

# Anticipated acquisition by T&L Sugars Limited of certain assets of Tereos United Kingdom and Ireland Limited from Tereos SCA

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

**ME 7074/23**

The Competition and Markets Authority’s decision on relevant merger situation and substantial lessening of competition under section 33(1) of the Enterprise Act 2002 given on 8 March 2024. Full text of the decision published on 23 April 2024.

The Competition and Markets Authority (**CMA**) has excluded from this 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 [§]. Some numbers have been replaced by a range, which are shown in square brackets.

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# SUMMARY

## OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) believes that the acquisition by T&L Sugars Limited (**TLS**) of the UK packing and distribution site and business-to-consumer (**B2C**) activities (the **Target**) of Tereos United Kingdom and Ireland Limited (**TUKI**) from Tereos SCA (**Tereos**), gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to B2C customers in the UK.
2. On 26 July 2023, TLS agreed to acquire the Target. The CMA refers to the acquisition as the **Merger**. 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), this is referred to as the '**Merged Entity**',
3. As the CMA believes that the Merger gives rise to a realistic prospect of an SLC, the Parties have until 15 March 2024 to offer undertakings in lieu of a reference to phase 2 (**UILs**) to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).

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

4. TLS is a sugar producer which refines and distributes sugar and related products in the UK through two plants in London.
5. The Target packs and distributes sugar in the UK. The Target sources the sugar it packs from Tereos in France.
6. TLS and the Target overlap in the supply of various types of white and brown packed sugar to B2C customers. These customers include grocery customers (both retailers and wholesalers) and 'out of home' foodservice customers (such as restaurants, hotels and vending machine operators).

## Why did the CMA review this merger?

7. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so.
8. In this case, the CMA has concluded that it has jurisdiction to review this Merger because a relevant merger situation has been created. Each of TLS and the

assets constituting the Target is an enterprise and as a result of the Merger, these enterprises will cease to be distinct. The CMA concluded that the share of supply test is met as TLS and the Target have a combined share of supply of over 25%, with an increment, by volume in the supply of various types of packed sugar to B2C customers in the UK, including the supply of packed white granulated sugar to B2C customers in the UK.

9. Tereos announced on 2 November 2023 that it had agreed to sell the Target, and that the Merger is conditional on receiving merger control clearance from the CMA.

### **What evidence has the CMA looked at?**

10. In assessing this Merger, the CMA considered a wide range of evidence in the round.
11. The CMA received several submissions and responses to information requests from the Parties. The CMA gathered information about the Parties' reasons for pursuing the Merger, how competition works in the sector, and each of TLS's and the Target's market position in the various sugar products. The CMA also examined the Parties' internal documents that were created in the ordinary course of business.
12. The CMA spoke to, and gathered evidence from, other market participants, including customers and competitors (both current and potential), to better understand the competitive landscape, to get their views on the impact of the Merger and whether any had the intention to enter the markets in question.

### **What did the evidence tell the CMA...**

#### **...about what would have happened had the Merger not taken place?**

13. In order to determine the impact that the Merger could have on competition, the CMA has considered what would have happened had the Merger not taken place. This is known as the counterfactual.
14. The Target has faced profitability challenges in recent years. The evidence indicates that Tereos considered various options for the UK business at the same time that they decided to investigate the possible sale of the business. The CMA considers that the appropriate counterfactual in this case is the prevailing conditions of competition (namely, that the Target would have continued to compete in the UK B2C markets as an independent competitor).

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

15. The CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to UK B2C customers (specifically, granulated white sugar, white caster sugar, white vending sugar, standard icing sugar, fondant icing sugar, royal icing sugar, jam sugar, preserving sugar, white sugar blends, white sugar cubes, golden granulated sugar, golden caster sugar, demerara sugar, light soft brown sugar, dark soft brown sugar, light muscovado sugar and dark muscovado sugar). In particular, in relation to all of these markets individually and overall:
- (a) The evidence indicates that the Merger will lead to a duopoly and remove an important competitive constraint in the Target. The Merged Entity would face competition from only one other competitor – British Sugar – post-Merger;
  - (b) There is no evidence that EU suppliers would pose a competitive constraint post-Merger; and
  - (c) Several third parties raised concerns about the loss of competition that would result from the Merger in markets that are already highly concentrated.

### **...about any entry or expansion?**

16. The CMA has not received evidence to indicate that any entry or expansion in response to the Merger would be timely, likely and sufficient to prevent the SLC from arising.

### **What happens next?**

17. As a result of these concerns, the CMA believes 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. The Parties have until 15 March 2024 to offer an undertaking which might be accepted by the CMA to address the SLC. If no such undertaking is offered, or the CMA decides that any undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

# ASSESSMENT

## 1. PARTIES, MERGER AND MERGER RATIONALE

1. TLS is a sugar producer which refines and distributes sugar and related products in the UK through two plants in London. TLS is a subsidiary of ASR Group Europe Limited and an indirect subsidiary of ASR Group International, Inc. (**ASR Group**), a company domiciled in the United States of America.<sup>1</sup> In Europe, ASR Group also operates refineries in Italy and Portugal. The turnover of TLS for the financial year ending 25 September 2022 was approximately £340 million worldwide, of which approximately £317 million was produced in the UK.<sup>2</sup>
2. Tereos, a sugar cooperative headquartered in Moussey-le-Vieux, France, is primarily active in processed agricultural raw materials, in particular sugar, alcohol and starch. TUKI is an indirect subsidiary of Tereos which packs and distributes sugar products, sourced from Tereos, to customers in the UK.<sup>3</sup> 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 B2C channel comprises grocery customers (both retailers and wholesalers) and 'out of home' foodservice customers (such as restaurants, hotels and vending machine operators). TUKI will retain the business-to-business (**B2B**) business (the supply of sugar products to UK industrial customers) post-Merger.<sup>4</sup> The turnover produced by the Target in financial year 22/23 was £[§<] worldwide, all of which was produced in the UK.<sup>5</sup>
3. TLS submitted that the Merger will allow it to improve its operational facilities [§<].<sup>6</sup> TLS's internal acquisition documents assessing the Target are broadly consistent with TLS's stated rationale for the Merger.<sup>7</sup> However, the CMA notes that TLS prepared these documents specifically to assess the Merger and in likely anticipation of a merger control review, and has placed less evidentiary weight on these as a result.<sup>8</sup> As discussed later at paragraph 86, TLS internal documents prepared in the ordinary course of business (and prior to the contemplation of the

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<sup>1</sup> Final Merger Notice submitted to the CMA on 18 January 2024 (**FMN**), paragraph 2.6.

<sup>2</sup> FMN, paragraph 6.1.

<sup>3</sup> FMN, paragraph 2.8.

<sup>4</sup> The Parties explained (FMN, footnote 156) that under section 7.6 of the BPA, at completion, should the Merger proceed, the Merged Entity and Tereos will enter into an arms-length supply agreement for the Merged Entity to acquire bulk sugar from Tereos to fulfil certain volume requirements. These are the volumes required to fulfil the Target's existing customer obligations that were not anticipated by TLS during the previous sugar bidding season.

<sup>5</sup> FMN, paragraph 3.17.

<sup>6</sup> FMN, paragraphs 2.10.1 – 2.10.4.

<sup>7</sup> See for example the following documents, which note that the Merger will [§<]: TLS Internal Document, Annex 003 to the FMN, 'Tchaikovsky overview', undated, slide 4; TLS Internal Document, Annex 004 to the FMN, 'Project Tchaikovsky – Non-binding indicative bid opportunity', February 2023, slide 3. The same document later describes the [§<] (slide 6).

<sup>8</sup> As a general principle, the CMA may place less evidentiary weight on internal documents that may have been specifically prepared in anticipation of a merger investigation. [CMA's Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 2.29(a).

Merger) consistently indicate TLS's view that the Target is an important competitor, with one 2021 document noting that TLS had '[redacted]', which the CMA considers may suggest an alternative Merger rationale to eliminate a competitive threat.<sup>9</sup> A record of a November 2022 Tereos Board discussion and a November 2022 presentation to the Board also indicate that [redacted].<sup>10</sup>

4. Tereos submitted that its main strategic rationale for the Merger is [redacted].<sup>11</sup> The CMA has considered these points as part of the counterfactual assessment below.

## 2. PROCEDURE

5. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>12</sup>
6. The CMA commenced its phase 1 investigation on 12 January 2024. As part of its phase 1 investigation, the CMA gathered a significant volume of evidence from the Parties. In response to targeted information requests, the CMA received and reviewed internal documents from the Parties. The Parties also had opportunities to make submissions and comment on the CMA's emerging thinking throughout the phase 1 investigation. In February 2024 the CMA invited the Parties to attend an Issues Meeting, and the Parties submitted their views in writing. The CMA also gathered evidence from other market participants, such as customers and competitors of the Parties. The evidence the CMA has gathered has been tested rigorously, and the context in which the evidence was produced has been considered when deciding how much weight to give it.
7. Where necessary, this evidence has been referred to within this Decision.
8. The Merger was considered at a Case Review Meeting.<sup>13</sup>

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<sup>9</sup> TLS Internal Document, Annex 097 to the FMN, 'Grocery & Foodservice FY22 Plans [redacted] 29th Jan 2021', January 2021, slide 3, titled 'Tereos summary' which specifically considers the competitive threat from the Target in relation to UK grocery customers. As a general principle, the CMA considers that internal documents prepared in the ordinary course of business are liable to have higher probative value than internal documents that may have been specifically prepared in anticipation of a merger investigation. The CMA further considers that given [redacted]'s role as [redacted] (a position at a grade considered within the ASR Group as typically that of a highly experienced manager responsible for [redacted] – see TLS's response to the Issues Letter, 19 February 2024, footnote 25), this document has good probative value as a reflector of TLS's position.

<sup>10</sup> Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 3; Tereos Internal Document, Annex 161 to the FMN, [redacted], November 2022, slide 16. These documents are also discussed further at paragraph 87.

<sup>11</sup> FMN, paragraph 2.12.

<sup>12</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), December 2020 (as amended on 4 January 2022), paragraphs 6.4 – 6.6.

<sup>13</sup> [CMA2](#), from page 65.

### 3. JURISDICTION

9. A relevant merger situation exists where two or more enterprises have ceased to be distinct and either the turnover or the share of supply test is met.<sup>14</sup>
10. Each of TLS and the Target is an enterprise as the assets constituting the Target, that are being transferred to TLS, enable the business activity associated with the Target to be continued by TLS.<sup>15</sup> As a result of the Merger, these enterprises will cease to be distinct.
11. Based on the evidence received from the Parties and third parties, the CMA estimates that the Merger will lead to TLS and the Target having a combined share of more than 25% by volume, with an increment, in multiple sugar segments. This includes the supply of white granulated sugar to B2C customers in the UK for marketing year (MY)<sup>16</sup> 2022 (in which TLS and the Target would have a combined share of [50-60]%, with an increment of [10-20]% as a result of the Merger).<sup>17</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.
12. The CMA therefore considers that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
13. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 January 2024 and the statutory 40 working day deadline for a decision is therefore 8 March 2024.

### 4. COUNTERFACTUAL

14. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>18</sup> In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the prevailing conditions of competition.<sup>19</sup> In determining the appropriate counterfactual, the CMA will generally focus on potential changes to the prevailing conditions of competition only where there are

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<sup>14</sup> [CMA2](#), chapter 4; Section [23](#) of the Act.

<sup>15</sup> See section [129](#) of the Act and [CMA2](#), paragraph 4.8. In particular, the Merger involves the transfer of assets and records, employees, existing contracts and goodwill, all of which are highlighted as relevant considerations in the CMA's assessment of whether a merger enables a particular business activity to be continued.

<sup>16</sup> The marketing year for sugar sales runs in the industry from the beginning of October to the end of September of the following year (ie MY22 spans 1 October 2022 to 30 September 2023).

<sup>17</sup> This is explained in more detail at Shares of supply below.

<sup>18</sup> [CMA129](#), paragraph 3.1.

