

Anticipated Acquisition by Eurofins of Cellmark

Decision on relevant merger situation and substantial lessening of competition

ME/7098/24

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 2 August 2024. Full text of the decision published on 19 August 2024.

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 Some numbers have been replaced by a range, which are shown in square brackets.

Contents

SUMMARY	2
ASSESSMENT	4
1. PARTIES AND MERGER	4
2. PROCEDURE	5
3. JURISDICTION	5
4. COUNTERFACTUAL	6
4.1 Limb 1: Absent the Merger, would Cellmark have exited?	6
4.2 Limb 2: Absent the Merger, would there be an alternative, less anti-competitive purchaser to Eurofins for the Cellmark business or its assets?	14
4.3 Conclusion on the counterfactual	16
5. THIRD PARTY VIEWS	16
DECISION	18

SUMMARY

OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Eurofins Forensics LUX Holding Sarl, a fully-owned subsidiary of Eurofins Scientific SE (**Eurofins**) of DNACO Limited (**Cellmark**), is a relevant merger situation that does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**).
2. Eurofins has agreed to buy the entire share capital of Cellmark (the **Merger**). Eurofins and Cellmark are together referred to as the **Parties**. The Parties primarily overlap in the supply of traditional forensic science services (eg DNA analysis and hair and drugs toxicology) to police forces, law enforcement agencies and local authorities in England and Wales.

Why did the CMA review this merger?

3. 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. 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 the Parties is an enterprise that will cease to be distinct as a result of the Merger and the share of supply test is met.

What evidence has the CMA looked at?

4. In assessing this Merger, the CMA considered a wide range of evidence in the round.
5. The CMA received several submissions and responses to information requests from the Parties, and examined a number of the Parties' own internal documents.
6. The CMA spoke to and gathered evidence from other companies and organisations to understand better the market dynamics, competitive landscape and to get their views on the impact of the Merger. In particular, the CMA received evidence from competitors, customers and third-party analysts. It also engaged with public bodies.

What did the evidence tell the CMA about what would have happened had the Merger not taken place?

7. 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.
8. The Parties submitted that the relevant counterfactual is one in which, absent the Merger, Cellmark would have exited the markets in which it is active as a result of financial failure.
9. Evidence available to the CMA shows that the target, Cellmark, has faced significant financial challenges since at least the Coronavirus (COVID-19) pandemic. The CMA has received compelling evidence that Cellmark has been operating with acute cashflow issues impacting the short-term sustainability of the business, and that, absent the Merger, Cellmark would therefore have exited the market, and there was no alternative, less anti-competitive purchaser for Cellmark or its assets.
10. Where the CMA concludes that a merging firm would exit absent the merger and there would not have been an alternative, less anti-competitive purchaser for the firm or its assets, it will not find an SLC.

What happens next?

11. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

1. PARTIES AND MERGER

1. Eurofins Forensics LUX Holding Sarl, a fully-owned subsidiary of Eurofins Scientific SE (**Eurofins**), is a Paris-listed global supplier of food, environmental, pharmaceutical, clinical diagnostic and forensic testing. The worldwide turnover of Eurofins in calendar year 2023 was €6.5 billion, of which approximately £200 million was generated in the UK.¹
2. DNACO Limited (**Cellmark**) is a supplier of DNA testing and forensic science services to police forces, government agencies, local authorities and the public. The turnover of Cellmark in calendar year 2023 was approximately £[X]million in the UK.² The worldwide turnover of Cellmark in calendar year 2022 was £28.2 million, of which £27.8 million was generated in the UK.³
3. On 8 March 2024, Eurofins agreed to acquire 100% of the share capital of Cellmark.⁴
4. The Parties primarily overlap in the supply of forensic science services, and in particular in the supply of traditional forensic science services. Forensic science services involves the application of scientific methods for the detection or investigation of a crime or the preparation, analysis or presentation of evidence in proceedings within the criminal justice system. Evidence is analysed and reviewed in the broad categories of biology (eg DNA testing), chemistry (eg hair or drugs toxicology), marks and traces (eg footprints or fibre analysis),⁵ as well as casework biology which involves combining multiple forensic science disciplines and tests for the investigation of a crime. The customers for forensic science services include police forces, law enforcement agencies and local authorities. Given the different procurement systems across the devolved nations, the Parties primarily compete to provide these services in England and Wales.⁶ The Parties also overlap in the supply of DNA testing services to the public and other government agencies.⁷

¹ Eurofins' briefing paper to the CMA, 15 March 2024, page 2.

