

**ANTICIPATED ACQUISITION BY T&L SUGARS (“TLS”) OF THE UK PACKING AND
DISTRIBUTION SITE AND BUSINESS-TO-CONSUMER ACTIVITIES OF TEREOS UK &
IRELAND LTD (“THE TARGET”) FROM TEREOS SCA**

CASE ME/7074/23

TLS’ response to CMA Issues Statement dated 26 April 2024

10 May 2024

1 Introduction

1.1 T & L Sugars Limited (“**TLS**”) welcomes the opportunity to respond to the CMA’s Issues Statement of 26 April 2024 (the “**Issues Statement**”), in the context of the CMA’s Phase 2 investigation into the anticipated acquisition by TLS of certain business assets of Tereos UK & Ireland Limited (the “**Target**”, together the “**Parties**”) from Tereos SCA (the “**Transaction**”) ^{1,2}.

1.2 The Transaction concerns a £[REDACTED] million acquisition of the business of a packing plant supplying packed sugar to B2C customers, who have high countervailing buyer power and between whom there is intense price competition. The Transaction is small in the context of the market in which it occurs, accounting for:

1.2.1 Only 8.6% (by volume) of the UK’s B2C market for packed sugar;

1.2.2 1.8% and 0.18% (by volume) of the overall sugar consumption in the UK and Europe, respectively³; and

1.2.3 TLS considers it is also appropriate for the CMA to assess the Transaction based on the Target’s current performance, which is in decline, and the very limited extent to which the Target poses a constraint on TLS for the supply of packed sugar to B2C customers.

1.3 From TLS’ perspective, the Transaction is motivated by a desire:

1.3.1 to achieve resilience and optionality in its operations. TLS has only one integrated plant in the UK (Thames Refinery) to [REDACTED]

¹ TLS notes that Tereos is submitting its own observations on the Issues Statement and Phase 1 decision. Tereos’ representations specifically focus on the counterfactual arguments presented at Phase 1, which the CMA has identified, rightly, as a “central focus” of the Phase 2 inquiry.

² TLS’ submissions and observations on the CMA’s Phase 1 decision, dated 8 March 2024, are set out in Annex 1.

³ Calculated respectively by dividing 30,000 tonnes by 1.6 million tonnes (TLS’ estimates of consumption in the UK) and 30,000 tonnes divided by an estimated EU consumption of c. 16,000,000 tonnes.

[REDACTED]. A second scalable packing plant would provide improved contingency and resilience to [REDACTED]. In addition, Thames Refinery [REDACTED]. The Transaction would provide optionality to [REDACTED], thereby enhancing TLS' ability to [REDACTED]; and

1.3.2 to [REDACTED], most of whom have distribution facilities in the Midlands area. Specifically, this [REDACTED] would provide TLS with the opportunity to [REDACTED] and would reduce TLS' [REDACTED]. This has been a strategic aim of TLS as far back as [REDACTED]⁴.

1.4 The Transaction will also enable TLS to focus on [REDACTED]; the Transaction will provide TLS with [REDACTED], some of which are more than [REDACTED] years old, [REDACTED]⁵.

1.5 TLS notes that, at Phase 2, the CMA must apply the 'balance of probabilities' threshold to its analysis⁶. Applying this threshold, TLS considers that there is no plausible basis on which the Transaction may be expected to result in a substantial lessening of competition ("SLC") as a result of horizontal effects in the supply of any type of packed sugar to B2C customers in the UK, or at all. Specifically, for the reasons set out in this submission, TLS submits that the Transaction would **not** enable TLS, post-Transaction, to raise prices for packed sugar supplied to B2C customers above the levels that would occur absent the Transaction which is, as noted below, the only plausible basis on which a SLC could, hypothetically, occur. TLS' position is that the Target imposes only a limited constraint and various market characteristics which are discussed in this submission suggest that intense price competition will continue post-Transaction. This supported by the extensive objective and compelling evidence

⁴ Issues Letter Response dated 13 February 2024 ("ILR"), Annex 03.

⁵ See the Annex to the slides presented to the CMA during the site visit for more detail on TLS' rationale, which also includes [REDACTED].

⁶ Merger Assessment Guidelines (CMA129) ("MAGs"), paragraph 2.36.

provided during the Phase 1 process, some of which is referred to in the points that follow.

1.6 TLS submits, as further detailed in sections 2 to 6 below, that the following are the key matters for the CMA's consideration during the Phase 2 inquiry:

1.6.1 Section 3: paragraphs 26 (a) to (d) of the CMA's Issues Statement:

- (i) the limited extent to which TLS and TUKI compete, if at all (paragraph 26(a)) (see paragraph 3.1 below);
- (ii) price formation and negotiation in B2C market (paragraph 26(b)) (see paragraph 3.9 below);
- (iii) the competitive constraints from outside the UK, particularly the continuous and material threat of imports of packed sugar from the EU paragraph 26(c)) (see paragraph 3.16 below);
- (iv) prospects for, and barriers to, entry and/or expansion, or lack thereof (paragraph 26(d)) (see paragraph 3.20 below);

1.6.2 Section 4: market definition (paragraphs 27 to 31 of the CMA's Issues Statement);

1.6.3 Section 5: the existence of excess packing capacity; and

1.6.4 Section 6: countervailing buyer power.

2 Executive summary – key matters for consideration

2.1 TLS agrees that the matters set out in paragraph 26(a) to (d) of the Issues Statement are central to the assessment of whether the Transaction may be expected to result in a SLC in the supply of packed sugar to UK B2C customers. TLS also submits (see section 4 below) that it would be appropriate for the CMA to focus its inquiry on the supply of white granulated sugar ("**WGS**") to retail and wholesale grocery customers ("**Grocery Customers**") in the UK B2C channel and the points which follow are made on this basis:

2.1.1 With respect to the extent to which the Parties compete closely to win B2C contracts in the UK (paragraph 26(a)), TLS submits that TUKI is a weakened and declining competitor in the B2C market for the supply of

packed sugar to Grocery Customers. Any loss of competition between TLS and the Target (the “**Merged Entity**”) resulting from the Transaction is therefore not material, and certainly not sufficient to be regarded as “substantial”.