<sup>19</sup> [CMA129](#), paragraph 3.2.

reasons to believe that those changes would make a material difference to its competitive assessment.<sup>20</sup>

15. Tereos submitted that the relevant counterfactual in this case is one in which, absent the Merger, the Target would have pursued a corporate strategy to [X]. Tereos submitted that [X].<sup>21</sup>
16. For the CMA to accept an exiting firm counterfactual at phase 1, it must believe, based on compelling evidence, that it is inevitable that, absent the merger:
  - (a) the firm would have exited (through failure or otherwise) (**Limb 1**); and
  - (b) there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question (**Limb 2**).<sup>22</sup>
17. The CMA will only take into account events that would have happened in the absence of the merger under review – and are not a consequence of it – in the counterfactual.<sup>23</sup> A merging firm may exit for strategic rather than financial reasons absent the merger.
18. Therefore, in assessing the relevant counterfactual, the CMA has considered whether there is compelling evidence that it is inevitable that, absent the Merger (1) the Target would exit the markets in which it is active and (2) there would not have been an alternative, less anti-competitive purchaser for the Target.

#### **4.1 Limb 1: Absent the Merger, would the Target have exited?**

19. To assess Limb 1, the CMA considered: (1) the strategic purpose for which Tereos carried on the business of the Target, and whether or not the Target was meeting this purpose, and (2) the decision-making process of the Tereos Board in deciding to sell the Target.

##### **4.1.1 Tereos submissions**

20. Tereos submitted that its main focus was to sell sugar from its French crops each year primarily to Western European customers in the B2B segment<sup>24</sup> and that its acquisition of Napier Brown in 2015 was motivated by its UK B2B rather than B2C business.<sup>25</sup> The strategic purpose of TUKI's UK B2C activity was to provide a more profitable market for Tereos' surplus sugar production (ie sugar not sold to

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<sup>20</sup> [CMA129](#), paragraph 3.9.

<sup>21</sup> FMN, page 4.

<sup>22</sup> [CMA129](#), paragraphs 3.21 and 3.23.

<sup>23</sup> [CMA129](#), paragraph 3.4.

<sup>24</sup> FMN, paragraph 11.9.

<sup>25</sup> FMN, paragraph 11.8. Tereos changed the name of Napier Brown to TUKI in 2016.

Western European B2B customers or in France) compared to what Tereos could achieve by exporting the surplus sugar elsewhere.<sup>26</sup>

21. Tereos submitted a range of evidence to support its submission that this strategy had not been successful over the last few years. In particular, it submitted that [X].<sup>27</sup> This resulted in an accumulated loss to Tereos of £[X] in the period FY17/18 to FY22/23.<sup>28</sup> Tereos stated that the TUKI B2C business' lack of profitability must also be understood within the broader context of the [X].<sup>29</sup>
22. Following a change in its senior leadership at group board level in December 2020, Tereos conducted a strategic review of its global operations, including of its UK B2C business.<sup>30</sup> This review identified various performance levers to improve TUKI's financial results<sup>31</sup> and explored a range of commercial options for the TUKI business.<sup>32</sup>
23. Tereos submitted that it had chosen [X] to sell the Target as a going concern, [X]. Tereos referred to this process as [X] and a business would naturally follow these steps in order.<sup>33</sup> Tereos submitted that a presentation made by TUKI to the Tereos Board in November 2022 (the **November 2022 Board Presentation**), which showed that Tereos had initiated a sale process, was evidence that Tereos had already decided to [X] and that it is merely [X] that is in question [X].<sup>34</sup>
24. Tereos acknowledged that its forecasts in November 2022 following measures to improve profitability suggested a more positive outlook. However, Tereos put forward that despite competing for contracts in good faith over the course of MY23, overall its volumes supplied had declined and it had remained unprofitable.<sup>35</sup>
25. On 6 February 2024, the CMA and the Parties held a 'state of play' call in which the CMA conveyed that it would proceed to an issues letter (and specifically, that it did not consider at that point that Limb 1 was met). On 13 February 2024, the Tereos Board passed a resolution stating that, [X].<sup>36</sup> Tereos submitted that this resolution was genuine and compelling evidence of [X].<sup>37</sup>

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<sup>26</sup> FMN, paragraph 15.15. Specifically, Tereos would sell sugar to TUKI at a transfer price above export parity price, following which TUKI would manage packing, sales and distribution of sugar to UK B2C customers to return positive earnings before interest and tax (FMN, paragraph 11.10).

<sup>27</sup> FMN, paragraph 11.11. This is assessed further below in Competitive assessment.

<sup>28</sup> FMN, paragraph 11.15.

<sup>29</sup> FMN, paragraph 11.24.

<sup>30</sup> FMN, paragraph 11.6.2.

<sup>31</sup> FMN, paragraph 11.6.3.

<sup>32</sup> FMN, paragraphs 11.30 – 11.32. Tereos submitted that these measures were undertaken in addition to ongoing actions it had taken since it acquired the business in 2015 [X] (FMN, paragraph 11.33).

<sup>33</sup> Tereos' response to the Issues Letter, 19 February 2024, paragraph 6.

<sup>34</sup> Tereos' response to the Issues Letter, 19 February 2024, paragraph 24.

<sup>35</sup> Tereos' response to the Issues Letter, 19 February 2024, paragraph 17 and Chart 7.

<sup>36</sup> Tereos' response to the Issues Letter, 19 February 2024, Annex IM-1 (EN).

<sup>37</sup> Tereos' response to the Issues Letter, 19 February 2024, paragraph 6. Tereos also previously submitted in the FMN if the CMA were to refer the Merger for a phase 2 investigation, [X] (FMN, paragraph 11.5).

26. Tereos further submitted an assessment by Oxera dated January 2024 of the Target's [redacted] costs<sup>38</sup> which estimated [redacted] (the **Oxera Analysis**). Using this analysis Oxera also estimated that [redacted].<sup>39</sup> Tereos argued that this provided further empirical evidence to [redacted].<sup>40</sup>
27. In addition, Tereos submitted that the likelihood of Tereos [redacted] absent the Merger was evidenced by Tereos' current practice of [redacted].<sup>41</sup>

#### 4.1.2 CMA Assessment

28. As stated above, to accept an exiting firm counterfactual argument at phase 1, the CMA requires compelling evidence that exit was inevitable and, in the case of a strategic exit, needs to be satisfied that this exit would have happened for strategic reasons unrelated to the merger.<sup>42</sup> That exit is one of a number of plausible options, even if it were the most likely option, would not meet the phase 1 standard for an inevitable exit.
29. Tereos' internal documents support Tereos' submissions that the Target had not been achieving its strategic objective, [redacted].<sup>43</sup> The accumulated loss figures submitted by Tereos are consistent with the figures and statements the CMA has seen in a number of internal documents that suggest that selling through TUKI had not been profitable in this context.<sup>44</sup> Tereos' internal documents also indicate that measures had been looked into to improve TUKI's performance.<sup>45</sup> The minutes of a Tereos Board meeting in November 2022 (the **November 2022 Board Minutes**) record a number of negative comments regarding the Target [redacted].<sup>46</sup>
30. The CMA, however, considers that while this evidence provides illustrative context that TUKI was not meeting Tereos' strategic objective, these documents (all of

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<sup>38</sup> Oxera Analysis, Annex 190 to the FMN, [redacted], January 2024.

<sup>39</sup> Tereos' response to the Issues Letter, 19 February 2024, paragraph 26(a)(iv).

<sup>40</sup> FMN, paragraph 11.55.

<sup>41</sup> FMN, paragraphs 11.57 and 11.59. Since 2021, Tereos has closed sugar plants in Romania and France. Tereos is also in the process of closing a potato starch plant and distillery in France.

<sup>42</sup> [CMA129](#), paragraphs 3.23 and 3.29.

<sup>43</sup> See for example Tereos Internal Document, Annex 163 to the FMN, 'Draft TUKI Strategic Review Presentation', October 2021, slide 27.

<sup>44</sup> For example, Tereos Internal Document, Annex 163 to the FMN, 'Draft TUKI Strategic Review Presentation', October 2021, slides 35 and 36, which are consistent with the figures provided in TUKI's management accounts (Tereos Internal Documents, Annexes 101 to 123 to the FMN, 'TUK&I Monthly Meeting', October 2021 to July 2023). However, the CMA notes that the export market price for sugar has been volatile in recent years, with exceptional highs in FY 2023/2024. This led to a greater than normal discrepancy between the transfer price TUKI received and the profit that Tereos could expect to receive through export (Tereos' response to the Issues Letter, 19 February 2024, paragraph 12(c)). The CMA has therefore considered the Target's financial position (and as discussed later in the Competitive assessment section, competitive) over time rather than seeking to extrapolate conclusions based solely on its most recent performance.

<sup>45</sup> For example, Tereos Internal Document, Annex 137 to the FMN, 'Opportunities BH v4 feb 20 update', April 2021, lists a number of cost-cutting exercises undertaken by TUKI. See also Tereos Internal Document, Annex 150 to the FMN, 'Dashboard 24.3.22', March 2022.

<sup>46</sup> Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 2, which notes volume reductions from [redacted] tonnes to [redacted] tonnes, that there were [redacted] difficulties and that the Normanton site had always been an [redacted] facility. Whether there would be sufficient volumes given [redacted] was also questioned. As discussed in more detail at paragraph 31, the minutes of this November board meeting also, however, show that several members of the Board suggested future strategies for the Target other than [redacted].

which were produced prior to the Merger and the decision to sell the Target) do not evidence a decision by Tereos for the Target to exit. The CMA considers that deciding to exit could be one commercially rational option on the basis of its being consistently unprofitable [redacted]. However, the evidence does not indicate that the Tereos board made a conclusive decision to do so (including, if the Merger did not proceed). It is also not possible to infer that exit is inevitable from Tereos' documents. Several documents indicate that Tereos' outlook was becoming more positive for the Target by the time it decided to initiate the sales process in November 2022. For example,

- (a) a TUKI business plan for 2022 to 2027 sets out a plan to reach [redacted] tonnes (which had consistently been its aim in a number of internal documents) [redacted].<sup>47</sup>
- (b) the November 2022 Board Minutes set out that the Target was expected to be profitable in 2022/23 (even on conservative assumptions), that contact had been renewed with a number of supermarket chains that were lost during Brexit, and fixed costs stabilised.<sup>48</sup> Having multiple channels through which to sell was also mentioned as 'always profitable, especially in the sugar sector, which is highly volatile from one year to the next.'<sup>49</sup>
- (c) the November 2022 Board Presentation<sup>50</sup> describes a more positive performance and that the outlook for TUKI's B2C business was more reassuring for the next few years.<sup>51</sup> It also suggested further measures could be considered: '[redacted]'<sup>52</sup>

31. Overall, the November 2022 Board Presentation and Board Minutes<sup>53</sup> show that while the Board recognised that the Target had significant challenges, at least some Board members considered there to still be several options [redacted], and that (as noted in the previous paragraphs) there had been a degree of improvement in the Target's performance.

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<sup>47</sup> Tereos Internal Document, Annex 218 to the FMN, 'TSUKI PMT 2022-2027', undated, slide 2. See also Tereos Internal Document, Annex 165 to the FMN, 'A destination exclusive du Conseil de Surveillance.' 23 February 2022 and, Annex 163 to the FMN, 'Draft TUKI Strategic Review Presentation', October 2021, page 3.

<sup>48</sup> Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 2.

<sup>49</sup> Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 3.

<sup>50</sup> Tereos Internal Document, Annex 161 to the FMN, [redacted], November 2022.

<sup>51</sup> Tereos Internal Document, Annex 161 to the FMN, [redacted], November 2022, slide 3.

<sup>52</sup> Tereos Internal Document, Annex 161 to the FMN, [redacted], November 2022, slide 23.

<sup>53</sup> Tereos Internal Document, Annex 161 to the FMN, [redacted], November 2022; Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022.