² Eurofins' response to the CMA's section 109 notice, 14 May 2024, page 3.

³ Annual report and financial statements of Orchid Cellmark Ltd for the year ended 31 December 2022, page 19. (Also provided as Eurofins' response to the CMA's section 109 notice, 14 May, Annex 12). The financial accounts for the year ended 31 December 2023 have yet to be submitted.

⁴ Eurofins' response to the CMA's section 109 notice, 14 May 2024, Annex 1.

⁵ Marks and traces also includes fingerprint analysis, which is typically performed inhouse by police forces. Eurofins' response to the CMA's section 109 notice, 14 May 2024, page 6.

⁶ The Parties are not active in Northern Ireland. In Northern Ireland, Forensic Science Northern Ireland, an Executive Agency of the Department of Justice, provides the vast majority of forensic services to police forces. In Scotland, pursuant to the Police and Fire Reform (Scotland) Act 2012, the Scottish Police Authority, a public sector organisation, provides forensic science services to police forces.

⁷ Eurofins' response to the CMA's section 109 notice, 14 May 2024, pages 6 and 7.

2. PROCEDURE

5. The CMA's mergers intelligence function identified the Merger as warranting an investigation.⁸
6. The CMA commenced its phase 1 investigation on 19 July 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 Eurofins and Cellmark to understand what likely would have happened absent the Merger, as well as the impact the Merger will have on competition. The CMA also gathered evidence from other market participants, such as competitors, customers, third-party analysts and public bodies. 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.

3. JURISDICTION

8. A relevant merger situation exists where two or more enterprises cease to be distinct and either the turnover or share of supply test is met.⁹
9. Each of Eurofins and Cellmark is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
10. The Parties overlap in the supply of traditional forensic science services in England and Wales, with a combined share of supply of [80-90]% (with an increment of [20-30]%) by value in 2023.¹⁰ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
11. The CMA therefore believes 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.
12. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 July 2024 and the statutory 40 working day deadline for a decision is therefore 13 September 2024.

⁸ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), April 2024, paragraphs 6.4–6.6. The CMA called in the Merger for investigation on 2 April 2024 and the Parties provided a complete response to the CMA's Enquiry Letter on 5 June 2024. Given the financial challenges facing Cellmark, on receipt of this information from the Parties the CMA has acted expeditiously in conducting its review of the Merger.

⁹ [CMA2](#), chapter 4; Section 23 of the Act.

¹⁰ This share of supply excludes in-house provision. In the supply of traditional forensic science services in England and Wales including in-house supply, the Parties have a combined share of supply of [70-80]% (with an increment of [20-30]%) by value in 2023.

4. COUNTERFACTUAL

13. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).¹¹
14. 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.¹² In determining the appropriate counterfactual, the CMA will generally focus on potential changes to the prevailing conditions of competition only where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹³
15. Eurofins submitted that the relevant counterfactual in this case is one in which, absent the Merger, there would be an uncontrolled exit from the market by Cellmark (the **exiting firm counterfactual**).¹⁴
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:¹⁵
 - (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**).
17. Where the CMA concludes that a merging firm would exit absent the merger and there would not have been an alternative, less anti-competitive purchaser for the firm or its assets, it will not find an SLC.¹⁶
18. Therefore, in assessing the relevant counterfactual, the CMA considered whether there is compelling evidence that it is inevitable that, absent the Merger, Cellmark would exit the markets in which it is active, and whether there would have been an alternative, less anti-competitive purchaser for Cellmark or its assets.

4.1 Limb 1: Absent the Merger, would Cellmark have exited?

19. To assess whether it is inevitable that, absent the Merger, Cellmark would have exited through financial failure, the CMA considered: (i) the financial performance of the suppliers of traditional forensic science services; (ii) Cellmark's historic financial performance; (iii) Cellmark's current financial position, including its ability

¹¹ [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

¹² [CMA129](#), paragraph 3.2.

¹³ [CMA129](#), paragraph 3.9.

¹⁴ Eurofins' response to the CMA's section 109 notice, 14 May 2024, pages 8–9.

¹⁵ [CMA129](#), paragraph 3.21 and 3.23.