2.1.2 With respect to how prices for packed sugar supplied to Grocery Customers are set and negotiated in practice (paragraph 26(b)), the interplay between world, EU, and UK sugar prices, are a critical part of the inquiry. The price of sugar in the UK B2C channel is correlated with the price of sugar in the EU B2B channel. This means that prices which suppliers can charge Grocery Customers for packed sugar in the UK are constrained by the EU price for bulk sugar, plus packing and transport costs, which acts as a price ceiling. This relationship is described in more detail in the TLS price formation paper, submitted to the CMA on 26 April 2024 (“**TLS’ Price Formation Paper**”). Importantly, this dynamic is not affected in any respect by the Transaction.

2.1.3 Sugar is a commodity product. Information about world and EU sugar prices are widely available, and Grocery Customers in the UK are well-informed of these. Grocery Customers buy a formidable quantity of own label products that contain sugar and will therefore, owing to the nature of own label sourcing and open book costing, be fully aware of the price for sugar. Moreover, some important wholesalers and retailers, such as Aldi or Lidl, operate and source their products at a European level. The high degree of transparency of world and EU sugar prices, coupled with annual procurement processes undertaken by Grocery Customers, means that these customers can and do exert substantial pricing discipline on suppliers of packed sugar when negotiating supply prices.

2.1.4 The competitive constraint which arises from the threat of supply of packed sugar from EU suppliers (paragraph 26(c)) is real, and will continue post-Transaction to impose a material, credible competitive constraint on the Merged Entity. Grocery Customers are sophisticated buyers of packed sugar who use (1) their knowledge of the raw sugar market and B2B prices (in the UK and EU) and (2) conduct price checks against EU suppliers of packed sugar, as negotiating/benchmarking tools. Consequently, TLS (and British Sugar) are constrained to maintain their prices at levels which are

highly competitive and sufficiently low so as to not encourage Grocery Customers to procure packed sugar from EU suppliers.

- 2.1.5 Regarding barriers to future entry and expansion in the supply of packed sugar to B2C customers (paragraph 26 (d)), TLS submits that for suppliers outside the UK, entering the UK B2C market would be straightforward if UK prices were to increase, and moreover these suppliers would enter if prices were to increase by even a small increment (see paragraph 3.20 below). For existing or new UK suppliers that already pack sugar or similar dry, powdered foods, barriers to future entry and expansion (in terms of modifications that would be required to their existing operations) are low (see paragraph 3.22 below).
- 2.2 Importantly, TLS notes that the Issues Statement does not expressly identify the countervailing buyer power of B2C customers as a matter to consider during Phase 2. The buyer power of Grocery Customers is consistently recognised in the decisional practice of the CMA and other regulators globally, including in relation to agricultural / commodity products such as sugar. TLS considers that Grocery Customers exercise abnormally high countervailing buyer power and have good alternatives to which they can switch. These include British Sugar and EU suppliers. TLS therefore submits that this is a key matter that the CMA should consider during its Phase 2 inquiry⁷. This is explained in more detail in section 6 below.
- 2.3 With respect to market definition, paragraphs 27-31 of the Issues Statement note that the CMA will use the segmentations adopted in the Phase 1 decision as a starting point for its analysis.
- 2.4 In response to the CMA's comment in paragraph 31 of the Issues Statement that it will "*consider whether it is appropriate to treat each type of sugar as a distinct product market*", TLS submits that the CMA should consider focusing on the product - WGS - where TLS acknowledges there is a material overlap. This would be consistent with previous decisional practice of the CMA, in which it concluded (as a reason for finding that the transaction did not give rise to a realistic prospect of an SLC) that overlaps

⁷ The CMA is directed to the article referenced in footnote 150 of the FMN, as well as the CMA's own work into the groceries sector, which acknowledges the buyer power of retailers: "*Competition, choice and rising prices in groceries*", July 2023, paragraphs 4.8-4.17.

between 0-5% were not material⁸. TLS' comments on the approach to market definition during the Phase 2 inquiry are set out in section 4 below.

3 Assessment of the competitive effects of the Merger

Closeness of competition/overlap

- 3.1 TLS submits that the parties are not close competitors in the supply of B2C sugar in the UK.
- 3.2 The Target is a weakened and declining player in the packing and distribution part of the value chain, which is dominated in the UK by British Sugar (the only processor and packer of the UK beet sugar crop). The Target is reliant on its parent, Tereos, for the supply of sugar and the volume of sugar that the Target has supplied in the B2C channel in the UK has declined substantially over the past five years⁹. Where there is an overlap between TLS and the Target, this is largely confined to "Tier 2" or "discounter" retailers. TLS' observation is that this is because the majority of smaller retailers do not require the full range of packed sugar types and as noted above, WGS accounts for over █% of sugar products packed by the Target.
- 3.3 In contrast, British Sugar is (and always has been) the leading supplier of packed sugar to B2C customers. British Sugar generally produces between an estimated 0.8 million and 1.2 million tonnes of sugar each year¹⁰. British Sugar packs and supplies a full range of sugar products under the "Silver Spoon" and "Billington's" brands, as well as private label products. It is already a significant and vigorous competitor in the supply of sugar in the UK B2C channel. According to the Phase 1 decision¹¹, in MY22, British Sugar accounted for an estimated share of supply of c.40-50% in respect of the supply of WGS to B2C customers in the UK which, based on data presented by the Parties during Phase 1¹², is around four times the share of supply of the Target.
- 3.4 Moreover, in terms of its penetration in the UK grocery sector, British Sugar supplies WGS to retailers accounting for more than 60% of the UK grocery market, as

⁸ Anticipated acquisition by ForFarmers UK Limited of the Feed and Forage business of Countrywide Farmers plc, ME/6507/14, decision dated 13 April 2015, paragraph 78.