- (a) In February 2022, a board presentation had listed five potential options for the Target being [REDACTED].<sup>54</sup> The November 2022 Board Presentation does not reject any of these options.
- (b) Further, an assessment of Tereos' medium to long term levers for improving profitability in the November 2022 Board Presentation leaves open the option of [REDACTED].<sup>55</sup>
- (c) The November 2022 Board Presentation describes the sale process [REDACTED], and explicitly notes that it would then [REDACTED].<sup>56</sup> Similarly, the November 2022 Board Minutes suggest that Tereos would [REDACTED] before deciding whether to sell.<sup>57</sup>

32. The November 2022 Board Minutes note that the Tereos Board would, once it had had a clearer indication [REDACTED], come back to a decision on whether to sell the Target or continue its business.<sup>58</sup> However, Tereos has advised the CMA that it has no Board documents or minutes discussing its strategy for the Target that were produced during the period between November 2022 and February 2024. In addition, Tereos has produced no other contemporaneous documents evidencing its assertion that, following the November 2022 Board meeting, the Tereos Board [REDACTED]. Tereos instead submitted that the fact that it had ultimately decided to proceed with a sale was itself implicit evidence [REDACTED].<sup>59</sup> The CMA disagrees that it is possible to make such an inference given the open-ended nature of the November 2022 Board Minutes. Tereos is a large, established corporate group that documents corporate decisions.<sup>60</sup> In particular, the lack of evidence of any further discussion or decision on the various options for the Target discussed at the November 2022 board meeting leaves the CMA with no basis to conclude that a decision to exit had been taken and that Tereos would not have pursued the other options for the business in the absence of the Merger.

33. The CMA does not consider the board resolution of 13 February 2024 to be strong evidence [REDACTED]. Given its timing (between the state of play call between the CMA and the Parties' advisers, and the Issues Meeting on 15 February 2024), it

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<sup>54</sup> Tereos Internal Document, Annex 167 to the FMN, 'Commission Finance Performance De Tsuki Historique et Perspectives', February 2022, slide 38.

<sup>55</sup> See Tereos Internal Document, Annex 161 to the FMN, [REDACTED], November 2022, slides 10 and 16, which refers to [REDACTED].

<sup>56</sup> See Tereos Internal Document, Annex 161 to the FMN, [REDACTED], November 2022, slide 3.

<sup>57</sup> Statements included, for example, [REDACTED], Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 3. Although Tereos ultimately [REDACTED], the debate at the November 2022 board suggests that the Board was far from agreed as to the appropriate course of action, should a sale not proceed.

<sup>58</sup> Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 3.

<sup>59</sup> Tereos' response to the Issues Letter, 19 February 2024, paragraphs 6 and 10(c)(i)(D).

<sup>60</sup> [CMA129](#), paragraph 2.29(d). An absence of internal documents pointing to, for example, competitive interactions between the merger firms may not be probative if the merger firms do not normally generate documents in the ordinary course of business or where merger firms have document retention policies whereby documents are regularly deleted. In this instance, the CMA does not however consider this to be the policy of Tereos and has seen no evidence to suggest otherwise.

appears that this resolution may have been passed in response to the CMA's review into the Merger. As such, the CMA has placed very little evidentiary weight on it.<sup>61</sup>

34. The CMA does not consider the Oxera Analysis to provide compelling evidence that the Limb 1 test is met. The test the CMA must apply is not whether the CMA in the position of executives of the company might have chosen to exit the market, but rather whether a strategic exit was inevitable absent the merger. The only examination of [REDACTED] that Tereos appears to have undertaken is the Oxera Analysis which it commissioned in January 2024 as a result of this merger investigation.<sup>62</sup> As noted above, at the time that the possible sale of the Target was discussed, members of the Tereos board also put forward other potential future strategies for the business. Those board members were operating on similar data about the business' performance as that relied on by Oxera and reviewed by the CMA. The CMA does not consider that it would be appropriate to substitute its own assessment from that of senior stakeholders responsible for the business.
35. With respect to Tereos' assertion that a phase 2 reference by the CMA [REDACTED],<sup>63</sup> the CMA notes that it is ultimately the responsibility of the businesses involved to consider how to balance any execution risks relating to merger control that are borne by either merging party, against other commercial priorities. It was for Tereos, in this case, to consider the incremental risks that might be raised by an acquisition by TLS, and the reduction in competition that the Merger could therefore bring about. It would not be appropriate, given the nature of the CMA's statutory responsibilities and its duty to protect consumers, for the CMA to downplay or dismiss any competition concerns identified in its phase 1 investigation because of the impact that this might have on the Target's business.
36. Finally, the CMA also disagrees with Tereos' submission that its history of [REDACTED] demonstrates that it would [REDACTED]. Tereos submitted that these [REDACTED] have been after an evaluation that [REDACTED].<sup>64</sup> As noted above, the CMA has not seen any evidence of Tereos making such an evaluation for the Target in contemporaneous internal documents. In addition, decisions on whether to [REDACTED] appear to have been made on a case-by-case basis<sup>65</sup> and after [REDACTED], Tereos has proceeded to [REDACTED].<sup>66</sup>

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<sup>61</sup> [CMA129](#), paragraph 3.24. When considering any exiting firm argument, the CMA will usually attach greater weight to evidence that has not been prepared in contemplation of the merger.

<sup>62</sup> Oxera Analysis, Annex 190 to the FMN, '[REDACTED]', 18 January 2024. The CMA agrees that historically the Target has not been profitable and that in order to meet its objectives, it would need an increase in volumes or margins. [REDACTED].

<sup>63</sup> See footnote 37. FMN, paragraph 11.5; Tereos' response to the Issues Letter, 19 February 2024, paragraph 30.

<sup>64</sup> FMN, paragraph 11.59.

<sup>65</sup> See for example, Tereos Internal Document, Annex 155 to the FMN, '20220628 - Projet Tchaikovski', June 2022.

<sup>66</sup> Email from Tereos' legal advisers to the CMA, 21 February 2024, paragraph (c).

### **4.1.3 Conclusion on Limb 1**

37. The evidence threshold to accept an exiting firm argument at phase 1 is high. The CMA must believe that there is compelling evidence that exit is inevitable, not one of a number of options being considered at the time the decision to exit was made.<sup>67</sup>
38. The CMA recognises that the Target has not been meeting Tereos' strategic aims and that, in this context, one commercially rational decision could be to decide to exit the UK B2C market. However, the threshold for accepting an exiting firm counterfactual at phase 1 is not that a decision to exit may be rational, but that it is inevitable and supported by compelling evidence. The evidence Tereos has provided does not meet this threshold. Overall, Tereos' internal documents indicate that notwithstanding the Target's challenges, Tereos was still considering several options for the Target (including, continuation of the business) in addition to sale [X] when it initiated the sale. Further, there is no compelling evidence that following its November 2022 board meeting, Tereos made a definitive decision to [X].
39. Accordingly, the CMA considers that it has not seen compelling evidence that the exit of the Target was inevitable absent the Merger. The CMA therefore considers that limb 1 of the exiting firm assessment is not met.

## **4.2 Limb 2: Absent the Merger, would there be an alternative, less anti-competitive purchaser to TLS for the Target?**

40. The conditions of the two limbed test at paragraph 3.21 of CMA129 are cumulative and as the CMA does not consider that limb 1 is met, the CMA has not needed to come to a conclusion on limb 2.

### **4.3 CMA's conclusion on the counterfactual**

41. For the reasons set out above, the CMA considers the prevailing conditions of competition to be the appropriate counterfactual and is assessing the Merger under such. Specifically, this is that the Target would have continued to compete in the supply of packed sugar to B2C customers in the UK absent the Merger.

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<sup>67</sup> [CMA129](#), paragraph 3.23.

## 5. COMPETITIVE ASSESSMENT

### 5.1 Background and nature of competition

#### 5.1.1 Overview of the Parties' and other suppliers' activities

42. TLS and the Target overlap in the supply of packed sugar to B2C customers in the UK. TLS refines and packs sugar at two facilities in London.<sup>68</sup> TUKI's B2C business model differs as it does not refine sugar on-site but imports refined white and brown sugar from its parent company Tereos in France and packs into the various pack sizes at its Normanton facility in the UK.<sup>69</sup>
43. The other key supplier of packed sugar in the UK is British Sugar (**BS-SS**). Like TLS, BS-SS refines and packs on the same site in the UK, selling a full range of sugar products under the Silver Spoon and Billington's brands, as well as private label products. As set out in more detail in Section 5.3.2, the market for the supply of packed sugar to B2C customers is highly concentrated with TUKI, TLS and BS-SS supplying almost all the volumes in the UK for the last six years.<sup>70</sup>
44. Most of the Parties' B2C customers in the UK are grocery customers (both grocery retailers and grocery wholesalers).<sup>71</sup> B2C customers typically procure and stock a wide range of brown and white sugar types; the most popular product by volume is granulated white sugar, which comprised roughly [60-70]% of all packed sugar sold to B2C customers in MY22.<sup>72</sup>

#### 5.1.2 Approach to competition assessment

45. The Parties submitted that price was the most important parameter of competition and that the only plausible way in which an SLC could hypothetically arise as a result of the Merger would be in relation to price. In the Parties' view, the CMA had to determine whether the Merged Entity would have the incentive and the ability to increase prices when deciding whether the legal test for a phase 2 reference was met.<sup>73</sup> The Parties, in turn, argued that the Merger would have no or a limited effect specifically on the price of packed sugar supplied to UK B2C customers.

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<sup>68</sup> FMN, paragraph 3.1.

<sup>69</sup> FMN, paragraph 3.11.

<sup>70</sup> A small number of suppliers ('co-packers') supply small volumes, such as Portion Solutions and Nutshell. A co-packer (or 'contract packer') is active in the packaging of sugar and/or other dry, ambient food products. They may provide packing support to suppliers like TLS and BS-SS to fulfil their B2C contracts where they require additional capacity (due to for example performance issues or demand fluctuations). The co-packer supplies the packed sugar back to eg TLS before TLS delivers this to the customer (and the customer does not know whether a supplier has used a co-packer to fulfil a given contract). Where a co-packer provided packing support, the CMA attributed the volumes to the supplier in its Shares of supply analysis.

<sup>71</sup> FMN, paragraph 12.8.

<sup>72</sup> This estimate is based on the volumes used for calculating the shares of supply in Table 8 and is based on the total B2C market (ie it includes all pack sizes of up to and including 25kg supplied to B2C customers by all suppliers).

<sup>73</sup> TLS's response to the Issues Letter, 19 February 2024, paragraphs 1.7 and 4.45.

This is because as a homogenous product, the price of packed sugar in the UK is determined by exogenous factors (namely, global commodity prices, bulk EU and UK sugar prices, and a ‘market clearing price’ determined by EU suppliers’ variable cost).<sup>74</sup>

46. The evidence supports the Parties’ view that price is the most important competitive parameter for B2C customers of packed sugar.<sup>75</sup> However, the CMA does not agree that the Merger could have only limited or no effect on prices. On the first point, while the bulk price of the raw sugar to be packed is clearly a key input into the final price charged to B2C customers, suppliers still compete on price at the packed (rather than bulk) level of the supply chain where B2C customers commonly negotiate prices bilaterally using a variety of procurement approaches.<sup>76</sup> Whilst the Parties argue that the Target cannot compete on price,<sup>77</sup> there is clear evidence that TLS views the Target as an important constraint and that the Merger will lead to the loss of this important competitive constraint across all of the relevant B2C packed sugar markets under investigation.<sup>78</sup>

## 5.2 Market definition

47. Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.<sup>79</sup>
48. Market definition involves identifying the most significant competitive alternatives available to customers of the merger parties and includes the sources of competition to the merger parties that are the immediate determinants of the effects of the merger.
49. While market definition can be an important part of the overall merger assessment process, the CMA’s experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant

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<sup>74</sup> FMN, paragraph 12.28.3; GlobalData Analysis, Annex 031 to the FMN, ‘The Landscape of the EU+UK Sugar Market’, 17 December 2023; TLS’s response to the Issues Letter, 19 February 2024, Charts 3, 5 and 6, paragraph 4.46. The Parties submitted an economic model prepared by Oxera which ranked B2C suppliers in ascending order based on their productive efficiency, purporting to show that the competitive market price is determined by the variable cost of the next-most efficient producer once customer demand is met. The model indicated that the last unit of demand would be met by the Target and that the market clearing price would be determined by EU suppliers’ variable cost.