¹⁶ [CMA129](#), paragraph 3.23.

to meet its financial obligations in the near future; (iv) whether Cellmark could refinance its operations to avoid exit; and (v) whether Cellmark could restructure itself or reduce costs to successfully avoid exit.¹⁷

4.1.1 The financial performance of the suppliers of traditional forensic science services

20. It is widely recognised that suppliers of traditional forensic science services to police forces and government bodies have encountered long-term financial difficulties.¹⁸ In 2019, the House of Lords heard evidence of many suppliers, including the largest companies, facing financial difficulties and being close to collapse. One of the reasons for this inquiry was Key Forensic Services' (KFS) collapse and the effects it had on service delivery.¹⁹ In 2021, the House of Lords published a report stating that suppliers were under extreme pressure and suggesting recommendations to improve the delivery of traditional forensic science services in England and Wales.²⁰ The CMA has received evidence that the recommendations set out in this report have not been implemented.²¹
21. Third parties also submitted that the Coronavirus (COVID-19) pandemic resulted in lower submissions and revenue from police forces, which had an impact on their business as submissions from police forces account for a majority of suppliers' overall work.²² Moreover, submission levels have been slow to return to pre-pandemic levels.²³
22. During its investigation, the CMA received evidence from multiple third parties confirming that suppliers continue to struggle to operate profitably. For example, the three main suppliers (Eurofins, Cellmark and KFS) each reported a loss in their 2022/2023 published accounts. Suppliers indicated that the losses were a reflection of their low margins.²⁴ The CMA received evidence that this resulted from customers' focus on price, and the requirements in contracts to provide special service requirements, such as around-the-clock on-call services for a wide range of forensic service disciplines and short timeframes for attending crime scenes.²⁵ This requirement in particular results in a need to maintain the ability to

¹⁷ [CMA129](#), paragraph 3.28.

¹⁸ For example, in 2018 KFS, the third largest supplier went into administration and was bought by a private equity owner, Corp Acq. (Eurofins' response to the CMA's section 109 notice, 14 May 2024, page 8). A third party also noted that LGC (now Eurofins) has also required financial assistance in the past (Response to the CMA's invitation to comment from a third party).

¹⁹ [UK Forensic science is in a state of crisis and must be reformed urgently, Lords Committee says - UK Parliament. Forensic science and the criminal justice system: a blueprint for change \(parliament.uk\).](#)

²⁰ Response to the CMA's invitation to comment from a third party; and Cellmark's submission on financial challenges, July 2024, page 1.

²¹ Third parties submitted that reduced submissions by police forces during the COVID-19 pandemic, especially road toxicology submissions, had a particular impact on Cellmark given the vast majority of its revenue is derived from such work. Note of a call with a third party, July 2024, paragraphs 6 and 17.

²² Note of a call with a third party, July 2024, paragraphs 17 and 18.

²³ Note of a call with a third party, July 2024, paragraphs 20, 24 and 28–29; and response from a third party to the CMA's questionnaire.

²⁴ Note of a call with a third party, June 2024, paragraph 15; and note of a call with Cellmark, July 2024, paragraph 2.

provide certain specialist services that are used infrequently, resulting in high fixed costs but unpredictable income. One third party also submitted that, until recently, contracts with police forces did not [redacted], despite some contracts lasting [redacted] years.²⁶

23. Third parties noted that suppliers regularly receive insufficient volumes of traditional forensic science services work to generate adequate revenue.²⁷ Tenders for these services also happen infrequently as contracts often have [redacted] year durations, which has resulted in some suppliers, when between contracts, experiencing relatively long periods with low revenue.²⁸ Furthermore, suppliers also encounter structural challenges, such as hiring and training sufficient numbers of qualified personnel required to provide forensic services.²⁹ In addition, as noted in the 2021 House of Lords report, spending by police forces on forensic science services has been reduced in line with the reduction in overall police budgets, but spending on commercial providers has declined more rapidly, putting additional pressure on suppliers.³⁰

4.1.2 Cellmark's historic financial performance

24. Cellmark submitted that in 2020, prior to the pandemic, it was operating profitably with significant cash reserves and assets. However, during the pandemic, levels of forensic submissions from police forces declined and Cellmark was unable to pursue strategies to raise revenue from other customers. As a result, by 2022, the company was reporting a loss, which could not be funded completely from cash reserves and so the business incurred debt.³¹ Cellmark's statutory accounts for 2022 indicate that the company generated a loss of around £6 million,³² and Cellmark estimates that the loss for 2023 will be around £[redacted].³³
25. The CMA received evidence to indicate that Cellmark also suffered financial challenges before the pandemic. In 2017 and 2018, a number of police forces' contracts were being awarded, [redacted]. An external report produced by financial advisors on Cellmark's financials indicate that it suffered [redacted] in 2017 and 2018.³⁴

²⁶ Note of a call with a third party, July 2024, paragraph 29.