⁹ Paragraph 15.20.2 of the FMN.

¹⁰ The CMA will note that British Sugar's production falls some way short of the UK's annual consumption of sugar, estimated by TLS to be c. █ [0-5] million mt of sugar. The implications of this for price formation are discussed in paragraphs 2.10 – 2.11 below.

¹¹ Table 2 of the Annex to the Phase 1 decision.

¹² Table 10 of the FMN.

evidenced by the Table 12 of the Final Merger Notice dated 18 January 2024 (“**FMN**”). In particular, British Sugar has success in supplying all ‘types’ of Grocery Customers: “Tier 1” and “Tier 2” grocery retailers, as well as grocery wholesalers. In contrast, data presented by the Parties in Phase 1 indicate that the Target’s supply of WGS to Iceland, which is the Target’s most important customer, accounts for only a 2.3% share of the UK grocery sector¹³.

3.5 TLS regards British Sugar as its key competitor¹⁴. This is reflected in TLS’ internal documents, which focus primarily on sugar production and the overall sugar market in the UK. TLS therefore conducts [REDACTED]. For the same reasons, TLS views Tereos as primarily a competitor in the production of sugar and supply of sugar [REDACTED] and does not in the ordinary course of business [REDACTED]¹⁵.

3.6 Conversely, TLS’ observation is that the Target does not offer a full range of sugar types to potential customers. Since the majority of major grocery retailers prefer to single-source all of their requirements, TLS does not [REDACTED]. This is particularly true for Tier 1 retailers, who are [REDACTED] customers for TLS and require a full range of products, as well as any other customer that requires a broad range of sugars; the Target (by its own admission in the Information Memorandum¹⁶) does not, or cannot, compete for these tenders¹⁷ as it does not offer a full range.

3.7 The lack of competitiveness of the Target is not only evidenced by which customers it supplies, but also by the procurement processes in which it participates. This is demonstrated in Oxera’s ‘Overlap and switching analysis’ note submitted during Phase 1¹⁸. The results of the analysis show limited switching and tender overlap between both merging parties. More specifically, Oxera’s note shows that switching between TLS and Tereos occurred only in [REDACTED] of [REDACTED] [0-10%] of the analysed procurement processes. Also, from this group of [REDACTED] procurement processes, only [REDACTED] [20-30%] of them had the participation of both TLS and the Target.

¹³ Paragraph 15.37 of the FMN.

¹⁴ Paragraph 15.40 of the FMN.

¹⁵ Paragraph 4.69 of the ILR.

¹⁶ FMN Annex 248.

¹⁷ Paragraph 15.41 of the ILR.

¹⁸ FMN Annex 241.

3.8 In summary, therefore, the competitive constraint imposed by the Target is, at best, limited and declining. The Parties do not compete closely, with previously submitted TLS internal documents supporting the view that TLS does not monitor the Target closely as a competitor, as it does with British Sugar or European sugar production and / or beet supply¹⁹.

Price formation and negotiation with B2C customers

3.9 Sugar is a homogeneous, commodity product and the packed sugar category in the B2C channel displays distinct characteristics: brand is not material, on shelf-competition is rare (Grocery Customers usually stock a single branded product or a single private label product) and sugar is not a destination product for consumers. TLS has previously presented evidence to the CMA, demonstrating that price is by some margin the key parameter of competition in relation to packed sugar²⁰, which is viewed by B2C customers (and consumers) as an everyday, low-priced product²¹. This means there is intense competition between grocery retailers, aiming to price match Aldi (the UK's fourth largest UK grocery retailer, which is Germany based, and one which is generally known by consumers to have very low prices). Accordingly, as price is the most important parameter of competition (and other non-price aspects are materially less important), the issue on which the CMA should focus when deciding whether the Transaction may be expected to result in a SLC within any market or markets in the UK is whether, post- Transaction, the Merged Entity would have the incentive and ability to raise prices.

3.10 When considering this matter, TLS would invite the CMA to consider the following points. These are all explained in detail in TLS' Price Formation Paper, as well as the analysis conducted by independent market analysts, GlobalData, submitted to the CMA during Phase 1²², and TLS refers the CMA to both:

3.10.1 The fundamentals of price formation are critical to the competitive assessment of the Transaction. The UK is part of the wider-European sugar market and the price for sugar in the UK follows EU market trends.

¹⁹ See ILR paragraph 4.70.

²⁰ See ILR Annexes 08-11.

²¹ By way of example, Annex 2 sets out details of the retail price of 1kg WGS in a number of Grocery Customers, as at 19 April 2024.

²² FMN Annex 031 – referred to in this submission as the GlobalData report.

The dynamics of competition in the market for the supply of packed sugar in the B2C channel in the UK must be evaluated against this backdrop.

3.10.2 Only c. █% of the production cost of a 1kg pack of WGS supplied to B2C customers relates to the functional activity of packing the sugar, i.e. the area of overlap between the activities of TLS and the Target. Conversely, approximately █% of the cost of production of packed WGS is the sugar (“feedstock”) in the bag. This is broadly the case, whether the sugar in the bag is derived from sugar beet, or sugar cane²³. As the sugar “feedstock” in a bag of WGS is the same sugar “feedstock” as used by industrial (B2B) customers, the underlying cost (or price) of the sugar “feedstock” in packed WGS is derived from the EU and UK B2B bulk sugar prices (i.e. the price for the supply of sugar to industrial customers).