<sup>75</sup> Based on feedback from B2C customers, who generally considered price to be the most important parameter of competition.

<sup>76</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 11 and 12.

<sup>77</sup> FMN, paragraph 15.28; TLS’s response to the Issues Letter, 19 February 2024, paragraph 4.68.1.

<sup>78</sup> This is discussed in detail in the section on Horizontal unilateral effects in the supply of packed sugar to UK B2C customers.

<sup>79</sup> [CMA129](#), paragraph 9.1.

constraints on the merger parties' behaviour, captures the competitive dynamics more fully than formal market definition.<sup>80</sup>

### 5.2.1 Product market

50. TLS and the Target overlap in the supply of various packed sugar types to B2C customers, which the CMA takes as its starting point for determining the relevant product market.
51. The boundaries of the relevant product market are generally determined by reference to demand-side substitution. However, the CMA may widen the scope of the market where there is evidence that firms routinely use their production assets to supply a range of products and where the conditions of competition for those products are similar.<sup>81</sup>

#### 5.2.1.1.1 B2C and B2B customers

52. The CMA considered whether to expand the relevant product market to include the supply of packed sugar to B2B customers. The evidence indicates that the packaging, distribution and customer profiles between B2C and B2B differ significantly.<sup>82</sup> This is reflected in [redacted]. The Parties' internal documents also reflect a clear distinction between B2C and B2B.<sup>83</sup> Moreover, differences in the size of packaging and distribution appear sufficient to enable different prices to be charged to the two customer groups (ie limited arbitrage).<sup>84</sup>

#### 5.2.1.1.2 Types of sugar

53. The Parties submitted that the narrowest (and primary) plausible product market was the packing and supply of branded white granulated sugar to grocery customers in the UK.<sup>85</sup>
54. The CMA has considered whether different types of sugar constitute separate product markets within the B2C category. On the demand side, grocery retailers told the CMA that they stocked a wide range of sugar types to cater for different

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<sup>80</sup> CMA129, paragraph 9.2.

<sup>81</sup> CMA129, paragraph 9.8.

<sup>82</sup> FMN, paragraph 13.3. Sugar sold to B2C customers is packed in sizes from 0.5kg to 25kg whereas sugar is supplied to B2B customers in bulk. Within B2C, the large majority of volumes (ie more than 90%) (see Table 1) are retailed in smaller bags below 25kg. Particularly grocery retailers require these smaller pack sizes. Larger bags, in turn, tend to be procured by grocery wholesalers and some foodservice customers depending on the nature of their business. Note of a call with a third-party, November 2023, paragraph 5; Response to the CMA questionnaire from a number of third-parties, January 2024, question 3.

<sup>83</sup> See for instance Tereos Internal Document, Annex 163 to the FMN, 'Draft TUKI Strategic Review Presentation', October 2021; TLS Internal Document, Annex 034 to the FMN, 'ASRGE Update – Q4'21 YTD', October 2021.

<sup>84</sup> TUKI's internal documents discuss that [redacted] (eg Tereos Internal Document, Annex 163 to the FMN, 'Draft TUKI Strategic Review Presentation', October 2021, pages 37, 40 and 46; Tereos Internal Document, Annex 2223 to s109N1, 'Point on Negotiation TSUKI', August 2021, page 2).

<sup>85</sup> FMN, paragraph 13.11.

customer needs. While granulated white sugar was considered to be an ‘everyday’ product, retailers will also stock speciality sugars such as demerara, golden, light and dark brown sugars that may be used for home baking.<sup>86</sup>

55. On the supply side, it appears there is a degree of substitutability between the packing of some sugar types but not for others. In particular, the packing lines for white icing sugars were not typically adapted to pack other granulated sugars; this was due to different bulk density which required different volumetric fillers for consistent pack weights.<sup>87</sup>
56. Evidence on supply-side substitution between white and brown sugar types was also mixed. Two suppliers told the CMA that packing lines were generally capable of switching between white and brown sugars, but such a change would require a ‘line set-up’ or a ‘purge of the filling system’, which would include full clean downs to ensure product integrity.<sup>88</sup> Suppliers commented such changes may impact the efficiency of a site as pipework was set up to minimise handling of products.<sup>89</sup>
57. The evidence indicates that B2C customers take varying approaches on their supply, with some preferring to procure their entire sugar range from a single supplier, while others like to source from multiple suppliers (with such multi-sourcing occurring both across a range of sugar products and within single sugar types).<sup>90</sup> Moreover, while B2C customers tend to run one procurement process for the entire range of sugar types stocked, suppliers can choose to quote for a portion of the products or the entire range.<sup>91</sup>
58. Accordingly, the CMA has assessed the effect of the Merger on each sugar type in which TLS and the Target overlap. Given the Merger relates to the transfer of a production facility that is used to pack all sugar types and the procurement approaches adopted by B2C customers, the CMA has also considered the picture that emerges at an aggregate white/brown sugar level where relevant so as to consider the effect of the Merger not just on individual product markets in isolation but also, in the round.

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<sup>86</sup> Note of a call with a third-party, November 2023, paragraphs 6 – 8; Response to the CMA questionnaire from a third-party, January 2024, question 8.

<sup>87</sup> FMN, paragraph 13.2.4.

<sup>88</sup> Response to the CMA questionnaire from a third-party, January 2024, question 5; Submission to the CMA from a third-party, December 2023.

<sup>89</sup> Submission to the CMA from a third-party, December 2023.

<sup>90</sup> Note of a call with a third-party, November 2023, paragraph 11. For customer evidence for multi-sourcing: Response to the CMA questionnaire from a third-party, January 2024, question 11; Note of a call with a third-party, November 2023, paragraph 18. For customer evidence for single-sourcing: Response to the CMA questionnaire from a number of third-parties, January 2024, question 11; Note of a call with a third-party, November 2023, paragraph 18.

<sup>91</sup> Note of a call with a third-party, November 2023, paragraph 15.

#### 5.2.1.1.3 *Branded and private label*

59. The Parties submitted that branded and private label white granulated sugar could be considered together, as the conditions of competition did not differ materially between the two.<sup>92</sup> Similarly, third parties told the CMA that there were no major differences in the competitive conditions between private and branded label.<sup>93</sup>

#### 5.2.1.1.4 *Conclusion on relevant product market*

60. Based on the above evidence, the CMA has considered the impact of the Merger in the supply of packed sugar to B2C customers segmented by sugar type.

### 5.2.2 **Geographic market**

61. The Parties submitted that the relevant geographical market was at least an EU-wide market, including the UK. They submitted that sugar was imported into the UK from the EU and the beet sugar imports were tariff free.<sup>94</sup> In the Parties' view, there were no material obstacles to sourcing sugar produced outside the UK and cited Cosun Beet Company and Südzucker as examples of EU suppliers that have supplied sugar to the UK.<sup>95</sup> Moreover, the Parties noted that EU suppliers would enter if UK B2C prices 'rose substantially' or 'if price was sufficient'.<sup>96</sup> Consequently, EU suppliers exert pricing discipline and a substantial competitive constraint on UK B2C suppliers.

62. The Parties argued that packed sugar flowed freely around Europe today, facilitated by large retailers with pan-European presence and group-wide tenders. In support of this, the Parties provided several examples of sugar sold in continental Europe where the country of origin (ie location of the refinery) for a pack of 1kg white granulated differed from the point of sale (ie retailer's location).<sup>97</sup>

#### 5.2.2.1 *CMA assessment*

63. Supply-side substitution within the market definition framework requires evidence that firms routinely use existing production assets to supply a range of products between different geographic markets and have in practice shifted existing capacity between these different geographic markets.<sup>98</sup> For an EU-wide market, including the UK, the CMA would need to see evidence that EU suppliers have

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<sup>92</sup> FMN, paragraph 13.11 and footnote 121.

<sup>93</sup> Response to the CMA questionnaire from a third-party, January 2024, question 6.

<sup>94</sup> FMN, paragraph 13.12.1.

<sup>95</sup> FMN, paragraphs 13.12.3 and 15.42.

<sup>96</sup> TLS's response to the Issues Letter, 19 February 2024, paragraphs 4.8.5 and 4.9.2.

<sup>97</sup> TLS's response to the Issues Letter, 19 February 2024, Annex 06.

<sup>98</sup> [CMA129](#), paragraphs 9.8 and 9.14.

switched supply from other markets in Europe to the UK in response to relative price changes.

64. The evidence set out in paragraph 77(b) and the Annex on Historic shares of supply suggests that non-UK based suppliers have made only limited sales of packed sugar into the UK. Neither [X], are active in the supply of packed sugar in the UK.<sup>99</sup> TUKI's internal documents indicate that EU suppliers have exited the UK market and the number of suppliers has fallen from five to three.<sup>100</sup> The CMA also notes that the evidence on cross-border travel of packed sugar in Europe provided by the Parties does not support the Parties' claim that the UK market would operate in the same way as it does not take account of UK-specific barriers (eg travel via the Channel, no direct road connection and border control).<sup>101</sup>
65. Customers and suppliers also indicated that there are additional costs and logistical complications involved in transporting sugar across the English Channel. In their view, this reduces the ability of EU sugar producers to import packed sugar into the UK profitably. Some B2C customers told the CMA that they were unwilling to rely on foreign sugar suppliers as their main source of packed sugar, due to a lack of confidence in their ability to ensure regular and adequate supplies from continental Europe.<sup>102</sup> This concern was also confirmed by a European supplier.<sup>103</sup>

#### *5.2.2.1.1 Conclusion on the relevant geographic market*

66. Based on the above evidence, the CMA has considered the impact of the Merger in the UK.

### **5.2.3 CMA's conclusion on market definition**

67. For the reasons set out above, the CMA assessed the impact of this Merger on the supply of:
- (a) Packed granulated white sugar to B2C customers in the UK;
  - (b) Packed white caster sugar to B2C customers in the UK;
  - (c) Packed white vending sugar to B2C customers in the UK;
  - (d) Packed standard icing sugar to B2C customers in the UK;

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<sup>99</sup> Note of a call with a third-party, November 2023, paragraph 6; Note of a call with a third-party, November 2023, paragraph 1.

<sup>100</sup> Tereos Internal Document, Annex 028 to the FMN, 'Information Memorandum', January 2023, page 8; Tereos Internal Document, Annex 4817 to s109N1, 'Tereos Europe Markets Global overview', July 2023, page 51.

<sup>101</sup> The examples in TLS's response to the Issues Letter, 19 February 2024, Annex 06, related to packed sugar flows from Germany to Spain and Greece, Portugal to Spain, France to Greece, Portugal to Poland, Spain, Germany and Malta, as well as Poland to Romania.

<sup>102</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 10.

<sup>103</sup> Note of a call with a third-party, November 2023, paragraph 6.

- (e) Packed fondant icing sugar to B2C customers in the UK;
- (f) Packed royal icing sugar to B2C customers in the UK;
- (g) Packed jam sugar to B2C customers in the UK;
- (h) Packed preserving sugar to B2C customers in the UK;
- (i) Packed white sugar blends to B2C customers in the UK;
- (j) Packed white sugar cubes to B2C customers in the UK;
- (k) Packed golden granulated sugar to B2C customers in the UK;
- (l) Packed golden caster sugar to B2C customers in the UK;
- (m) Packed demerara sugar to B2C customers in the UK;
- (n) Packed light soft brown sugar to B2C customers in the UK;
- (o) Packed dark soft brown sugar to B2C customers in the UK;
- (p) Packed light muscovado sugar to B2C customers in the UK; and
- (q) Packed dark muscovado sugar to B2C customers in the UK.

