

ANTICIPATED ACQUISITION BY T&L SUGARS LIMITED OF THE UK PACKING AND DISTRIBUTION SITE AND BUSINESS-TO- CONSUMER ACTIVITIES OF TEREOS UNITED KINGDOM AND IRELAND LIMITED FROM TEREOS SCA

Issues statement

26 April 2024

The reference

1. On 22 March 2024, in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the **Act**), the Competition and Markets Authority (**CMA**) referred the anticipated acquisition by T&L Sugars Limited (**TLS**) of the UK packing and distribution site and business-to-consumer (**B2C**)¹ business (the **Target**) of Tereos United Kingdom and Ireland Limited (**TUKI**) from Tereos SCA (**Tereos**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. TLS, TUKI and Tereos are together referred to as the **Parties** and, for statements relating to the future where TLS acquires the Target (if the Merger was to proceed), as the **Merged Entity**.
3. In exercise of its duty under [section 36\(1\)](#) of the Act, the CMA must decide:
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

¹ Throughout this issues statement we use the term 'B2C' as defined by TUKI to mean sales to companies which in turn sell the relevant products directly to consumers (see Final Merger Notice submitted to the CMA on 18 January 2024 (**FMN**), paragraph 2.7). The 'B2C channel' therefore comprises grocery customers (both retailers and wholesalers) and 'out of home' foodservice customers (such as restaurants and hotels). Post-Merger, Tereos will remain active in the UK in the business-to-business (**B2B**) segment, ie the supply of sugar products to industrial customers (FMN, paragraph 2.8).

Purpose of this issues statement

4. In this issues statement, we set out the main issues that we are likely to consider in reaching a decision on the SLC question (paragraph 3(b) above), having had regard to the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
5. The CMA's phase 1 decision² (**Phase 1 Decision**) contains much of the detailed background to this issues statement. We are publishing this statement to assist parties submitting evidence to our phase 2 investigation.
6. As noted above, this issues statement sets out the main issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The Parties

7. TLS is a sugar producer which refines and distributes sugar and related products in the UK through two plants in London (Thames Refinery and Plaistow Wharf). TLS is a subsidiary of ASR Group Europe Limited and an indirect subsidiary of ASR Group International, Inc., a company domiciled in the United States of America.³ The turnover of TLS for the financial year ending 25 September 2022 was approximately €[redacted] million worldwide, of which approximately €[redacted] million was produced in the UK.
8. TUKI is an indirect subsidiary of Tereos, a sugar cooperative based in France. TUKI packs and distributes sugar products, sourced from Tereos, to customers in the UK.⁴ The Target comprises TUKI's B2C business, specifically a packing facility, a lease of a warehouse and offices in Normanton, West Yorkshire, a licence for the 'Whitworths' brand, the novation or assignment of customer contracts, and the TUPE transfer of 53 employees. The turnover produced by the Target in the financial year 22/23 was £[redacted] million, all of which was produced in the UK.

² The Phase 1 Decision was published on the CMA case page: [T&L Sugars/Tereos merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/cases/t&l-sugars-tereos-merger-inquiry).

³ Phase 1 Decision, paragraph 1.

⁴ Phase 1 Decision, paragraph 2.

The Merger

9. On 26 July 2023, TLS signed a business purchase agreement to acquire the Target from Tereos.⁵ Post-Merger, the Target will be integrated into TLS' existing business. The Merger is conditional on receiving merger control clearance from the CMA.
10. TLS submitted that the Merger represents an opportunity to acquire a purpose-built packing facility in the North of England, which will complement its existing production and warehouse capacity at its operations in London.⁶
11. Tereos submitted that the Merger is motivated by [~~§~~].⁷

Our inquiry

12. Below we set out the main areas of our intended assessment in phase 2 in order to help parties who wish to make representations to us.