3.10.3 These prices are driven by:

- (i) the demand for sugar from the B2B channel which accounts for more than 80% of EU and UK sugar consumption²⁴; and
- (ii) the supply of sugar, which is dependent on the success of the beet crop in the EU and UK. As discussed in TLS’ Price Formation Paper, the UK is a deficit sugar market, i.e. sugar produced locally (from beet) by British Sugar, the lowest cost producer in the UK, is below the UK’s consumption of c. █ [0-5] million mt of sugar²⁵. Therefore, the UK needs to import sugar to meet its overall consumption. The closest surplus sugar production region to the UK are the Northwestern EU countries (the “**EU Region 2**”). The EU Region 2 produces surplus sugar each year, which must be exported to “clear” (make storage space available) for sugar produced from the new beet crop. The EU Region 2 also comprises some of the lowest cost sugar producers within Europe.

3.10.4 As such, sugar prices in the UK are generally based on import parity to the EU Region 2, i.e. prices in the UK must be at a sufficient level to attract sugar from its closest surplus region (in terms of price competitiveness) to

²³ The CMA should note that, from the perspective of consumers, WGS produced from beet is indistinguishable from WGS produced from sugar cane.

²⁴ See Chart 3 of TLS’ Price Formation Paper.

²⁵ Based on TLS estimates.

close the deficit gap. In this respect, TLS considers itself as operating in the [REDACTED] in the UK and as [REDACTED], i.e. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁷.

3.10.5 Critically, this price formation dynamic (being the dynamic which determines the price of the sugar “feedstock” in packed sugar supplied to Grocery Customers) is a function of a range of market factors, which are not within the sphere of influence of the Parties and are not altered in any respect by the Transaction. The EU B2B prices operate as a constraint on prices for packed B2C sugar in the UK; the EU bulk price, plus packing and transport costs, effectively acts as a ceiling on the price in the UK of a 1kg bag of WGS. Furthermore, as sugar is homogenous in nature and a commodity product, it will remain freely available from numerous sources post-Transaction.

3.11 In addition, and critically, Grocery Customers play a key role in setting the price for packed sugar, and TLS submits that this dynamic is also fundamental to analysing the competitive effects of the Transaction:

3.11.1 Grocery Customers are sophisticated purchasers. They have a detailed understanding of sugar prices, which are transparent, being set internationally and benchmarked on highly liquid international futures markets. Grocery Customers also have detailed knowledge of the sources of supply that are available to them.

3.11.2 Many – if not all – Grocery Customers in the UK have extensive knowledge and experience of working with EU suppliers for food products and non-food products (e.g. packaging materials). As such they have knowledge and experience of the costs of securing and importing other products from the EU.

²⁶ [REDACTED]

²⁷ This is demonstrated in chart 8 of TLS’ Price Formation Paper.

- 3.11.3 Many also procure B2B sugar for use in their own products (e.g., bakery items, confectionary) giving them an extensive knowledge of the input costs of sugar and related logistics (including from open book costing).
- 3.12 The supply of packed sugar to Grocery Customers is highly contracted, whereby Grocery Customers lock in a fixed price for the quantity of sugar that they wish to purchase typically in the coming 12 months, sometimes longer. This means that when contracts come to an end, customer prices “reset” to reflect the latest international and EU pricing variables. Grocery Customers are aware of these variables due to the transparency of pricing information and use the commercial levers at their disposal (annual competitive procurement processes and price checks) to exert significant pricing discipline on suppliers of packed sugar²⁸, leading to low prices. The significant pricing discipline that Grocery Customers exert on suppliers of packed sugar is evident from a comparison of retail prices for WGS in the UK with retail prices in the EU - see Annex 2.
- 3.13 In addition, TLS invites the CMA to consider the Appendix on page 40 of the slides presented at the CMA site visit. This table includes details of the procurement processes adopted by retailers accounting for c.95% of the UK’s grocery retail market. Rather than implying that Grocery Customers are “price takers” and struggle to switch between suppliers, the reason that Grocery Customers have not changed suppliers is because they have not needed to; Grocery Customers exert significant pricing discipline and are able to achieve prices they are content with through their own procurement practices and knowledge of sugar prices.
- 3.14 The clearest example of this is Tesco. Tesco runs its own internal hedging team and operates an open book costing model for own-label products, which include sugar as an input cost. This gives Tesco complete visibility of global sugar prices, particularly when combined with the fact that sugar prices are reported daily for businesses of any size (or even individuals) to see in seconds following a simple online search. The only plausible explanation for the fact that Tesco has not switched supplier and has not even tendered its supply of sugar at any time in the last 5 years, is that Tesco must be content with the price they have been achieving for packed sugar. TLS expects this is because Tesco purchases its sugar linked to a buying model, which is likely to be linked or benchmarked to international and EU price indices and benchmarks.

²⁸ See section 8 of TLS’ Price Formation Paper for more detail.

3.15 Even without the sophistication of the Tesco buying model, TLS submits that low levels of actual switching indicates that all retailers can negotiate and use the presence of the threat of switching to exert discipline and achieve lower prices from their suppliers of packed sugar. Low brand awareness and the lack of on-shelf competition make switching straightforward for customers and the threat of switching credible. It is extremely easy to obtain a price from another supplier either in the UK or in the EU and use this as a negotiating tool. Indeed, the CMA noted in its Phase 1 decision that some B2C customers had provided evidence that they had reached out to EU suppliers (or co-packers) in their last procurement round²⁹. TLS's experience is that customers leverage this position to negotiate with TLS where they consider that TLS is more expensive compared to prices they can achieve elsewhere in the market. If TLS was not constrained by this leveraging and only offered prices above import parity and thus out of kilter with the market (whether pre- or post- Transaction), TLS would risk a significant loss of market share, as there would be no incentive to buy from TLS. Instead, there would be a swift and strong supply side response from other EU suppliers. Moreover, as brand is not material, switching costs for Grocery Customers are reduced.