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

68. In markets involving undifferentiated products, horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>104</sup> Horizontal unilateral effects are more likely when the parties to a merger are close competitors.
69. The CMA assessed whether it is or may be the case that the Merger gives rise to a realistic prospect of an SLC in relation to horizontal unilateral effects in the supply of packed sugar to B2C customers in the UK.<sup>105</sup> That is, the CMA is assessed one theory of harm, covering the 17 different sugar types listed at paragraph 67 above.

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<sup>104</sup> [CMA129](#), paragraphs 4.35-4.36.

<sup>105</sup> At an early stage in its investigation, the CMA considered whether the Merger may give rise to vertical foreclosure concerns in that the Merged Entity would be able to (1) leverage any upstream market power to foreclose downstream competitors through refusing to supply vital inputs and/or (2) leverage downstream market power to foreclose upstream competitors through refusing to pack products. The CMA deprioritised these theories of harm after finding no evidence to support them.

70. As explained in paragraphs 53 to 58 above, the CMA has distinguished between different sugar types in its market definition. There are nevertheless common elements between them that are relevant to its assessment. The CMA has not received any evidence suggesting that key parameters of competition vary between sugar types and the Parties' internal documents and the third-party feedback received to date usually did not make observations applicable specifically to a certain sugar type within B2C. Consequently, following a brief outline of the Parties' submissions, the CMA has structured its analysis below based on the following categories of evidence, and for each category explained where evidence is specific to a sugar type:

- (a) Shares of supply;
- (b) UK B2C customers' sources of supply;
- (c) Internal documents;
- (d) Third-party views on the Merger;
- (e) Capacity; and
- (f) Buyer power.

### 5.3.1 Parties' submissions

71. In addition to the arguments set out at paragraph 45 above, the Parties submitted that the Merger did not raise any substantive concerns for a number of reasons:<sup>106,107</sup>

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<sup>106</sup> The Parties also noted as a **fifth** reason that the Merger does not have any impact upstream as TUKI is not active in manufacturing and/or refining sugar (FMN, paragraph 15.20.1). The CMA has addressed this argument (ie the relevant overlap) above in the Background and nature of competition. The Parties also noted as a **sixth** reason that the Target is a weakened competitor and its ability to compete in the supply of packed sugar to B2C customers is constrained [§<] (FMN, paragraph 15.20.2). The CMA has addressed this argument above in the Counterfactual. The Parties also noted as a **seventh** reason that pricing of packed sugar supplied to UK B2C customers is a function of a range of market factors which are outside the Parties' control (FMN, paragraph 15.20.8). The CMA has addressed this argument above in the Background and nature of competition.

<sup>107</sup> The Parties submitted that even if the entire transaction value (ie £[§<]) were to be driven purely by the expectation that prices post-Merger would be increased above competitive levels, this price increase would be minimal (at most [0-5]%) and not anti-competitive on any reasonable assessment (Oxera Analysis, Annex 032 to the FMN, 'Project Tchaikovsky: what does the UK sugar price formation process and transaction value imply for post-Transaction prices', 15 December 2023). The Parties argued that the approach of using the transaction value to inform on potential competitive effects was not novel, citing cases such as *PayPal/iZettle* (2019) where the CMA had examined whether the consideration paid had taken account of a potential reduction in competition. The CMA notes that its merger assessments in such cases considered whether the excess consideration was an indicator of the acquiring firm's intention to implement price increases post-Merger in conjunction with a range of other evidence. It is not clear that these circumstances are applicable to the present case. The CMA does not consider that the Oxera analysis proves that the Merged Entity would be restricted from pricing above its modelled price increase, nor that this potential [0-5]% increase is inherently non-problematic.

- (a) The Parties are not close competitors; in particular, the overlap is largely confined to so-called Tier 2 retailers that require smaller volumes than Tier 1 retailers such as the large supermarkets who require greater volumes.<sup>108</sup>
- (b) BS-SS is the market leader in the supply of packed sugar to UK B2C customers, and the Merged Entity will be constrained by them as well as a number of other EU and UK-based suppliers.<sup>109</sup>
- (c) Excess packing capacity in the UK will ensure intense price competition post-Merger.<sup>110</sup>
- (d) Barriers to expansion in the supply of packed sugar to UK B2C customers are low and customers will continue to exert countervailing buyer power, *inter alia*, due to low brand awareness and the option to import packed sugar (addressed in Section 6 below).<sup>111</sup>

72. The CMA notes that the Parties made these arguments for granulated white sugar on the basis that they considered overlaps in other sugar types to be minimal.<sup>112</sup> The CMA's assessment, however, covers all sugar types outlined in paragraph 67 above and will address the Parties' points in detail in the relevant sections below.

### 5.3.2 Shares of supply

73. The Parties submitted that while there was a material overlap in packed white granulated sugar,<sup>113</sup> in all other sugar types the overlap was immaterial as: (i) the increment brought about by the Merger was [0-5]% or less;<sup>114</sup> or (ii) Parties' joint sales fell below £[<];<sup>115</sup> or (iii) the most recent overlap occurred prior to MY22.<sup>116</sup>

74. As set out in Sections 5.1 and 5.2.1.1.3, sugar is a homogenous product (within the same type of sugar) – with the implication that price is the most important parameter of competition whilst branding is not as important. In markets where the

<sup>108</sup> FMN, paragraph 15.20.3.

<sup>109</sup> FMN, paragraphs 15.20.3 and 15.20.4.

<sup>110</sup> FMN, paragraph 15.20.5.

<sup>111</sup> FMN, paragraphs 15.20.6 and 15.20.7.

<sup>112</sup> FMN, paragraph 12.7.

<sup>113</sup> TLS's response to the Issues Letter, 19 February 2024, paragraph 4.5.

<sup>114</sup> Sugar types with an increment lower than [0-5]%, according to the Parties: white caster, standard icing, jam, preserving, white sugar cubes, golden caster, demerara, light soft brown, dark soft brown, light muscovado, dark muscovado.

<sup>115</sup> These were for the sugar types of white vending, white sugar blends and golden granulated.

<sup>116</sup> The sugar types were for fondant icing, royal icing. The CMA clarifies that all overlaps are defined as occurring in the same marketing year. In fact, for 16 out of the 17 sugar types considered in the competitive assessment, there was an overlap in MY22 for bags below 25kg (ie supply exceeded 0.0kt pa). The exception is fondant icing sugar, for which the last overlap occurred in MY20. Royal icing sugar was incorrectly identified by the Parties in TLS's response to the Issues Letter, 19 February 2024, Figure 1, as having no overlap in MY22. In particular, based on Parties' submission to the CMA, Annex 228 to the FMN, 'Volumes and revenues - UK grocery and foodservice'. December 2023, TUKI supplied [<] royal icing sugar in MY22 to UK grocery and foodservice. See also note 4 to Table 1.

degree of differentiation between firms is limited, concentration measures such as shares of supply are good indicators of a firm's market power.<sup>117</sup>

75. The CMA has based its share of supply estimates on volume and considers that volume shares are an appropriate metric in this present case due to the relatively undifferentiated nature of packed sugar. Table 1 below sets out the CMA's share of supply estimates of packed sugar to B2C customers, split by sugar type, for MY22 (ie 1 October 2022 to 30 September 2023). The Annex on Historic shares of supply for each marketing year between 2017 to 2022.

**Table 1: Shares of supply of packed sugar in MY22 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[40-50]%	[10-20]%	[50-60]%	[40-50]%	[0-5]%
White caster	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
White vending	[40-50]%	[10-20]%	[60-70]%	[20-30]%	[10-20]%
Standard icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Fondant icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Royal icing	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Jam	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Preserving	[80-90]%	[0-5]%	[80-90]%	[10-20]%	[0-5]%
White sugar blends	[0-5]%	[10-20]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>
Golden granulated	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Golden caster	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Demerara	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
Light soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Dark soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Light muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Dark muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
<b>Combined brown</b>	<b>[40-50]%</b>	<b>[0-5]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[0-5]%</b>

**Source:** CMA analysis of the Parties' volumes collected as part of Annex 228 to the FMN and the response to the CMA questionnaire from a number of third-parties, January 2024, question 3.

**Notes:**

1. For the share of supply of BS-SS and 'Other', the CMA has relied on data provided by third parties. The CMA contacted all suppliers that the Parties considered as competitors in the UK B2C channel (FMN, paragraph 15.39). The majority of them submitted that they made no or minimal sales to UK B2C customers in MY20 to MY22.
2. The large majority of B2C volumes (ie more than 90%) are retailed in smaller bags below 25kg. However, the CMA has also included for comparison in **Table 8** (Annex on Shares of supply including 25kg bags) the shares of supply that include packs of 25kg, which are mainly supplied to grocery wholesalers and some foodservice customers.
3. The CMA has excluded sales to resellers and distributors as third-party feedback suggested that these customers resell the packed sugar to smaller, independent B2B customers (ie they are not active in the B2C channel).<sup>118</sup>
4. The CMA's analysis includes all sugar types where the Parties have overlapped in at least one of the last six marketing years. The CMA considers that given the high level of concentration in these markets, it is important to take a longer term view to assess the Parties' competitive positions, rather than focusing solely on MY22 (see Historic shares of supply). In any event, there is only one segment where the Target made no or limited sales in MY22. The CMA nevertheless considered this to be an overlap on the basis that the Target retains the capability to compete for this segment.
5. 'Combined white' includes: white granulated; white caster; white vending; standard icing; fondant icing; royal icing; jam; preserving; white sugar blends; white sugar cubes. 'Combined brown' includes: golden granulated; golden caster; demerara; light and dark soft brown; light and dark muscovado.

76. Table 1 shows that overall, the competitive landscape in the supply of packed sugar to B2C customers in the UK is highly concentrated with three suppliers –

<sup>117</sup> [CMA129](#), paragraph 4.14.

<sup>118</sup> Note of a call with a third-party, November 2023, paragraph 3.

TLS, the Target and BS-SS – consistently supplying 90-100% of all volumes of white and brown packed sugar to B2C customers in the UK in MY22. BS-SS and TLS are the two leading suppliers, and the Target is the third largest supplier. The only category in which there is any material level of supply from sources other than these three firms is white vending sugar, where ‘other’ relates to the share of supply of a single supplier that supplies predominantly to the foodservice sector, suggesting that its constraint is limited to this customer group. The Annex on Historic shares of supply indicates that the market structure has remained broadly the same over the six-year period, with no significant entry or exit. The Parties’ combined share of supply by volume in ‘combined white’ was [50–60]% in MY22, with an increment of [10–20]%. For ‘combined brown’, the Parties’ combined share of supply was [40–50]%, with an increment of [0–5]%.

77. The analysis also shows that, while there is some variation in the distribution of shares between the three suppliers across sugar products, each individual sugar market is already highly concentrated, and the Merger will lead to the loss of an important competitive constraint in the Target.

(a) In white granulated sugar, which is by far the most popular product accounting for more than 70% of total volume of white sugar sold,<sup>119</sup> the Merger will create a relatively symmetric duopoly between the Parties at [50-60]% and BS-SS at [40-50]%.

(b) While the increments are relatively low in other sugar products, given the highly concentrated structure of these markets, the CMA considers that the removal of the Target as a smaller competitor is still a significant concern. In the last six years, the Target was the only supplier making any sizeable (and in many instances, any)<sup>120</sup> sales other than TLS and BS-SS. The important constraint posed by the Target (notwithstanding its smaller share) is also evidenced by the Parties’ internal documents (as discussed further at the Internal documents section).

(c) BS-SS has been a leading supplier alongside TLS across all sugar products. No other suppliers have had any material share in the six-year period between 2017 and 2022, indicating that they are unlikely to be a strong competitive constraint currently and in future.

78. The CMA therefore considers that the Merger will lead to one of two leading suppliers in a three-player market acquiring the third smaller, important supplier. In this context, the CMA does not consider that the continued presence of BS-SS would provide a sufficient competitive constraint on the Merged Entity post-Merger. The CMA notes that an SLC can arise in a variety of circumstances,

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<sup>119</sup> Based on Table 1 (ie volumes supplied to UK B2C customers in pack sizes below 25kg in MY22).

