kepak would have a [5-10]% share of supply of fresh beef to supermarkets in the UK after winning some of the Target's lost business.⁵¹

55. The CMA therefore notes that on this basis, ABP's post-Merger share is appreciably lower than on the basis of the unadjusted 2022 data, with only a minimal increase in share resulting from the Merger, and an additional competitor (Kepak) is also present in the market.

Closeness of competition

Parties' views

56. The Parties submitted that as a consequence of (i) the loss of a significant customer contract and the reduction in demand from another customer and (ii) the lack of any realistic prospect of recouping those lost volumes (whether from those customers or other sources), Scotbeef decided to undertake a significant re-structuring of its business by either significantly downsizing production and mothballing its current sites or selling its facilities to a third party purchaser.⁵² The Parties told the CMA that that there was no realistic prospect of the Target business remaining commercially or operationally viable in its pre-Merger state.⁵³
57. The Parties submitted that the Target had a [X] deteriorating financial position and, therefore, the Target would not constitute a meaningful competitive constraint in the supply of fresh beef.⁵⁴
58. The CMA also notes that, in the context of agreeing derogations to the initial enforcement order imposed on 29 July 2023, the Parties provided evidence regarding the Target's need for considerable financial support from ABP given the Target's deteriorating financial state.

Third parties' views

59. Evidence from customers and competitors indicates that although ABP is a stronger competitor than Scotbeef, Scotbeef is also perceived to be a credible competitor in the supply of fresh beef.⁵⁵
- (a) Customers were asked to identify meat processors they are aware of and rate the suitability of their offering. All customers that responded ranked ABP as a

⁵¹ [X].

⁵² FMN, paragraph 11.13.

⁵³ FMN, paragraph 15.90.

⁵⁴ FMN, paragraph 15.9.

⁵⁵ Although the CMA recognises that third parties' views on the strength of Scotbeef do not necessarily represent their views of the Target specifically, the CMA considers these views offer some insight into the Target's strength given that pre-Merger the Target constituted key assets in relation to Scotbeef's supply of fresh beef and the Merger only recently occurred in July 2023.

strong supplier of fresh beef and nearly all of them also ranked Scotbeef as a strong option.⁵⁶

- (b) Competitors were asked to identify competitors and rate the strength at which they compete with themselves. Most that responded considered ABP to be a close competitor and half considered Scotbeef to be a close competitor.⁵⁷

60. The CMA has again assessed and weighted these views in its competitive assessment in light of recent market developments and the other available evidence.

61. [REDACTED].⁵⁸

Internal documents

62. The CMA considers that Scotbeef's internal documents prior to the Merger demonstrate that it was facing [REDACTED] issues and the prospect of long-term financial distress following the loss of the significant customer contract. Examples of these internal documents are provided below.

(a) [REDACTED]. This document described [REDACTED].⁵⁹

(b) A document prepared for the board [REDACTED].⁶⁰

(c) Multiple Scotbeef internal documents show that [REDACTED].⁶¹ However, the CMA notes that these customers did not terminate or reduce volumes [REDACTED].

Assessment

63. The CMA has sought and considered evidence regarding the Target's current competitive strength, including evidence relating to the impact of the loss of the contract in April 2023 on the Target's competitive strength.

64. On the basis of the evidence provided by the Parties in support of derogations to the initial enforcement order imposed on 29 July 2023, the CMA considered that ABP's involvement was required in order for the Target to operate viably during the course of the investigation; for example through the provision of technical and product development support, new equipment and financial oversight. The CMA considers that the level of support that the Target needed from ABP indicates that the Target's capability as an independent competitor was significantly constrained at the time of

⁵⁶ Third parties' responses to customer questionnaire.

⁵⁷ Third parties' responses to competitor questionnaire.

⁵⁸ [REDACTED].

⁵⁹ Scotbeef response to section 109 notice dated 2 August 2023, Annex 3.

⁶⁰ Scotbeef response to section 109 notice dated 2 August 2023, Annex 35.

⁶¹ See, for example, Scotbeef response to section 109 notice dated 2 August 2023, Annex 21, Annex 24, Annex 35 and Annex 48.

the Merger.⁶² This is consistent with Scotbeef's internal documents as described above.

65. Ultimately, the CMA considers that the loss of a large contract, in the circumstances in which it occurred, resulted in a degradation of Scotbeef's viability and competitive significance relative to its historic position. The CMA has therefore given weight to these circumstances in its assessment of the Target's competitive significance.