Competitive constraints from outside the UK

3.16 TLS submits that EU suppliers exert a real and credible competitive constraint in the market for the supply of packed sugar to B2C customers in the UK. This is because Grocery Customers use EU prices and the threat of supply from EU suppliers (who already export sugar to the UK for B2B customers) to exert pricing discipline in their negotiations with UK suppliers.

3.17 TLS considers AMS and Tesco to be pertinent examples of how customers leverage the threat of supply from outside the UK as a competitive constraint on UK suppliers:

3.17.1 Paragraph 2.14 above details how, to the best of TLS' knowledge, Tesco uses EU prices as part of its procurement strategy.

3.17.2 AMS are a buying alliance consisting of grocery retailers in the UK and EU, including Morrisons and Booker. TLS believes that AMS price checks across Europe for their members as a means of securing competitive prices, including in the UK. AMS would have a good knowledge of which

²⁹ Phase 1 decision, paragraph 83.

EU suppliers engage in discussions, or tender for, the supply of packed sugar to Grocery Customers.

- 3.18 TLS understands that Aldi runs pan-European procurement processes, which includes obtaining prices/quotes for the delivery of packed B2C sugar into the UK from EU suppliers. This is also the case for Lidl (the seventh largest grocery retailer in the UK, which is German based and also generally known by consumers as having low prices). As other retailers price check packed 1kg WGS against prices in Aldi and Lidl, by extension, they also receive the benefit of the EU pricing constraints obtained through Aldi and Lidl's EU procurement processes. Many customers also price check against EU suppliers themselves (as noted in paragraph 2.16) and information about raw and refined white sugar prices is widely available, meaning that customers can and do benchmark prices they are quoted against international benchmarks.
- 3.19 TLS therefore invites the CMA to consider why/whether customers would price check against EU suppliers (or at least, why they would do so more than once) if EU suppliers were not able to provide a competitive price. As outlined below, TLS does not consider there to be any structural barriers preventing EU suppliers from supplying customers in the UK with packed sugar; the low UK price is the only factor currently stopping this.

Prospects for, and barriers to, entry and/or expansion

- 3.20 Low B2C prices in the UK mean that EU suppliers have not had an incentive to supply sugar in the B2C channel in the UK. However, as the threat of EU entry is already factored into UK B2C prices, even a small, sustained increase in prices for packed B2C sugar would induce entry. In this respect, there are no inherent barriers to entry for an EU supplier of sugar:

3.20.1 the EU-UK supply chain is an established one; 25% of sugar and 46% of total food already arrives in the UK from the EU³⁰. Sugar arrives freely with no volume restrictions or caps and without duty from the EU into the UK. These imports of sugar are required each year to close the UK's consumption deficit gap;

3.20.2 sugar is a fungible, commodity product, which is low risk and easy to transport – for example, there are no technical requirements (e.g. no refrigeration requirements);

³⁰ See paragraph 4.8.1. of the Issues Letter response dated 19 February 2024.

- 3.20.3 TLS' experience is that transporting packed 1kg sugar is less costly than transporting sugar in bulk and has presented evidence to demonstrate this to the CMA³¹. The import of bulk sugar requires a specialist vehicle that must be cleaned and sent back empty, hence increasing the cost relative to a lorry of packed sugar on pallets, which does not need to be cleaned and can be loaded with other goods for the return journey; and
- 3.20.4 TLS provided clear and compelling evidence during the Phase 1 process that packed sugar travels around Europe³². In addition, TLS has previously imported [REDACTED]³³ into the UK, as well as recent imports of [REDACTED] mt of 1kg and 500g bags of WGS, soft brown and icing sugars in [REDACTED] and [REDACTED] from [REDACTED]. The majority of this volume was to supply [REDACTED] in the UK.
- 3.21 TLS has presented data to the CMA which indicates that the EU Region 2 produces surplus sugar each year and that this is exported to deficit markets such as the UK, European regions, or outside Europe in the world market, to create storage space for sugar produced from the next beet crop³⁴. The CMA should note that the EU Region 2 surplus itself is higher than the UK's entire sugar consumption and as the surplus changes each year, this would suggest that EU suppliers would not face capacity constraints in supplying the residual UK demand. Between 2019 and 2023 the surplus has ranged between 1.6 million tonnes to 3.4 million tonnes³⁵ (noting that UK consumption is c. [REDACTED] [0-5] million tonnes).
- 3.22 When considering the prospects for, and barriers to, future entry and/or expansion, TLS submits that it is also important that the CMA considers the prospects of entry or expansion for UK based suppliers. There are already several UK based co-packing businesses that pack sugar (e.g. Britannia Superfine; Kent Foods Limited), and businesses that pack other dry, free flowing food products that could equally adapt their operations to pack sugar:

³¹ See paragraph 12.34 of the FMN; paragraph 4.7 and footnote 41 of the ILR.

³² See ILR Annex 06.

³³ [REDACTED] mt was imported in 2015 from [REDACTED] and supplied to [REDACTED].

³⁴ See section 5 of TLS' Price Formation Paper.

³⁵ Please see the GlobalData report.

- 3.22.1 Refined sugar is a dry, free-flowing product which is easy to pack and does not present the complexities of, for example, packing multiple ingredients or flavoured products.
- 3.22.2 Packing sugar simply involves taking sugar from the feed system and putting it in paper bags which can be pre-formed or made from a reel. This involves sieving, passing the sieved sugar through a metal detector and then passing it through a weighing machine. These are not complex processes.
- 3.22.3 A company which already has the necessary accreditations, technology, and expertise (e.g. by already packing ambient, dry powdered food products such as flour or semolina) would be likely to incur only a relatively modest cost in adapting existing facilities to pack sugar in a slightly different bag format. TLS has estimated the cost of such modifications³⁶ to be no more than £█ million for a packing facility with 5 lines, and necessary adaptations could be achieved within 6-9 months.