Jurisdiction

13. We shall consider the question of jurisdiction in our inquiry. In the case of an anticipated merger, a relevant merger situation exists where the following conditions are satisfied:⁸
 - (a) Two or more enterprises⁹ have ceased to be distinct; and
 - (b) Either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the **turnover test**); or
 - (ii) the enterprises ceasing to be distinct have a share of supply in the UK, or in a substantial part of the UK, of 25% or more in relation to goods or services of any description (the **share of supply test**).¹⁰
14. In its Phase 1 Decision,¹¹ the CMA found that it had jurisdiction to review the Merger on the basis that it believed that it is or may be the case that:

⁵ FMN, paragraphs 2.1-2.3.

⁶ FMN, paragraph 2.10.

⁷ FMN, paragraph 2.12.

⁸ [Section 23](#) of the Act.

⁹ An enterprise is defined under [section 129\(1\)](#) of the Act as the activities, or part of the activities, of a business. A business includes a professional practice and any other undertaking which is carried on for gain or reward, or which supplies goods or services otherwise than free of charge.

¹⁰ The merger must also result in an increment to the share of supply or acquisition.

¹¹ Phase 1 Decision, paragraphs 10-12.

- (a) each of TLS and the Target is an enterprise, and that these enterprises will cease to be distinct as a result of the Merger; and
- (b) the share of supply test is satisfied on the basis that TLS and the Target have a combined share of supply of more than 25% by volume, with an increment, in multiple sugar segments (including the supply of white granulated sugar to B2C customers in the UK).

Counterfactual

- 15. We will compare the prospects for competition with the Merger against the competitive situation without the Merger. The latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.¹²
- 16. The counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.¹³ The appropriate counterfactual may therefore increase or reduce the prospects of an SLC finding. [X<].
- 17. In the Phase 1 Decision, the CMA assessed the impact of the Merger against the prevailing conditions of competition.¹⁴
- 18. The counterfactual assessment will be a central focus of our inquiry. At phase 2, we are required to form a view as to the most likely competitive situation absent the Merger.¹⁵ Our analysis will be informed by internal documents, financial analysis and (where relevant) evidence from third parties. We welcome any further evidence on this part of our assessment.

Assessment of the competitive effects of the Merger

Theories of harm

- 19. The term 'theory of harm' refers to a hypothesis about how the process of rivalry could be harmed as a result of a merger. Theories of harm provide a framework for assessing the competitive effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.¹⁶

¹² [Merger Assessment Guidelines \(March 2021\) \(CMA129\)](#), paragraph 3.1.

¹³ [CMA129](#), paragraph 3.2.

¹⁴ Phase 1 Decision, paragraph 41.

¹⁵ [CMA129](#), paragraph 3.13.

¹⁶ [CMA129](#), paragraph 2.11.

20. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to UK B2C customers (granulated white; white caster; white vending; standard icing; fondant icing; royal icing; jam; preserving; white sugar blends; white sugar cubes; golden granulated; golden caster; demerara; light soft brown; dark soft brown; light muscovado; dark muscovado).¹⁷
21. We are minded to focus our competitive assessment on this theory of harm at phase 2. However, identifying a theory of harm in this issues statement does not preclude an SLC from being identified on another basis following receipt of additional evidence or following further analysis. Should any party have reason to believe that we should investigate any new theories of harm, it should tell us and provide a reasoned submission.

Horizontal unilateral effects in the supply of packed sugar to UK B2C customers

22. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both), and is not limited to end consumers.¹⁸
23. When assessing whether a merger may give rise to an SLC as a result of horizontal unilateral effects, the CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.¹⁹
24. In the Phase 1 Decision, the CMA found that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to B2C customers in the UK because:
- (a) the competitive landscape is highly concentrated, with just three suppliers – TLS, the Target and British Sugar – supplying almost all packed sugar to B2C customers in the UK;²⁰

¹⁷ Phase 1 Decision, paragraph 118.

¹⁸ CMA129, paragraph 4.1.

¹⁹ CMA129, paragraph 4.3.

²⁰ Phase 1 Decision, paragraph 76.