Alternative competitive constraints

Parties' views

66. The Parties submitted that a range of strong competitors remain in the market including Hilton, Dunbia, Woodheads and Kepak. The Parties told the CMA that, with the exception of Hilton, each of these competitors are vertically integrated upstream.⁶³ Furthermore, they submitted that Kepak has become a sizeable new competitor in the supply of fresh beef to retailers and is, as a result, well-placed to expand further through winning contracts with other retailers.⁶⁴
67. The Parties also submitted that all suppliers could meet the needs of customers given that fresh beef is a largely homogenous product.⁶⁵ Furthermore, the Parties told the CMA that customers can switch easily.⁶⁶

Third parties' views

68. The CMA contacted the Parties' largest customers of fresh beef in the UK. These customers were asked to identify all the suppliers of fresh beef in the UK that they were aware of. Of the customers that responded, half of them were able to name at least seven suppliers of fresh beef. Furthermore, 17 different suppliers of fresh beef were named by customers in total. Of these, ABP, Dunbia, Scotbeef, Foyle, Kepak and Dovecote Park were mentioned most often and ranked most frequently as being strong options.⁶⁷
69. The CMA asked competitors of the Parties to identify their main competitors in supplying fresh beef in the UK. The majority of respondents identified at least five competitors for the supply of fresh beef. Furthermore, in total, respondents named 11 different competitors for the supplying fresh beef. Of these, ABP, Scotbeef, Kepak and Dunbia were mentioned most often and ranked most frequently as being strong options.⁶⁸

⁶² See, for example, [Derogation 29 July 2023](#), [Derogation 23 August 2023](#) and [Derogation 3 October 2023](#).

⁶³ FMN, paragraph 15.98.

⁶⁴ FMN, paragraph 15.95.

⁶⁵ FMN, paragraph 15.115.

⁶⁶ FMN, paragraph 15.100.

⁶⁷ Third parties' responses to customer questionnaire, question 5.

⁶⁸ Third parties' responses to competitor questionnaire, question 5 and question 6.

70. The CMA received concerns from a small number of third parties. However, the CMA notes that the underlying evidence they provided suggested the presence of strong alternatives for the supply of fresh beef.
- (a) One customer expressed concern about the Merger with regards to fresh beef. The customer stated that there would be a reduction from four integrated providers of fresh beef to three. However, the customer listed three other alternatives to the four integrated suppliers and considered them to be adequate.⁶⁹
 - (b) Two competitors expressed concern about the Merger with regards to fresh beef.⁷⁰ One of these told the CMA that there will be reduced competition in the UK beef market, and the other told the CMA that ABP will have a market dominant position, especially in Scotland. However, they were able to identify at least four suppliers they closely competed against in the supply of fresh beef.⁷¹

Assessment

71. On the basis of the evidence above, the CMA considers that the Merged Entity will face competition from at least four other large competitors (Dovecoat Park, Dunbia, Foyle and Kepak) and a smaller tail of other competitors in the supply of fresh beef.

Conclusion on horizontal unilateral effects in the supply of fresh beef

72. For the reasons set out above, the CMA considers that the available evidence suggests that the recent market developments that led to the Merger have significantly reduced the effectiveness of the Target as a competitor to ABP. The CMA therefore believes that 2022 shares of supply significantly overestimate the competitive position of the Target at the time of the Merger. In any case, even on the basis of those shares, it is clear that the Merged Entity faces competition from a range of competitors. Therefore, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of fresh beef in the UK.

BARRIERS TO ENTRY AND EXPANSION

73. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing

⁶⁹ Third parties' responses to customer questionnaire, question 7.

⁷⁰ Third parties' responses to competitor questionnaire, question 7.

⁷¹ Third parties' responses to competitor questionnaire, question 5.

whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁷²

74. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

THIRD PARTY VIEWS

75. The CMA contacted customers and competitors of the Parties, as well as a trade organisation. Some third parties raised concerns regarding the Merged Entity's strength in the purchase of cattle leading to loss of choice and revenues for farmers and other producers.
76. Third parties' comments have been taken into account where appropriate in the competitive assessment above.

⁷² CMA129, March 2021, from paragraph 8.40.

DECISION

77. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the United Kingdom.
78. The Merger will therefore not be referred under section 22(1) of the Act.

Richard Flanagan
Director, Mergers
Competition and Markets Authority
9 November 2023

ⁱ The Parties have informed the CMA that the Merger completed on 31 July 2023.