4 Market definition

- 4.1 As set out in the FMN, TLS considers that the relevant product and geographic market on which the CMA should base its' assessment of the Transaction during the Phase 2 inquiry is the market for the packing and supply of WGS³⁷ on an EU-wide (including UK) basis³⁸ to Grocery Customers (i.e. wholesale and grocery retailers) in the B2C channel.
- 4.2 The main product overlap between TLS and the Target is the supply of packed WGS. This is supported by data provided by the Parties during Phase 1: in the campaign year running from October 2022 – September 23, WGS accounted for █% [large majority] (by volume) of sugar products for B2C customers packed by the Target and █% [majority] (by volume) of sugar products for B2C customers packed by TLS³⁹. Over the same period, of the sugar types set out in the Phase 1 decision:
- 4.2.1 there were no overlaps at all in fondant icing sugar and royal icing sugar;

³⁶ See FMN paragraph 21.3.

³⁷ FMN paragraph 13.2.7.

³⁸ FMN paragraph 13.12.

³⁹ Tables 1 and 2 in the FMN.

- 4.2.2 for all overlaps except those in white vending sugar, white sugar blends, golden granulated sugar and white granulated sugar, the increment arising from the Transaction was very small (■■■■% [0-5%] or less); and
- 4.2.3 for white vending sugar, white sugar blends and golden granulated sugar, the Parties had joint sales of below £■■■■⁴⁰.
- 4.3 As for each party's focus in the UK B2C channel, the main customer overlap between TLS and the Target are Grocery Customers. Data presented by the Parties during Phase 1 indicate that in FY22/23, Grocery Customers accounted for c.■■■■% [majority] of the Target's total volumes of sugar products⁴¹ and only ■■■■% [minority] of the Target's total volumes of sugar products were supplied to out of home customers. For TLS, Grocery Customers accounted for c.■■■■% [majority], and out of home customers accounted for c.■■■■% [minority], of their total volumes of sugar products supplied in the B2C channel in the UK in FY22/23. Given there is virtually no overlap with respect to out of home customers, it would be appropriate for the CMA to focus during Phase 2 on the key customer overlap -grocery retailers and wholesalers – and to exclude out of home customers.
- 4.4 As set out in the ILR, assessing the Merger on the basis of its effect on each type of sugar in which TLS and TUKI have made sales in at least one of the last six years (the approach adopted by the CMA in Phase 1) is artificially narrow, and not a realistic method of identifying the parameters of the relevant product market. In fact, some of the products with immaterial volumes identified in the Phase 1 decision are purchased externally by each party, i.e. not manufactured or packed by either.
- 4.5 In addition, from a supply side substitution perspective⁴², some types of sugar can be packed on the same line (e.g. TLS packs WGS and caster sugar on the same line) and TLS considers that it is relatively easy to switch packing processes between different types of sugar⁴³. TLS notes that there are only short-term operative restrictions on switching (for example, during a recent night shift, TLS changed over its ■■■■
■■■■), and over the longer term (1 year) it would be straightforward for any company awarded

⁴⁰ See the data presented by the Parties in paragraphs 4.2. 4.4 and Figure 1 of the Issues Letter response.

⁴¹ FMN paragraph 12.8.

⁴² As set out in FMN paragraph 13.2.1 onwards.

⁴³ TLS notes that white and brown sugars are typically segregated and packed on separate lines to avoid cross-contamination, although these can be switched if necessary.

a contract for any type of sugar to adapt packing lines to switch to supplying that type of sugar the following year⁴⁴.

4.6 In terms of the geographic market, TLS submits that the CMA should consider the UK-EU B2C market as a single market for packed sugar⁴⁵. This is on the basis that:

4.6.1 the cost of importing packed white sugar into the UK is low and, therefore, EU integrated producers exert competitive constraints on the UK suppliers;

4.6.2 the EU-UK food supply chain is well established, as noted earlier;

4.6.3 sugar flows around the EU and the UK readily, arriving freely (with no volume restrictions or caps) and without duty from the EU into the UK;

4.6.4 TLS understands that a number of Grocery Customers in the UK source their requirements of packed sugar on a UK and EU wide basis; and

4.6.5 TLS have provided clear and compelling evidence that packed (i.e., B2C) sugar flows around Europe, for example the largest retailers with a pan-European presence (such as Lidl or Aldi) frequently arrange large annual European tenders for 1kg WGS for the whole group and sugar frequently crosses borders to be supplied. As described earlier in this submission, packers of sugar across the EU could, and would, supply UK B2C customers if the prices in the UK were to rise. Consequently, EU suppliers exert pricing discipline and a substantial competitive constraint on UK B2C suppliers.

5 Excess capacity

5.1 The Issues Statement does not expressly identify excess capacity as matter to be analysed during the Phase 2 inquiry. TLS submits, however, that the excess capacity which exists in the UK B2C market is relevant⁴⁶ and the Transaction will not change that excess capacity. As such, post-Transaction, excess capacity in the UK B2C market will continue to drive intense competition between the Merged Entity and British Sugar, the leading player in the market⁴⁷. This constraint is reinforced by the declining

⁴⁴ FMN paragraph 13.2.6.

⁴⁵ ILR, paragraph 4.9.1.

⁴⁶ TLS notes that para 4.38(c) of the MAGs state that if rivals have spare capacity, they may be expected to respond to a reduction in volumes by expanding their own production, which may prevent an increase in price levels.

⁴⁷ This is explained in the FMN in paragraph 15.46 onwards.

demand for packed sugar in the B2C market⁴⁸. TLS therefore invites the CMA to consider this point during its Phase 2 inquiry.