- (b) several third parties raised concerns about the loss of competition that would result from the Merger, with the majority of B2C customers naming TLS, the Target and British Sugar as their only credible suppliers;²¹
- (c) evidence from internal documents and the analysis of recent procurement exercises showed that the Parties are close competitors;²² and
- (d) the evidence showed that suppliers based outside the UK do not currently pose a material competitive constraint on the Parties, and there was no 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.²³

How we propose to investigate this theory of harm further in phase 2

- 25. As part of our inquiry, we will use the data and information collected during the phase 1 investigation, and seek to expand this evidence base as appropriate.
- 26. Amongst other factors, we will consider:
 - (a) the extent to which the Parties compete closely to win B2C contracts in the UK, including further analysis of recent procurement exercises, customer overlaps and evidence from third parties;
 - (b) how prices for packed sugar supplied to B2C customers are set and negotiated in practice, and the role of price indices and benchmarks in this process;
 - (c) the competitive constraint from suppliers based outside the UK; and
 - (d) the prospects for, and barriers to, future entry and/or expansion.

Market definition

- 27. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.²⁴ The CMA is therefore required to identify the market or markets within which an SLC may arise. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.²⁵

²¹ Phase 1 Decision, paragraph 90.

²² Phase 1 Decision, paragraphs 80-88.

²³ Phase 1 Decision, paragraphs 15-16, 83, 90 and 107-115.

²⁴ [Section 36\(1\)\(b\)](#) of the Act.

²⁵ [CMA129](#), paragraph 9.1.

28. 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.²⁶
29. The Parties overlap in the supply of multiple types of sugar to UK B2C customers, including both white and brown varieties.²⁷ In the Phase 1 Decision, the CMA found that there was limited demand-side substitution between different sugar types, as retailers stock a range of sugars to cater for different consumer needs. The CMA also found mixed evidence regarding the degree of supply-side substitution between sugar types, eg with some suppliers indicating that packing lines could not be easily adapted for different sugar types. The CMA therefore assessed the impact of the Merger in the supply of packed sugar to UK B2C customers, segmented by sugar type.²⁸
30. In terms of geographic scope, the CMA considered the appropriate frame of reference to be the UK.²⁹ The CMA found that non-UK based suppliers had made only very limited sales of sugar to UK B2C customers in recent years, and third parties indicated that there are additional costs and logistical complications involved in transporting sugar across the English Channel.³⁰
31. We will use the segmentations adopted in the Phase 1 Decision as a starting point for our analysis, although we will consider whether it is appropriate to treat each type of sugar as a distinct product market, or whether several types of sugar form part of a wider market (eg on the basis of supply-side substitution and/or how such products are procured in practice). We will consider the evidence and any submissions from the Parties and others, but we do not expect market definition to be determinative to the SLC question.

Countervailing factors

32. We will consider whether there are countervailing factors which prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.

²⁶ CMA129, paragraph 9.4.

²⁷ In the Phase 1 Decision, the CMA considered 17 different sugar types (Phase 1 Decision, paragraph 67). This consisted of 10 types of white sugar (granulated white; white caster; white vending; standard icing; fondant icing; royal icing; jam; preserving; white sugar blends; white sugar cubes) and 7 types of brown sugar (golden granulated; golden caster; demerara; light soft brown; dark soft brown; light muscovado; dark muscovado).

²⁸ Phase 1 Decision, paragraphs 60 and 67.

²⁹ Phase 1 Decision, paragraphs 61-66.

³⁰ Phase 1 Decision, paragraphs 63-65.

33. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.³¹
34. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger may not be expected to result in an SLC.³²

Possible remedies and relevant customer benefits

35. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so, what remedies might be appropriate.
36. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would likely benefit.³³

Responses to this issues statement

37. Any party wishing to respond to this issues statement should do so in writing, no later than **5pm (UK time) on Friday 10 May 2024** by emailing TL Sugars-Tereos@cma.gov.uk.

³¹ [CMA129](#), paragraphs 8.28-8.46.

³² In order to reach a view that such efficiencies prevent or mitigate any SLC found, the CMA must be satisfied that the evidence shows that that the merger efficiencies: (a) enhance rivalry in the supply of those products where an SLC may otherwise arise; (b) are timely, likely and sufficient to prevent an SLC from arising; (c) are merger-specific; and (d) benefit customers in the UK ([CMA129](#), paragraph 8.8).

³³ [Merger Remedies](#) (CMA87), paragraphs 3.4 and 3.15–3.24.