²⁷ Note of a call with a third party, July 2024, paragraphs 28; and response from a third party to the CMA's questionnaire.

²⁸ Note of a call with a third party, June 2024, paragraph 16.

²⁹ Note of a call with a third party, June 2024, paragraph 18; and note of a call with a third party, July 2024, paragraphs 24.

³⁰ [Forensic science and the criminal justice system: a blueprint for change \(parliament.uk\)](https://www.parliament.uk/publications/2022/10/forensic-science-and-the-criminal-justice-system-a-blueprint-for-change), paragraphs 43-44.

³¹ Note of a call with Cellmark, July 2024, paragraph 3. See also Cellmark's submission on financial challenges, July 2024, page 1.

³² Annual report and financial statements of Orchid Cellmark Ltd for the year ended 31 December 2022, page 21. (Also provided as Eurofins' response to the CMA's section 109 notice, 14 May, Annex 12).

³³ Note of a call with Cellmark, July 2024, paragraph 10. Cellmark's financial accounts for 2023 have not yet been audited.

³⁴ Submission to the CMA from a third party, page 12.

26. This independent third-party report assessing Cellmark's business identified multiple causes for Cellmark's cashflow issues, including [X].³⁵ Another third party noted that Cellmark has less access to finance compared to competitors due to its current ownership structure.³⁶

4.1.3 Cellmark's current financial position, including its ability to meet its obligations in the near future

27. Cellmark submitted that, while it has been trading with a small profit at the start of 2024, it has significant liabilities.³⁷ Cellmark submitted that the levels of profit achieved are so low that there is only slow improvement in its financial position. Moreover, it is unable to meet demands to pay its debt and its financial issues make it challenging to obtain the supplies needed to provide services and generate revenue.³⁸

28. An external report from May 2024 stated that Cellmark would need to substantially increase cashflow (so as to generate profit of £[X] by September 2024) to meet creditor arrears whilst satisfying ongoing supplier commitments, which it considered was not reflective of Cellmark's forecasted revenues [X] given the company's current financial state.³⁹

4.1.3.1 Cellmark's reliance on [X] to fund monthly operations

29. A significant proportion (approximately 80%) of Cellmark's revenue is generated by the supply of forensic services to police forces.⁴⁰ In April 2023 Cellmark [X], to improve its access to cash and enable it to meet its monthly payments.⁴¹ This provided a temporary cash boost in April 2023. This arrangement does not provide Cellmark with any additional funds and as such does not address its significant debt position; it merely [X]. Third parties submitted that this support would not sufficiently resolve the financial issues within the business.⁴²

³⁵ Submission to the CMA from a third party, page 7.

³⁶ Note of a call with a third party, July 2024, paragraph 4.

³⁷ Cellmark provided a weekly cash flow statement that showed creditors of around £[X] in June 2024, with around £[X] being over three months old. Cellmark has generated around £[X] in profit before tax between January 2024 and May 2024. Cellmark's response to the CMA's section 109 notice, 27 June 2024, Annex CMK001 and Annex CMK033.

³⁸ Cellmark's response to the CMA's section 109 notice, 27 June 2024, page 3; and Cellmark's response to the CMA's section 109 notice, 15 July 2024, Annex CMK035.

³⁹ Eurofins' response to s109 notice, 14 May 2024, Annex 17, page 4.

⁴⁰ Note of a call with Cellmark, July 2024, paragraph 13.

⁴¹ Payments included salary payments to staff, and national insurance and PAYE contributions to HM Revenue and Customs (HMRC).

⁴² See for example, note of call with a third party, June 2024, paragraph 20; note of a call with a third party, July 2024, paragraphs 20 and 21; note of a call with a third party, July 2024, paragraph 9; and response to the CMA's invitation to comment from a third party.