<sup>120</sup> No other suppliers made [≥<] sales (according to the CMA’s estimates, as outlined below Table 1) in MY22 in the following segments: [≥<].

including where a large supplier seeks to remove one of the few remaining competing suppliers from the market.<sup>121</sup> Accordingly, the CMA considers that its share of supply analysis raises *prima facie* competition concerns as the Merger will lead to the loss of an important competitive constraint in each of the individual markets under investigation.

### 5.3.3 UK B2C customers' sources of supply

#### 5.3.3.1 Parties' views

79. The Parties argued that TLS and the Target supplied predominantly different types of B2C customers, resulting in a limited customer overlap. TLS focused on 'Tier 1' retailers that typically required larger volumes of sugar and were seen as relatively important in the UK grocery retail market (ie Tesco, Sainsbury's, ASDA, ALDI, Morrisons, LIDL, Co-op, Waitrose, M&S). The Target, in turn, supplied mostly 'Tier 2' retailers that had requirements for smaller volumes.<sup>122</sup> The Parties emphasised that TUKI's focus is on Tier 2 retailers and [X].<sup>123</sup>

#### 5.3.3.2 Parties' procurement analyses

80. TLS, through Oxera, carried out a form of bidding analysis for the period 2018 to 2023 (ie up to, and including MY22), based on the Parties' own data of both formal and informal procurements that they had participated in. TLS's analysis included information on, among other things, the identity of the incumbent supplier(s), winning bidder(s) and other participating bidders.<sup>124</sup> The analysis showed that:

- (a) the Parties overlapped in [20-30]% of the procurement processes, which they considered moderate; and
- (b) there were [X] levels of customer switching between the Parties.<sup>125</sup>

81. In the course of the CMA's investigation, the Parties provided an additional procurement participation analysis for TUKI that included the most recent marketing year (ie MY23) vis-à-vis its participation in MY22. This analysis showed that TUKI lost more B2C customers than it gained between MY22 and MY23, and that its contracted volumes fell by around 18% (ie by around 6.7kt).<sup>126</sup>

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<sup>121</sup> [CMA129](#), paragraphs 2.1 – 2.10.

<sup>122</sup> FMN, paragraph 15.31 and footnote 122.

<sup>123</sup> TLS's response to the Issues Letter, 19 February 2024, paragraphs 4.65 – 4.67.

<sup>124</sup> Information is also provided on procurement year, customer, product (eg full product range) and total volume procured, award date and contract length (Oxera Analysis, Annex 242 to the FMN, '23.09.22 (Oxera) Overlap and switching analysis - data (CONFIDENTIAL)', September 2022).

<sup>125</sup> FMN, paragraph 15.33.

<sup>126</sup> TLS's response to the Issues Letter, 19 February 2024, paragraph 4.67.

### 5.3.3.3 CMA's assessment

82. The CMA collected information from B2C customers, including most of the major grocery retailers (that is, high-volume customers, including all customers listed as Tier 1 retailers by the Parties),<sup>127</sup> on their current sources of supply and their views on which suppliers they considered to be credible.
83. The evidence gathered from retailers indicated that all retailers face limited options for procurement. The majority of B2C customers, including most of the major UK grocery retailers who tend to procure a range of sugar products, considered both Parties and BS-SS to be the only credible suppliers. Their feedback did not point to an obvious customer segmentation between so-called 'Tier 1' and 'Tier 2' retailers and the evidence indicates in any event that each of TLS and the Target are bidding for both Tier 1 and Tier 2 customers.<sup>128</sup> Only two of the major grocery retailers specifically did not identify TUKI as a credible supplier.<sup>129</sup> Some B2C customers said that they had also reached out to EU suppliers or co-packers in their last procurement round.<sup>130</sup> However, a few of them also noted that EU suppliers were ultimately not commercially viable or lacked competitiveness due to the significant transport costs from the EU to the UK,<sup>131</sup> or that co-packers had not been able to supply the required volumes.<sup>132</sup>
84. Consistent with the Parties' switching analysis, the CMA found that there were relatively low levels of switching in this market.<sup>133</sup> The fact that customers do not frequently switch from one of the Target/TLS to the other, or to BS-SS, however, appears to be a wider market feature of limited competition generally given the historically high levels of concentration in these markets rather than an indicator of a lack of competitive interaction between TLS and the Target. In any event, the evidence set out above shows that the majority of B2C customers consider both TLS and the Target to be credible suppliers and contact both when they start their procurements.
85. Based on the evidence outlined above, the CMA considers that TLS and the Target are two of only three (the other being BS-SS) credible supply options for packed sugar products for B2C customers.

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<sup>127</sup> Save for M&S, for whom neither Party provided contact details.

<sup>128</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 5.

<sup>129</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 5.

<sup>130</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 11.

<sup>131</sup> Response to the CMA questionnaire from a third-party, January 2024, question 11; Note of a call with a third-party, November 2023, paragraph 14.

<sup>132</sup> Note of a call with a third-party, November 2023, paragraph 11.

<sup>133</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 7.

#### 5.3.4 Internal documents

86. There is clear evidence that TLS views the Target as an important constraint and that the Merger will lead to the loss of this important competitive constraint across all of the relevant B2C packed sugar markets under investigation.<sup>134</sup> As noted above at paragraph 77(b), TLS's internal documents indicate that TLS views the Target as an important competitor. Several TLS documents which were prepared in the ordinary course of business refer solely to the Target and BS-SS in discussions of competitors.
- (a) In a slide deck from an ASR Group meeting in January 2021, which describes TLS's plans for the grocery and foodservice sector in 2022, TLS identifies Tereos/the Target and BS-SS as being its key competitors in the UK, stating that '[X]'.<sup>135</sup> As noted previously at paragraph 3, this document also references TLS's [X]. The fact that TLS considered it would be [X] strongly suggests that TLS regarded the Target as an important competitor.
  - (b) In a slide deck for an ASR Group board presentation in October 2021, TLS discusses competition from Tereos and BS-SS, with no mentions of other competitors.<sup>136</sup>
  - (c) The TLS sales team maintains an [X]. TUKI and BS-SS are the competitors that form the vast majority of the monitoring undertaken by TLS, and the only suppliers estimated to have any material volumes, with some other competitors such as [X] having a single note of supplying sugar into the UK B2C market for packed sugar.<sup>137</sup>
87. Similarly, Tereos' internal documents attribute significant importance to the constraint posed by TLS and BS-SS as competitors but provide very limited to no evidence of their considering others as a constraint. For example:
- (a) In the November 2022 Board Minutes, Tereos refers to TLS and BS-SS as [X]. As noted previously at paragraph 3, these minutes also refer to [X].<sup>138</sup> Similarly, in a section of the November 2022 Board Presentation giving [X], TUKI states that [X].<sup>139</sup>

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<sup>134</sup> This is discussed in detail in the section on Horizontal unilateral effects in the supply of packed sugar to UK B2C customers.

<sup>135</sup> TLS Internal Document, Annex 097 to the FMN, 'Grocery & Foodservice FY22 Plans [X] 29th Jan 2021', 29 January 2021, slides 2, 3, 44 and 45.

<sup>136</sup> TLS Internal Document, Annex 034 to the FMN, 'ASRGE Update – Q4'21 YTD', 20 October 2021, slides 17 and 21.

<sup>137</sup> TLS Internal Document, Annex 100 to the FMN, 'Where is the Business', September 2023.

<sup>138</sup> Tereos Internal Document, Annex 162 to the FMN, 'Extract from the Minutes of the Directors' Information Meeting', November 2022, page 3.

<sup>139</sup> Tereos Internal Document, Annex 161 to the FMN, [X], November 2022, slide 16.

- (b) The January 2023 Information Memorandum prepared for the sale of the Target explicitly characterises the overall B2C market in the UK as [X] and notes that [X].<sup>140</sup>

88. The CMA therefore considers that the significant degree of concentration across the UK B2C packed sugar markets evidenced by the shares of supply is also strongly reflected in the Parties' internal documents, which consistently refer only to each other and BS-SS when discussing the competitive landscape.

### 5.3.5 Third-party views on the Merger

89. The CMA asked third parties (ie B2C customers, UK and EU-based suppliers, and co-packers) for their views on the Merger.

90. Several B2C customers expressed negative views on the Merger.<sup>141</sup> All of them explained that this is due to the Merger reducing the number of supply options, whilst a couple of respondents were specifically concerned specifically about price effects.<sup>142</sup> Some also noted that the Merger would create a 'duopoly' in the supply of packed sugar in the UK.<sup>143</sup> The majority of customers do not consider that EU-based suppliers as credible options.<sup>144</sup>

91. While most B2C customers categorised their view on the Merger as being 'neutral', in their accompanying explanations some of these same customers noted that the Merger would result in fewer suppliers of packed sugar in the UK in an already highly concentrated market.<sup>145</sup> The CMA also heard concerns around whether any potential efficiencies would be passed on to B2C customers through lower prices.<sup>146</sup>

92. A B2C customer that categorised their view of the Merger as 'positive' stated the Merger could lead to economies of scale that could be passed on, but was unsure if this would be the case post-Merger, and still expressed that the Merger would lead to a reduced number of credible competitors.<sup>147</sup> Another customer suggested that the Merger could lead to an alternative negotiation option as against BS-SS, but still suggested the market was highly concentrated.<sup>148</sup>

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<sup>140</sup> Tereos Internal Document, Annex 028 to the FMN, 'Information Memorandum', January 2023, page 8. See also Tereos Internal Document, Annex 204 to the FMN, '2020/21 annual results TSUKI - NAPIER - Tereos Sugar UK & Ireland', April 2021, slide 10; Tereos Internal Document, Annex 124 to the FMN, 'Whitworths Sugar overview of the sugar market', July 2018, slides 6 – 9.

<sup>141</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>142</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>143</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>144</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 10.

<sup>145</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>146</sup> Note of a call with a third-party, November 2023, paragraph 26; Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>147</sup> Response to the CMA questionnaire from a third-party, January 2024, question 16.

<sup>148</sup> Response to the CMA questionnaire from a third-party, January 2024, question 16.

93. Views on the Merger from UK and EU-based suppliers and co-packers were generally negative. One suggested that the Merger would lead to a reduction in competition in the supply of packed sugar to B2C customers.<sup>149</sup> Other suppliers suggested that the Merger would not impact competition due to the possibility of imports from outside the UK,<sup>150</sup> but most also mentioned that European suppliers would face higher costs bringing packed sugar into the UK.<sup>151</sup> Further, as set out below in Entry and expansion, [§<].

### 5.3.6 Capacity

94. The Parties submitted that post-Merger, the two main suppliers of packed sugar to B2C customers (ie BS-SS and the Merged Entity) would have substantial excess capacity and that this would result in intense price competition.<sup>152</sup> The implication of the Parties' argument is that BS-SS would respond to any price increase by the Merged Entity by expanding its own production and lowering the price.

95. The CMA considers that the presence of excess capacity does not necessarily result in intense price competition and that the assessment of the effects of a merger needs to consider how the merger parties' incentives may change post-merger. Specifically, in undifferentiated product markets such as this, a merger may result in higher prices, as it may become more attractive for the merger firms to restrict volumes. By doing this, they would benefit not only from the increased profits on their own volumes, but also the increased profits on the volumes of the other merger firm.<sup>153</sup>

96. In the present case, given this market is highly concentrated with only two firms competing post-Merger, the CMA considers that BS-SS as the only rival may have limited incentive (and a lower incentive than it had pre-Merger) to engage in head-to-head price competition, as it would also benefit from higher market prices.

97. In any event, even if BS-SS was to expand production in response to the Merged Entity, it would not have sufficient capacity to supply all demand. If BS-SS operated at full capacity, based on volume estimates provided by the Parties, there would be [§<], or around [§<]% of total demand, that would be reliant solely on the Merged Entity.<sup>154</sup> As such, the Merged Entity would have substantial market power over this residual demand, since BS-SS would not be able to compete for

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<sup>149</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>150</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>151</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, questions 7 and 8.

<sup>152</sup> FMN, paragraph 15.20.5.