6 Countervailing factors – countervailing buyer power

6.1 The Parties supply their products to Grocery Customers, who have a deep understanding of EU and world sugar prices and are more than capable of defending their interests through competitive procurement processes, typically conducted annually. Specifically:

6.1.1 Grocery Customers' sourcing decisions are driven primarily by price, with the price that customers are willing to pay being driven by the retail prices that can be achieved, with prices often being benchmarked against Aldi and Lidl;

6.1.2 Annual procurement processes present an opportunity for Grocery Customers to exert pricing discipline on suppliers of sugar. These typically involve several rounds of negotiation in which competing bidders are commonly asked to improve their prices, or a customer obtains quotes to hold an existing supplier to account;

6.1.3 Grocery Customers do not necessarily order all of the contracted volumes; contracts typically provide for a fixed volume of sugar, but it is common practice for there to be a discrepancy between the contracted volume and the volumes ordered and this does not lead to disputes;

6.1.4 As noted earlier, Grocery Customers use the credible threat of supply from the EU to exert pricing discipline; and

6.1.5 Grocery Customers frequently source from only one supplier; brand is not an important parameter of competition. This means that there is no dependency on specific suppliers and no material impediments to switch supplier if customers conclude that they are not achieving good value in their supply agreements⁴⁹.

⁴⁸ TLS' rationale for the Transaction – which includes [REDACTED] – also means that TLS intends to ensure that [REDACTED].

⁴⁹ There are examples of customers that have more than one private label supplier, such as Aldi or Lidl. However, there is no on-shelf competition between private label products, so switching costs are also very low in these cases. Moreover, multiple private label suppliers mean that customers are even less dependent from each supplier, which makes it even easier for them to be replaced.

6.2 In short, there is no doubt that Grocery Customers are sophisticated purchasers and are well aware of the credible sourcing options available to them, which includes British Sugar as well as imports from EU suppliers. As Grocery Customers will continue to have good alternatives to whom they could switch, TLS submits that Grocery Customers do have significant buyer power and will therefore continue to have the ability to constrain the Merged Entity post-Transaction to the same extent as is currently the case. This is a critical competitive dynamic, which is recognised by the CMA⁵⁰, and should therefore form a central aspect of the Phase 2 inquiry.

7 Conclusion

7.1 TLS is confident that the evidence presented to the CMA during Phase 1 demonstrates, clearly, that the Transaction may not be expected, on the balance of probabilities, to result in a SLC within any market or markets in the UK for goods or services.

7.2 TLS remains at the disposal of the CMA to assist with the CMA's consideration of these issues during the Phase 2 inquiry.

⁵⁰ MAGs, paragraph 4.20.

Annex 1 –TLS’ comments on the Phase 1 decision

At the outset, and to assist the CMA with its phase 2 inquiry, TLS wishes to note those areas on which it agrees with the CMA’s phase 1 decision. These are the following:

1. The Transaction concerns only the UK B2C assets and business of the Target, which is **not** active in the upstream activity of refining and production of sugar, and that the Target’s business model is therefore different from that of TLS⁵¹;
2. The only overlap between the Parties is the supply of packed sugar to B2C customers in the UK⁵²;
3. Most of TLS and the Target’s B2C customers in the UK are grocery customers (grocery retailers and grocery wholesalers)⁵³
4. There is no material distinction in the conditions of competition between private label and branded sugar⁵⁴;
5. TLS’ internal acquisition documents assessing the Target are broadly consistent with TLS’ stated rationale for the Merger;⁵⁵
6. The evidence supports the view that price is the most important parameter of competition for B2C customers⁵⁶;
7. B2C customers use procurement processes to acquire packed sugar⁵⁷ and B2C customers contact UK and EU suppliers and co-packers of packed sugars to benchmark cost and increase their negotiating position⁵⁸; and
8. British Sugar is a strong competitor offering a full range of sugar products⁵⁹.

TLS did not, however, agree with the following aspects of the phase 1 decision:

⁵¹ Phase 1 decision, paragraph 42.

⁵² Ibid.

⁵³ Phase 1 decision, paragraph 44.

⁵⁴ Phase 1 decision, paragraph 59.

⁵⁵ Phase 1 decision, paragraph 3.

⁵⁶ Phase 1 decision, paragraph 46.

⁵⁷ Phase 1 decision, paragraphs 46, 57.

⁵⁸ Phase 1 decision, paragraph 83.

⁵⁹ Phase 1 decision, paragraph 43.

Issue	TLS' comments
1. Price formation	<p>The Phase 1 decision suggests that the CMA did not fully engage with the process of price formation in this sector⁶⁰, and did not as a result give sufficient weight to the constraints that the price formation process imposes on suppliers of packed sugar to B2C customers in the UK (see point 3 below). TLS considers that insufficient weight was given to the extensive evidence submitted by TLS, including the evidence and explanations contained in the GlobalData report.</p>
2. Supply of sugar from the EU to the UK and the threat posed by EU suppliers	<p>As a result of point 1 above, the Phase 1 decision indicates that the CMA did not fully understand that the UK B2C market for the supply of packed sugar is intrinsically linked to the EU sugar market.</p> <p>Consequently, the CMA did not give sufficient weight in its assessment to the constraints arising from the threat of imports of sugar from the EU into the market for the supply of packed sugar to B2C customers; the Phase 1 decision instead focussed on whether there was evidence that EU suppliers had switched supply from other markets in Europe to the UK in response to relative price changes⁶¹.</p> <p>As discussed earlier in this submission, the fact that there is little switching by customers instead implies that the price of B2C sugar in the UK is competitive and this is due to the competitive constraints imposed by EU suppliers (who already export sugar to the UK in the B2B channel), as well as countervailing buyer power.</p>
3. Countervailing buyer power	<p>The Phase 1 decision did not give sufficient weight to the significant countervailing buyer power of Grocery Customers⁶², derived from: the high degree of transparency about sugar prices; the availability of credible supply alternatives (British Sugar and supply from the EU);</p>

⁶⁰ Paragraph 45.

⁶¹ Paragraph 49.