30. While these arrangements have continued, the arrangement was never intended to be permanent and is not guaranteed to continue. Cellmark has to request [X]. [X] have indicated that they intend to cease the arrangement.⁴³

4.1.3.2 *Response from creditors and suppliers to Cellmark's financial position*

31. Cellmark submitted that it is not able to repay all of its debts as they fall due, even with the [X]. Consequently, Cellmark is at risk of creditors taking action that could be detrimental to the company's ability to continue to trade. Evidence available to the CMA shows that this risk has existed since [X].⁴⁴ Cellmark submitted compelling evidence to show the severe financial pressure it is under from its creditors and the actions these creditors have already taken or threatened to take against Cellmark:

- (a) HMRC has sent multiple notices to Cellmark demanding payment for [X]. [X]. Further, in July 2024, HMRC informed Cellmark that it is considering [X].⁴⁵
- (b) Creditors and suppliers have regularly started legal action to recover debts. For example, [X]ⁱ and within one month alone (between [X]), Cellmark received threats of legal action from third parties on at least [X] separate occasions. [X].⁴⁶
- (c) Suppliers have altered their contractual terms [X]. For example, Cellmark was required to pay for its [X]. Cellmark submitted that it anticipates other large payments will fall due in the near term such as [X]. Cellmark also submitted that, given suppliers' changing attitudes towards Cellmark, it is difficult for Cellmark to estimate the size of payments and the terms upon which services will be offered to Cellmark.⁴⁷

4.1.3.3 *Financial position impacting ability to generate revenue now and in the future*

32. The CMA received evidence that Cellmark's financial position is impacting its ability to generate revenue now and in the future.

- (a) In regard to its current contracts, the lack of stock in Cellmark's laboratories has led to a backlog in delivery of [X]⁴⁸ and [X].⁴⁹ Cellmark had to

⁴³ Note of a call with a third party, July 2024, paragraphs 9–11. Furthermore, [X]. Note of a call with Cellmark, July 2024, paragraph 19.

⁴⁴ Submission to the CMA from a third party.

⁴⁵ Cellmark's response to the CMA's section 109 notice, 15 July 2024, Annex CMK036.

⁴⁶ Cellmark's response to the CMA's section 109 notice, 15 July 2024, Annex CMK037.

⁴⁷ Note of a call with Cellmark, July 2024, paragraph 14.

⁴⁸ Specifically, [X].

⁴⁹ Cellmark submitted that it has reduced the level of stock held, as a way to reduce costs (Eurofins' response to s109 notice, 14 May 2024, Annex 50 (prepared by Cellmark), page 1).

outsource its work to third parties and request that police forces divert work to other suppliers.⁵⁰

(b) Cellmark also submitted that it has declined to participate in tenders for future work, as it would be unlikely to [REDACTED].⁵¹ A customer confirmed that Cellmark's late filing of statutory accounts and financial issues would cause Cellmark to [REDACTED].⁵²

33. Further, Cellmark submitted that its financial position risks its ability to maintain its regulatory accreditations. These accreditations are fundamental to it providing forensic services and thus its ability to generate revenue. For example, UKAS accreditation⁵³ requires Cellmark to have suitable premises, maintenance contracts, insurance, and suitable levels of trained and accredited staff. Cellmark's financial position has already meant it has experienced periods where it has been [REDACTED].⁵⁴ Further, as set out at paragraph 31(b), Cellmark is currently in arrears [REDACTED]. A loss of accreditation would mean it cannot perform work under most of its existing contracts and will not be able to bid for certain future contracts, further reducing Cellmark's revenue.

4.1.4 Refinancing options available to Cellmark

34. For its day-to-day working capital requirements Cellmark has primarily relied on invoice discounting, which has been extended [REDACTED] times in 2023,⁵⁵ and the [REDACTED] set out in paragraphs 29 and 30. While invoice discounting can improve the cashflow position of a company, the cost of discounting will reduce its profitability.

35. Cellmark has also looked to raise additional capital. However, Cellmark has faced significant difficulties obtaining additional finance.⁵⁶

36. Cellmark has submitted evidence to indicate that it is not able to raise additional finance from banks. In May 2023, Cellmark [REDACTED].⁵⁷ In November 2023, [REDACTED].⁵⁸ [REDACTED].

37. Cellmark has also approached a range of external sources to raise finance. None of these approaches were successful.⁵⁹

⁵⁰ Note of a call with Cellmark, July 2024, paragraph 12.

⁵¹ Cellmark's response to the CMA's section 109 notice, 15 July 2024, Annex CMK031.

⁵² Note of a call with a third party, July 2024, paragraph 4.