<sup>153</sup> [CMA129](#), paragraphs 4.36 – 4.38.

<sup>154</sup> [§<] is the difference between the estimated capacity of [§<] for BS-SS and a total demand of [§<] for refined sugar products by grocery customers. Moreover, [§<]. Figures are taken from Parties' submission to the CMA, Annex 227 to the FMN, 'RFI1 Q3: Shares of Supply Table', November 2023.

these sales given its capacity constraints. Consequently, the Merged Entity and BS-SS would have limited incentives to compete strongly on price post-Merger.

98. Further, the evidence shows that [X]. Given this, in the pre-Merger scenario, the Target would be, in principle, better placed to compete by lowering prices given it has the highest level of excess capacity. In this respect, the Merger would result in the loss of an important competitive constraint.
99. For the reasons set out above, the CMA considers that the Merger may result in higher prices rather than the intense price competition envisaged by the Parties.

### **5.3.7 Buyer power**

100. The Parties submitted that grocery retailers exerted high countervailing buyer power because they were sophisticated purchasers that had the ability to generate competitive tension through multiple rounds of bidding or negotiations in annual procurement processes, over-contracting volumes, and the credible threat of switching all volumes to a competitor or EU supplier.<sup>155,156</sup>
101. The CMA considers that the forms of buyer power that do not result in new entry, including all of those cited by the Parties above, are unlikely to prevent an SLC that would otherwise arise from the elimination of competition between TLS and the Target. This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced. In that sense, market power and buyer power are two sides of the same coin, and an SLC can be interpreted as a substantial lessening of customers' buyer power.<sup>157</sup>
102. In the present case, as noted above in Shares of supply and UK B2C customers' sources of supply, the large majority of the B2C customers indicated that they there were limited to three credible suppliers. Post-Merger, these customers would only have the option of two credible suppliers (ie Merged Entity, BS-SS). This reduction in options and the relative increase in the market power of suppliers' post-Merger is also likely to reflect a reduction in B2C customers' buyer power.

### **5.3.8 Conclusion on horizontal unilateral effects**

103. The Parties are the second and third largest suppliers by volume of packed sugar sold to B2C customers in the UK. The only other supplier is BS-SS, which together with the Parties account for [90-100]% shares of supply. For white granulated

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<sup>155</sup> FMN, paragraphs 15.53 and 23.3.

<sup>156</sup> In relation to grocery retailers specifically, the Parties also noted that the pricing of packed sugar is constrained by intense price competition between retailers downstream (TLS's response to the Issues Letter, 19 February 2024, paragraphs 4.48 – 4.50). The CMA notes that the intensity of competition at the retail market level is not related to a B2C customer's buyer power and, thus, not likely to be relevant for the CMA's assessment of Merger effects.

<sup>157</sup> [CMA129](#), paragraph 4.20.

sugar, which is by far the most popular sugar type, the Parties' combined share of supply was [50-60]%, with an increment of [10-20]% in MY22. The combined shares are similar when considering the supply of white sugar as a whole, and of brown sugar as a whole (and of both together), although the increment is smaller in brown sugar. The Parties had a combined share of supply of [50-60]% in white sugar and of [40-50]% in brown sugar in MY22 (Table 1). The CMA considers that these shares are high in a highly concentrated B2C packed sugar industry.

104. The market structure in B2C packed sugar types has been broadly unchanged over the six-year period between MY17 and MY22. BS-SS is the only other supplier that would be able to exercise a competitive constraint on the Merged Entity and the CMA does not consider that this constraint would be sufficient to offset the loss of competition between the Parties.
105. The majority of UK B2C customers told the CMA that the Parties and BS-SS were the only credible suppliers of packed sugar in the UK. The Parties' internal documents also indicate that the Parties view each other as one of only two (with BS-SS) competitors. The evidence on capacity and buyer power does not counter the CMA's competition concerns. In fact, the evidence on capacity indicates that the Merged Entity may have the incentives to reduce supply and increase prices post-Merger.
106. For the reasons set out above, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in the supply of:
  - (a) Packed granulated white sugar to B2C customers in the UK;
  - (b) Packed white caster sugar to B2C customers in the UK;
  - (c) Packed white vending sugar to B2C customers in the UK;
  - (d) Packed standard icing sugar to B2C customers in the UK;
  - (e) Packed fondant icing sugar to B2C customers in the UK;
  - (f) Packed royal icing sugar to B2C customers in the UK;
  - (g) Packed jam sugar to B2C customers in the UK;
  - (h) Packed preserving sugar to B2C customers in the UK;
  - (i) Packed white sugar blends to B2C customers in the UK;
  - (j) Packed white sugar cubes to B2C customers in the UK;
  - (k) Packed golden granulated sugar to B2C customers in the UK;
  - (l) Packed golden caster sugar to B2C customers in the UK;

- (m) Packed demerara sugar to B2C customers in the UK;
- (n) Packed light soft brown sugar to B2C customers in the UK;
- (o) Packed dark soft brown sugar to B2C customers in the UK;
- (p) Packed light muscovado sugar to B2C customers in the UK; and
- (q) Packed dark muscovado sugar to B2C customers in the UK.

## 6. ENTRY AND EXPANSION

107. 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. The CMA will consider entry and/or expansion plans of rivals who do so in direct response to the merger as a countervailing measure that could prevent an SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>158</sup>

### 6.1 Parties' submissions

108. The Parties submitted that the barriers to entry and expansion were low as sugar is easy to pack being a dry and free flowing product.<sup>159</sup> If a company already packs a similar product, the costs to adapting the existing facilities would be relatively minor.<sup>160</sup> The Parties further submitted that this could be achieved in [redacted]<sup>161</sup> and would cost no more than [redacted].<sup>162</sup>

109. The Parties further submitted that retailers such as Morrisons that already have vertically integrated supply chains could sponsor entry.<sup>163</sup> In addition, retailers who already have dry, ambient products packed for them as private label products could enter into commercial agreements with existing co-packers.<sup>164</sup>

110. The Parties put forward [redacted] as competitors in adjacent markets that could easily expand their operations to compete with the Parties.<sup>165</sup> The Parties submitted that as the Merger relates to only [redacted] of packed sugar (and equates to two packing lines of production) this would be easy for an entrant to replace this potential loss of competition.

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<sup>158</sup> [CMA129](#), paragraph 8.31.

<sup>159</sup> FMN, paragraph 21.2.

<sup>160</sup> FMN, paragraph 21.3.

<sup>161</sup> FMN, paragraph 21.4.

<sup>162</sup> FMN, paragraph 21.3.3.

<sup>163</sup> FMN, paragraph 22.2.

<sup>164</sup> FMN, paragraph 22.2. The CMA will typically consider that entry or expansion is timely if it will be effective within two years of an SLC arising ([CMA129](#), paragraph 8.33) and has seen no reason to depart from this in its investigation.

<sup>165</sup> FMN, paragraph 21.7.

## 6.2 CMA's assessment

111. The CMA has sought evidence from [X]. None of these suppliers intend to enter or re-enter this market.<sup>166</sup>
112. Similarly, no [X] told the CMA they intend to enter into the supply of packed sugar [X]. [X] mentioned the need to have a [X].<sup>167</sup>
113. The Parties' submission that the Merger relates to only [X] and therefore does not substantially affect the market has already been assessed at paragraphs 77 and 57. The CMA considers that the ability to supply a range of sugars is important to B2C customers, and the Merger will lead to a duopoly and the loss of an important competitive constraint in TUKI.
114. The CMA did not receive evidence to indicate that customers would sponsor entry or expansion of a supplier into packed sugar.<sup>168</sup> Only one customer indicated that they may consider this in the future if it was needed to offset the reduction in UK suppliers.<sup>169</sup>
115. For the reasons above, the CMA considers that entry or expansion would not be likely, sufficient and timely such that this could prevent a realistic prospect of an SLC as a result of the Merger. In any event, given the high level of concentration the CMA has identified in its competitive assessment above, any entry and expansion would need to be on a significant scale to mitigate the impact of the Merger.

## 7. EFFICIENCIES

116. The CMA's framework for assessing merger efficiencies is whether they enhance rivalry in the supply of those products where an SLC may otherwise arise, are timely, likely and sufficient, are merger-specific, and will benefit customers in the UK. The greater the expected adverse effect of a merger, the greater the expected efficiencies must be. The CMA will consider whether, even if the Merger does give rise to efficiencies, the Merged Entity would have the incentive to allow customers in the UK to benefit from the efficiencies. At phase 1, the evidence must be sufficient to satisfy the CMA within the time available in an initial investigation that efficiencies would prevent the realistic prospect of an SLC.<sup>170</sup>
117. TLS submitted that the Merger would give rise to efficiency savings of around EUR[X], leading to incremental sales volumes of around [X] per year.<sup>171</sup> The

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<sup>166</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 16.

<sup>167</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 13.

<sup>168</sup> Response to the CMA questionnaire from a number of third-parties, January 2024, question 15.

<sup>169</sup> Response to the CMA questionnaire from a third-party, January 2024, question 15.

<sup>170</sup> [CMA129](#), paragraphs 8.8 – 8.20.

<sup>171</sup> FMN, paragraphs 2.10 – 2.11.

CMA considers that the Parties have not provided the CMA with sufficient verifiable evidence that the Merger will lead to efficiencies that will be timely, likely and sufficient to prevent an SLC from arising. In relation to the claimed cost savings, the CMA has not received verifiable supporting evidence of these savings or how they would be passed on to customers. The CMA has also received no substantiated or verifiable evidence that customers can be expected to benefit from these claimed efficiencies. In relation to the Parties' supporting submissions that grocery customers are sophisticated purchasers whose decisions are driven by price,<sup>172</sup> the CMA refers back to its assessment at Background and nature of competition and Buyer power.

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

118. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the supply of:
- (a) Packed granulated white sugar to B2C customers in the UK;
  - (b) Packed white caster sugar to B2C customers in the UK;
  - (c) Packed white vending sugar to B2C customers in the UK;
  - (d) Packed standard icing sugar to B2C customers in the UK;
  - (e) Packed fondant icing sugar to B2C customers in the UK;
  - (f) Packed royal icing sugar to B2C customers in the UK;
  - (g) Packed jam sugar to B2C customers in the UK;
  - (h) Packed preserving sugar to B2C customers in the UK;
  - (i) Packed white sugar blends to B2C customers in the UK;
  - (j) Packed white sugar cubes to B2C customers in the UK;
  - (k) Packed golden granulated sugar to B2C customers in the UK;
  - (l) Packed golden caster sugar to B2C customers in the UK;
  - (m) Packed demerara sugar to B2C customers in the UK;

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<sup>172</sup> FMN, paragraph 2.11.

- (n) Packed light soft brown sugar to B2C customers in the UK;
- (o) Packed dark soft brown sugar to B2C customers in the UK;
- (p) Packed light muscovado sugar to B2C customers in the UK; and
- (q) Packed dark muscovado sugar to B2C customers in the UK..

# DECISION

119. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
120. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>173</sup> The Parties have until 15 March 2024<sup>174</sup> to offer an undertaking to the CMA.<sup>175</sup> The CMA will refer the Merger for a phase 2 investigation<sup>176</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>177</sup> by 22 March 2024 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Sorcha O’Carroll**  
**Senior Director, Mergers**  
**Competition and Markets Authority**  
**08 March 2024**

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<sup>173</sup> Section [33\(3\)\(b\)](#) of the Act.

<sup>174</sup> Section [73A\(1\)](#) of the Act.

<sup>175</sup> Section [73\(2\)](#) of the Act.

<sup>176</sup> Sections [33\(1\)](#) and [34ZA\(2\)](#) of the Act.

<sup>177</sup> Section [73A\(2\)](#) of the Act.