⁶² Paragraph 102.

	and the commercial levers at customers' disposal to exert strong pricing discipline on suppliers of packed sugar.
4. The Target's role as a competitor in the market for the supply of packed sugar to B2C customers	The way in which the Phase 1 decision assessed the Target's competitiveness did not give sufficient weight to evidence provided by TLS about the real and significant limitations that the Target faces (e.g. in relation to product range) when seeking to win contracts to supply packed sugar to B2C customers. As a consequence, TLS considers that the Phase 1 decision significantly overstated the competitive strength of the Target.
5. The constraints exerted by excess capacity	<p>The assessment of excess capacity in the market for the supply of B2C sugar, in which demand is in decline, was flawed in the Phase 1 decision. Packing sugar is a low margin and high fixed cost activity. The suggestion in paragraph 95 of the Phase 1 decision that the Merged Entity could pursue a strategy of volume suppression in order to benefit from higher prices is simply not plausible, as it would lead to lower revenues. For a hypothetical strategy⁶³ of this kind to be profitable, the Merged Entity would need to increase its prices substantially to compensate for the lower volumes, which would induce the entry of imports. Further details are presented in paragraph 4.75 of the response to the Issues Letter.</p> <p>In addition, volume reduction would not be profitable for a firm that sells a range of products in a market in which customers seek supply from only one provider (as is the case in the B2C channel). British Sugar, and TLS, would not only lose volumes across the portfolio of their products, including value-add products, but also customer relationships and profits in their value-added products, which are difficult to sell other than as part of a single-source contract to a B2C customer.</p>

⁶³ Moreover, a hypothetical strategy to suppress capacity would necessarily be a long-term and often an irreversible decision, due to fixed costs, labour, maintenance and training requirements.

<p>6. Insufficient weight given to certain customer feedback</p>	<p>There were inconsistencies in how the Phase 1 decision assessed customer feedback. For example, the Phase 1 decision appeared to give insufficient weight to evidence provided in market enquires that:</p> <ul style="list-style-type: none"> • customers do contact EU suppliers to obtain a quote at the outset of procurement processes, meaning that grocery customers do use the threat of EU supply to exert pricing discipline⁶⁴; and • a customer had responded positively that it would consider sponsoring new entry or expansion of a supplier into packed sugar if it was needed to offset the reduction in UK suppliers⁶⁵.
<p>7. Product overlaps</p>	<p>The Phase 1 decision concluded that there was a realistic prospect of a SLC in relation to 17 different types of sugar. However, as discussed earlier in this submission, the Parties presented data at phase 1 indicating that over █% of sugar packed by the Target is WGS, with remaining sugar types packed only in very small quantities or packed by a third party. As noted above, TLS therefore queries the approach adopted by the Phase 1 decision to determine overlaps between the Parties in relation to specific sugar types, when the evidence in fact demonstrates that the overlap between TLS and the Target is predominantly confined to WGS.</p>

⁶⁴ Paragraph 83, footnote 130.

⁶⁵ Paragraph 114.

**Annex 2: comparison of retail prices for 1kg WGS in the UK and Spain, Germany
France and Portugal**

Retailer	Gran 1kg	Last Checked (If not on.com)
Aldi	£1.09	
Asda	£1.19	
Co-Op	£1.35	
Lidl	£1.09	
Morrison's	£1.19	
Sainsbury's	£1.09 (FT 1kg at £1.20)	
Tesco	£1.09	
Waitrose	£1.30	
M&S	£1.10	
Ocado	£1.09	
B&M	£1.09	
Home Bargains	£1.09	14th April
Farmfoods	£1.19	13th Feb
Iceland	£1.19	
Poundland	£1.10 (1kg)	
Poundstretcher	£1.15	5th March
QD	£1.09	1st March
Savers	£1.09	13th Feb

Country	Customer	Branded/PL	RSP	excl/vat
Spain	LIDL	PL	1,45 €	1,318
Spain	Carrefour	Branded	1,47 €	1,336
Spain	Carrefour	PL	1,45 €	1,318
Spain	DIA	Branded	1,47 €	1,336
Spain	DIA	PL	1,45 €	1,318
Spain	Mercadona	PL	1,45 €	1,318
Spain	ALDI	PL	1,45 €	1,318

Country	Customer	Branded/PL	RSP	excl/vat
Portugal	Pingo Doce	Branded	1,79 €	1,455
Portugal	Pingo Doce	PL	1,49 €	1,211
Portugal	DIA	Branded	1,79 €	1,455
Portugal	DIA	PL	1,49 €	1,211
Portugal	ALDI	PL	1,49 €	1,211
Portugal	Modelo Continente	Branded	1,79 €	1,455
Portugal	Modelo Continente	PL	1,49 €	1,211
Portugal	Mercadona	PL	1,49 €	1,211
Portugal	Auchan	PL	1,49 €	1,211
Portugal	Auchan	Branded	1,79 €	1,455

France	VAT = 5.5%						
	RSP	Excl VAT					
E leclerc	€ 1.41	1.34	(Note - 'Powdered sugar' - 'Sucre en poudre)				
Carrefour	€ 1.59	1.51	(Note - 'Powdered sugar' - 'Sucre en poudre)				
Germany	VAT = 7%						
	RSP	Excl VAT					
Rewe	€ 1.89	1.77	(Note - 'Fine sugar' - 'Diamant Kristallzucker Feine Raffinade 1kg')				
Aldi	€ 1.49	1.39	(Note - 'Refined sugar fine grain' - 'Raffinade Zucker feine kornung')				

Notes: Retail prices were obtained on 19 April 2024, from retail websites and/or TLS industry knowledge. The CMA should note that a comparison should be made between prices net of VAT (10% in Spain and 23% in Portugal); and in France and Germany, TLS' research indicates that there is little 'true' WGS equivalent, and that most retailer websites do not have prices available in the same way as in the UK. This is why only two retailers are referenced for France and Germany.