⁵³ UKAS accreditation determines the technical competence and impartiality of forensic organisations delivering testing and inspection services to the Criminal Justice System. For further details see [Forensics Sector Accreditation | UKAS](#).

⁵⁴ Note of call with Cellmark, July 2024, paragraph 23.

⁵⁵ In addition, in October 2023, Cellmark renegotiated a large forensic contract to improve terms that had been putting financial strain on the business, such as [REDACTED].

⁵⁶ Cellmark's response to the CMA's section 109 notice, 27 June 2024, page 3.

⁵⁷ Cellmark's response to the CMA's section 109 notice, 27 June 2024, page 3.

⁵⁸ Cellmark's response to the CMA's section 109 notice, 15 July 2024, Annex CMK042.

⁵⁹ The CMA also received evidence that in February 2023, a potential investor approached by Cellmark informed it that it would only begin to consider investing if it received evidence of [REDACTED] (see Cellmark's response to the CMA's section 109

- (a) In March 2023, Cellmark submitted a formal request and funding application to [redacted] for a £[redacted] loan. This application was unsuccessful. In November 2023, Cellmark again submitted a loan application to [redacted], [redacted] informed Cellmark that the information provided did not provide the necessary assurances required to approve a [redacted] loan.⁶⁰
- (b) Cellmark has initiated discussions with [redacted] for potential loans but has not received any indication of interest.⁶¹

38. An external financial report assessing Cellmark's financial position, stated that Cellmark does not have [redacted]. In particular, the report notes that Cellmark is already [redacted].⁶²

4.1.5 Restructuring options available to Cellmark

39. Cellmark submitted that, during the last two years, it had looked to diversify its revenue stream by pursuing a diversification strategy. This included the acquisition of a veterinary testing laboratory in April 2022 and winning non-UK police work (both domestic work for other types of customers, and overseas contracts).⁶³

40. Cellmark further submitted that it has sought to reduce costs and improve cashflow in a number of ways, including the following.⁶⁴

- (a) Reducing staff costs as Cellmark has [redacted].
- (b) Staff salaries were also moved to [redacted] of the month to smooth cash outflows throughout the month.ⁱⁱ
- (c) Maximising back-office efficiency and overall staff productivity through process and IT improvements and [redacted].
- (d) Reducing expenditure on promotional/marketing activities, conference attendance and travel.
- (e) Reducing non-revenue generating activities, such as [redacted].
- (f) Renegotiating prices and payment terms with key suppliers and reducing the amount of stock held in the business.

notice, 15 July 2024, Annex CMK041). [redacted] is the minimum required to be considered for additional finance, and no assurances were given as to whether any finance would be forthcoming. As noted elsewhere in this Decision, evidence received by the CMA shows that numerous third parties who had access to detailed financial information on the Cellmark business declined to show any interest. As such, the CMA considers that this investment was not likely, even if [redacted] could have been demonstrated.

⁶⁰ Cellmark's response to the CMA's section 109 notice, 27 June 2024, Annex CMK028, page 5.

⁶¹ Cellmark's response to the CMA's section 109 notice, 27 June 2024, Annex CMK028, page 3.

⁶² Submission to the CMA from a third party, page 6.

⁶³ Cellmark's response to the CMA's section 109 notice, 27 June 2024, Annex CMK028, pages 4 and 5.

⁶⁴ Cellmark's response to the CMA's section 109 notice, 27 June 2024, Annex CMK028, page 2.

41. An external financial report also noted that Cellmark should consider whether to continue with [X].⁶⁵ However, the CMA considers that discontinuing this line of work would immediately reduce the revenue available to Cellmark but would not have an immediate impact on its cost base (eg as it would take time to reduce the size of the workforce).⁶⁶
42. Third parties did not believe Cellmark had other options available to it. Multiple third parties indicated that, if the Merger did not go ahead Cellmark would have to exit.⁶⁷

4.1.6 Conclusion on Limb 1

43. The CMA believes, based on the evidence set out above, that Cellmark is not in a position to generate sufficient business and cashflow to service aged creditors at the necessary speed to avoid them taking legal action that would result in Cellmark's exit. In addition, the CMA considers that Cellmark's financial position has created a substantial risk that it will lose access to vital supplies that it requires to provide services and generate cashflow. Cellmark currently has strained relationships with many of its creditors (including HMRC) and is unable to reduce existing debt and pay current liabilities as they fall due, particularly as suppliers demand stricter contractual terms.
44. The evidence also shows that refinancing or restructuring options are not available to enable Cellmark to materially increase cashflow so it can repay debt before suppliers are likely to take action that could lead to Cellmark's exit. The CMA notes that suppliers of traditional forensic science services also have limited options to increase revenue given the limited number of potential customers.
45. The CMA therefore believes, based on the evidence set out above, that it is inevitable that, in the absence of the Merger, Cellmark would be unable to meet its financial obligations in the near future and would not have realistic funding options or restructuring options available to it to avoid exit.
46. The CMA therefore believes that the test for Limb 1 of the exiting firm counterfactual is met.