# ANNEXES

## 9. HISTORIC SHARES OF SUPPLY

121. This Annex sets out shares of supply for each marketing year between 2017 to 2022 for pack sizes below 25kg. The CMA has focused on smaller pack sizes as the large majority of volumes supplied to UK B2C customers are supplied in bags below 25kg. This Annex includes all sugar products where the Parties have overlapped in at least one of the six marketing years.
122. To estimate the share of supply of BS-SS and 'Other' in marketing years 2020 to 2022, the CMA contacted all suppliers that the Parties considered as competitors in the UK B2C channel.<sup>178</sup> For marketing years 2017 to 2019, the CMA relied on the Parties' estimates of competitors' volumes.
123. The methodology in this Annex is otherwise identical to the one used in producing Table 1.

**Table 2: Shares of supply in MY22 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[40-50]%	[10-20]%	[50-60]%	[40-50]%	[0-5]%
White caster	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
White vending	[40-50]%	[10-20]%	[60-70]%	[20-30]%	[10-20]%
Standard icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Fondant icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Royal icing	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Jam	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Preserving	[80-90]%	[0-5]%	[80-90]%	[10-20]%	[0-5]%
White sugar blends	[0-5]%	[10-20]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>
Golden granulated	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Golden caster	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Demerara	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
Light soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Dark soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Light muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Dark muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
<b>Combined brown</b>	<b>[40-50]%</b>	<b>[0-5]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[0-5]%</b>

Source: CMA analysis of the Parties' volumes collected as part of Annex 228 to the FMN and the response to the CMA questionnaire from a number of third-parties, January 2024, question 3.

**Table 3: Shares of supply in MY21 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[30-40]%	[5-10]%	[40-50]%	[50-60]%	[0-5]%
White caster	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
White vending	[50-60]%	[5-10]%	[60-70]%	[20-30]%	[10-20]%
Standard icing	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Fondant icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Royal icing	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Jam	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Preserving	[70-80]%	[0-5]%	[80-90]%	[10-20]%	[0-5]%
White sugar blends	[0-5]%	[10-20]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[5-10]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[0-5]%</b>

<sup>178</sup> FMN, paragraph 15.39.

Golden granulated	[5-10]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Golden caster	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Demerara	[50-60]%	[0-5]%	[50-60]%	[30-40]%	[0-5]%
Light soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Dark soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Light muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Dark muscovado	[5-10]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
<b>Combined brown</b>	<b>[40-50]%</b>	<b>[0-5]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[0-5]%</b>

Source: CMA analysis of the Parties' volumes collected as part of Annex 228 to the FMN and the response to the CMA questionnaire from a number of third-parties, January 2024, question 3.

**Table 4: Shares of supply in MY20 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[30-40]%	[10-20]%	[50-60]%	[40-50]%	[0-5]%
White caster	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
White vending	[60-70]%	[0-5]%	[60-70]%	[20-30]%	[5-10]%
Standard icing	[40-50]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Fondant icing	[70-80]%	[0-5]%	[70-80]%	[20-30]%	[0-5]%
Royal icing	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Jam	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Preserving	[70-80]%	[0-5]%	[70-80]%	[20-30]%	[0-5]%
White sugar blends	[0-5]%	[10-20]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[30-40]%	[0-5]%	[30-40]%	[60-70]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>
Golden granulated	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Golden caster	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Demerara	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Light soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Dark soft brown	[50-60]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
Light muscovado	[10-20]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Dark muscovado	[20-30]%	[0-5]%	[20-30]%	[70-80]%	[0-5]%
<b>Combined brown</b>	<b>[40-50]%</b>	<b>[0-5]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[0-5]%</b>

Source: CMA analysis of the Parties' volumes collected as part of Annex 228 to the FMN and the response to the CMA questionnaire from a number of third-parties, January 2024, question 3.

**Table 5: Shares of supply in MY19 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[30-40]%	[10-20]%	[40-50]%	[40-50]%	[0-5]%
White caster	[40-50]%	[5-10]%	[50-60]%	[40-50]%	[0-5]%
White vending	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Standard icing	[30-40]%	[5-10]%	[40-50]%	[50-60]	[0-5]%
Fondant icing	[20-30]%	[20-30]%	[50-60]%	[40-50]%	[0-5]%
Royal icing	[10-20]%	[40-50]%	[60-70]%	[30-40]%	[0-5]%
Jam	[40-50]%	[30-40]%	[70-80]%	[30-40]%	[0-5]%
Preserving	[50-60]%	[30-40]%	[90-100]%	[5-10]	[0-5]
White sugar blends	[0-5]	[10-20]	[10-20]	[90-101]	[0-5]
White sugar cubes	[30-40]	[10-20]	[40-50]	[40-50]	[0-5]
<b>Combined white</b>	<b>[30-40]%</b>	<b>[10-20]%</b>	<b>[40-50]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>
Golden granulated	[10-20]%	[0-5]	[10-20]	[80-90]	[0-5]
Golden caster	[10-20]	[0-5]	[10-20]	[80-90]	[0-5]
Demerara	[60-70]	[0-5]	[60-70]	[30-40]	[0-5]
Light soft brown	[60-70]	[0-5]	[60-70]	[30-40]	[0-5]
Dark soft brown	[70-80]	[0-5]	[70-80]	[20-30]	[0-5]
Light muscovado	[20-30]	[0-5]	[20-30]	[70-80]	[0-5]
Dark muscovado	[40-50]	[0-5]	[40-50]	[50-60]	[0-5]
<b>Combined brown</b>	<b>[50-60]%</b>	<b>[0-5]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>

Source: CMA analysis of the Parties' volumes and Parties' estimates of others' volumes collected as part of Annex 228 to the FMN.

**Table 6: Shares of supply in MY18 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[40-50]	[10-20]	[50-60]	[40-50]	[0-5]
White caster	[50-60]	[5-10]	[60-70]	[30-40]	[0-5]
White vending	[50-60]	[0-5]	[50-60]	[40-50]	[0-5]
Standard icing	[40-50]	[10-20]	[50-60]	[40-50]	[0-5]
Fondant icing	[30-40]	[20-30]	[60-70]	[30-40]	[0-5]
Royal icing	[30-40]	[30-40]	[60-70]	[30-40]	[0-5]
Jam	[30-40]	[20-30]	[50-60]	[40-50]	[0-5]

Preserving	[40-50]%	[30-40]%	[80-90]%	[10-20]%	[0-5]%
White sugar blends	[0-5]%	[10-20]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[50-60]%	[10-20]%	[60-70]%	[30-40]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>
Golden granulated	[30-40]%	[0-5]%	[30-40]%	[60-70]%	[0-5]%
Golden caster	[30-40]%	[0-5]%	[30-40]%	[60-70]%	[0-5]%
Demerara	[60-70]%	[0-5]%	[70-80]%	[30-40]%	[0-5]%
Light soft brown	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
Dark soft brown	[70-80]%	[0-5]%	[70-80]%	[20-30]%	[0-5]%
Light muscovado	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Dark muscovado	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
<b>Combined brown</b>	<b>[60-70]%</b>	<b>[0-5]%</b>	<b>[60-70]%</b>	<b>[30-40]%</b>	<b>[0-5]%</b>

Source: CMA analysis of the Parties' volumes and Parties' estimates of others' volumes collected as part of Annex 228 to the FMN.

**Table 7: Shares of supply in MY17 for pack sizes below 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated	[40-50]%	[10-20]%	[60-70]%	[30-40]%	[0-5]%
White caster	[50-60]%	[5-10]%	[50-60]%	[30-40]%	[0-5]%
White vending	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
Standard icing	[40-50]%	[5-10]%	[50-60]%	[40-50]%	[0-5]%
Fondant icing	[40-50]%	[20-30]%	[60-70]%	[30-40]%	[0-5]%
Royal icing	[30-40]%	[30-40]%	[70-80]%	[20-30]%	[0-5]%
Jam	[50-60]%	[20-30]%	[70-80]%	[20-30]%	[0-5]%
Preserving	[50-60]%	[30-40]%	[80-90]%	[10-20]%	[0-5]%
White sugar blends	[0-5]%	[5-10]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[60-70]%	[10-20]%	[70-80]%	[20-30]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[50-60]%</b>	<b>[30-40]%</b>	<b>[0-5]%</b>
Golden granulated	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
Golden caster	[30-40]%	[0-5]%	[40-50]%	[60-70]%	[0-5]%
Demerara	[70-80]%	[0-5]%	[70-80]%	[20-30]%	[0-5]%
Light soft brown	[70-80]%	[0-5]%	[70-80]%	[20-30]%	[0-5]%
Dark soft brown	[70-80]%	[0-5]%	[80-90]%	[10-20]%	[0-5]%
Light muscovado	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Dark muscovado	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
<b>Combined brown</b>	<b>[60-70]%</b>	<b>[0-5]%</b>	<b>[60-70]%</b>	<b>[30-40]%</b>	<b>[0-5]%</b>

Source: CMA analysis of the Parties' volumes and Parties' estimates of others' volumes collected as part of Annex 228 to the FMN.

## 10. SHARES OF SUPPLY INCLUDING 25KG BAGS

124. Table 8 below sets out the CMA's estimates for shares of supply for MY22 when including a pack size of 25kg supplied to UK B2C customers. As noted at footnote 82, the inclusion of 25kg bags primarily reflects sales made to grocery wholesalers and foodservice customers within the B2C channel. The methodology is otherwise identical to the one used in producing Table 1.<sup>179</sup>

**Table 8: Shares of supply in MY22 for pack sizes of up to and including 25kg**

<i>Sugar product</i>	<i>TLS</i>	<i>Target</i>	<i>Parties' combined share</i>	<i>BS-SS</i>	<i>Other</i>
White granulated <sup>180</sup>	[40-50]%	[10-20]%	[50-60]%	[40-50]%	[0-5]%
White caster	[50-60]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
White vending	[40-50]%	[10-20]%	[60-70]%	[20-30]%	[10-20]%
Standard icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Fondant icing	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Royal icing	[0-5]%	[0-5]%	[0-5]%	[90-100]%	[0-5]%
Jam	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%

<sup>179</sup> As in Table 1, the CMA has excluded reseller and distributor volumes (see Note 3 to Table 1).

<sup>180</sup> The CMA notes that the Target is comparatively stronger in the supply of 25kg white granulated sugar to UK B2C customers relative to smaller packs ie the Target's share in 25kg granulated white is [20-30]% whilst its share in bags of granulated white sugar below 25kg is only [10-20]%. The CMA, therefore, considers that the combined share of supply in Table 8 understates the strength of the Target's position in larger bags of granulated white sugar.

Preserving	[80-90]%	[0-5]%	[80-90]%	[10-20]%	[0-5]%
White sugar blends	[0-5]%	[10-20]%	[10-20]%	[80-90]%	[0-5]%
White sugar cubes	[40-50]%	[0-5]%	[40-50]%	[50-60]%	[0-5]%
<b>Combined white</b>	<b>[40-50]%</b>	<b>[10-20]%</b>	<b>[50-60]%</b>	<b>[40-50]%</b>	<b>[0-5]%</b>
Golden granulated	[5-10]%	[0-5]%	[10-20]%	[80-90]%	[0-5]%
Golden caster	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Demerara	[60-70]%	[0-5]%	[60-70]%	[30-40]%	[0-5]%
Light soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Dark soft brown	[50-60]%	[0-5]%	[50-60]%	[40-50]%	[0-5]%
Light muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
Dark muscovado	[5-10]%	[0-5]%	[5-10]%	[90-100]%	[0-5]%
<b>Combined brown</b>	<b>[40-50]%</b>	<b>[0-5]%</b>	<b>[40-50]%</b>	<b>[50-60]%</b>	<b>[0-5]%</b>

**Source:** CMA analysis of the Parties' volumes collected as part of Annex 228 to the FMN and the response to the CMA questionnaire from a number of third-parties, January 2024, question 3.

125. Table 8 shows that the inclusion of 25kg bags does not materially change the CMA's estimated shares of supply in any of the horizontal overlaps. The only two discernible changes (ie instances where estimates change by more than 2pp) appear in white caster sugar where the Merged Entity's combined share increased from [50-60]% to [60-70]% when including 25kg bags, and in standard icing sugar where the Merged Entity's combined share increased from [50-60]% to [50-60]% when including 25kg bags.