⁶⁵ Submission to the CMA from a third party, page 20.

⁶⁶ The same report also recommends [X]. Submission to the CMA from a third party, page 9.

⁶⁷ Note of a call with a third party, June 2024, paragraph 23; note of a call with a third party, July 2024, paragraph 13; and note of a call with a third party, July 2024, paragraph 14; and responses to the CMA's invitation to comment from a number of third parties.

4.2 Limb 2: Absent the Merger, would there be an alternative, less anti-competitive purchaser to Eurofins for the Cellmark business or its assets?

47. For the CMA to conclude that Limb 2 has been satisfied at Phase 1, it would need to believe, on the basis of compelling evidence, that there would not have been an alternative, less anti-competitive purchaser for Cellmark or its assets to Eurofins absent the Merger.⁶⁸
48. When considering if there were alternative purchasers, the CMA will seek to identify who the alternative purchaser(s) might have been and take this into account when determining the counterfactual. In that context, the CMA may consider the marketing process for the target firm as well as offers received for it. However, the CMA will not restrict its analysis to alternative purchasers who were willing to pay the same or a similar price to that which was agreed in the merger under investigation, but rather if there was an alternative purchaser willing to acquire the firm at any price above liquidation value. Importantly, the CMA will also consider alternative purchasers that would have operated the business as a competitor.⁶⁹
49. To assess whether it is inevitable that, absent the Merger, there would be no alternative, less anti-competitive purchasers for Cellmark or its assets, the CMA considered whether there are plausible alternative purchasers for the Cellmark business or its assets who would run the business as a competitor. In its assessment, the CMA received evidence from Cellmark, including internal documents and correspondence. The CMA also received evidence directly from third parties, including Cellmark's external advisers and potential purchasers.

4.2.1 Potential alternative purchasers

50. Consistent with the assessment of external advisers and submissions from third parties,⁷⁰ the CMA considers that the overall pool of potential purchasers for Cellmark⁷¹ is likely to be limited, mainly due to the relatively limited attractiveness of the market and the severity of Cellmark's financial position (both described in Limb 1 above).⁷²
51. Given Cellmark's financial position and the structural issues in the market, its external advisors considered that the most plausible group of potential purchasers

⁶⁸ [CMA129](#), paragraph 3.21(b).

⁶⁹ [CMA129](#), paragraph 3.30.

⁷⁰ Note of a call with a third party, July 2024, paragraph 7; and responses to the CMA's invitation to comment from a number of third parties.

⁷¹ That would continue to run it as a competitor in the markets it currently operates in, ie as a supplier of a full range of traditional forensic science services.

⁷² One potential purchaser [§<].

were companies with some activity or connection to forensic science or related products.⁷³ Cellmark held discussion with two such companies (aside from Eurofins).

- (a) In 2021, [X] approached Cellmark regarding a potential acquisition. Meetings were held in May 2021 and again at the end of 2022. In December 2022, [X] made an offer for Cellmark and due diligence commenced. In April 2023, [X] withdrew its interest and offer because [X].
- (b) In December 2022, Cellmark also held discussions with [X], sharing only high-level financial data. Cellmark and its external advisers considered that the approach was speculative, noting that there was limited information about the proposed transaction structure and plans to solve Cellmark's financial issues.⁷⁴ The CMA received evidence to indicate that [X].⁷⁵

52. The CMA does not consider [X] a suitable alternative purchaser given its lack of interest in Cellmark.

53. The CMA considers that [X] is also not a suitable alternative purchaser.

- (a) Given [X], an acquisition by [X] of Cellmark is not clearly [X]. Such a deal would [X] result in [X], and as such would not result in [X].⁷⁶ In line with the CMA's practice not to have as its counterfactual [X],⁷⁷ such an acquisition should not be used as a counterfactual scenario.
- (b) Further, any interest from [X] is currently speculative as it has not received any detailed financial information, and as a commercial investment company, it is unclear whether it would consider a business with significant losses and cashflow issues viable. In addition, the time required to agree any sales process to [X] reduces its suitability as an alternative purchaser, given the acute cashflow issues Cellmark faces and the requirement for funding in the immediate term.

54. The CMA received evidence to indicate that although a wider group of potential purchasers were identified and contacted, most of these potential purchasers would either not have been interested in acquiring the business as a going concern, or would not have operated the business as a competitor in the markets it currently operates in.⁷⁸ In particular, the CMA received evidence that Cellmark's

⁷³ Note of a call with a third party, July 2024, paragraph 7.

⁷⁴ Note of a call with a third party, July 2024, paragraph 7.

⁷⁵ Submission to the CMA by a third party, July 2024.

⁷⁶ [CMA129](#), paragraph 3.32.

⁷⁷ [CMA129](#), paragraph 3.11.

⁷⁸ The CMA considers that an acquisition of some of Cellmark's assets (as opposed to the whole business) raises risks that Cellmark would be unable to fulfil its existing traditional forensic service contracts or lose its accreditation and, consequently, the ability to complete current work and win further tenders. The CMA therefore considers that there are no realistic alternative purchasers (aside from those already operating in the market, [X]) who could acquire some of

external advisors considered [X]. This would result in Cellmark operating in a dramatically different way as pre-Merger. Cellmark entering administration would mean it could lose accreditation and the ability to provide services to police forces, both currently and in future tenders. Consequently, although these companies were approached, discussions did not progress.⁷⁹

55. The CMA has not therefore considered such purchasers further in this Decision.

4.2.2 Conclusion on Limb 2

56. The CMA believes, based on the evidence considered above, that it is inevitable that, if the Merger does not proceed, there would be no alternative, less anti-competitive purchaser for Cellmark or its assets than Eurofins.

57. The CMA therefore believes that the test for Limb 2 of the exiting firm counterfactual is met.

4.3 Conclusion on the counterfactual

58. The CMA therefore believes, based on the evidence it has received, that the relevant counterfactual is one in which, absent the Merger, it is inevitable that Cellmark would have exited the markets in which it is active and there would not have been a less anti-competitive purchaser for Cellmark or its assets than Eurofins.

5. THIRD PARTY VIEWS

59. The CMA contacted customers and competitors of the Parties, as well as other interested third parties.

60. Some third parties stated that the Merger may have a positive impact by preventing Cellmark's exit from the market, which could cause widespread disruption to the supply of traditional forensic science services and the criminal justice system in England and Wales.⁸⁰ These views have been taken into account where appropriate in this Decision.

Cellmark's assets and be able to operate those assets to mitigate in a material way the loss of competition resulting from Cellmark's exit. For example, the CMA received evidence from one third party that any new entrant to the market would be unlikely to have the necessary skillset, expertise and quality accreditations, which each take years to establish, to carry on the Cellmark business effectively, and that in the past new entrants have been unsuccessful, causing significant disruption for police customers and the criminal justice system. See responses to the CMA's invitation to comment from a number of third parties.

⁷⁹ Note of a call with a third party, July 2024, paragraph 7; and submission to the CMA by a third party, page 28.

⁸⁰ Note of a call with a third party, June 2024, paragraphs 24–28; note of a call with a third party, July 2024, paragraph 21; note of a call with a third party, July 2024, paragraph 12; and responses to the CMA's invitation to comment from a number of third parties.

61. Several third parties expressed concerns about the Merger, stating that it is likely to reduce competition and choice in the supply of traditional forensic science services, and some also noted the potential for supply chain resilience issues (eg in the event of a cyber-attack).⁸¹ However, as set out above, where the CMA concludes that a merging firm would exit absent the merger and there would not have been an alternative, less anti-competitive purchaser for the firm or its assets, it will not find an SLC. Whilst the CMA considered these submissions, they have not therefore been discussed further in this Decision.

⁸¹ Responses to the CMA's invitation to comment from a number of third parties.

DECISION

62. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
63. The Merger will therefore not be referred under section 33(1) of the Act.

Jenny Sugiarto
Director, Mergers
Competition and Markets Authority
2 August 2024

ⁱ This should be read as '[~~3~~]'

ⁱⁱ This should be read as 'Staff salaries were also moved to the [~~3~~] of the month to smooth cash outflows throughout the month'