

**ANTICIPATED
ACQUISITION BY T&L
SUGARS LIMITED OF
CERTAIN ASSETS OF
TEREOS UNITED KINGDOM
AND IRELAND LIMITED
FROM TEREOS SCA**

Final Report

ME 7074/23

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The Competition and Markets Authority has excluded from this published version of the final report information which the inquiry group 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 Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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SUMMARY

OVERVIEW

1. The Competition and Markets Authority (**CMA**) has found that the anticipated 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**) may not be expected to result in a substantial lessening of competition (**SLC**) in any market or markets in the United Kingdom (**UK**).
2. On 26 July 2023, TLS agreed to acquire the Target pursuant to a Business Purchase Agreement (**BPA**). 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), TLS and the Target are together referred to as the **Merged Entity**.

THE PARTIES AND THEIR PRODUCTS

3. TLS is a sugar producer which refines and distributes sugar and related products in the UK through two plants in London. Tereos is a sugar cooperative based in France, which is primarily active in processed agricultural raw materials, such as sugar, alcohol and starch. TUKI is an indirect subsidiary of Tereos, which packs and distributes sugar products, sourced primarily from Tereos, to customers in the UK.
4. The Target comprises a collection of assets, currently owned by TUKI, which are used to pack and distribute sugar to B2C customers in the UK. B2C customers include retailers, wholesalers and 'out of home' foodservice customers (such as restaurants and hotels). The Target includes a sugar packing facility, the lease of a warehouse and offices in Normanton (West Yorkshire), a licence for the 'Whitworths' brand, the novation of customer contracts and the TUPE transfer of employees.
5. TLS and the Target overlap in the supply of various types of packed sugar to B2C customers in the UK.

OUR ASSESSMENT

Why are we examining this Merger?

6. The CMA's primary duty is to seek to promote competition for the benefit of UK consumers, including the investigation of mergers that could raise significant competition concerns in the UK where it has jurisdiction to do so.
7. In this case, the CMA has jurisdiction over the Merger because the Parties have a combined share of supply of over 25% (by volume, with an increment) in the supply of various types of packed sugar to B2C customers in the UK.

How have we examined this Merger so far?

8. In deciding whether a merger may be expected to result in an SLC, the question we are required to answer is whether there is an expectation – ie a more than 50% chance – that the merger may be expected to result in an SLC within any market or markets in the UK.
9. To determine whether this is the case, we have considered and augmented the information collected during the phase 1 investigation, including by gathering further evidence from a wide variety of sources, using our statutory powers where necessary, to assess the potential impact of the Merger on competition in the UK.
10. We received several submissions and responses to information requests from the Parties and from third parties, and held a site visit and hearing with each of the Parties. This evidence has helped inform our view on the extent to which the Parties compete closely against one another, the constraint imposed by other suppliers, and the extent to which the Parties would likely have competed in the future absent the Merger.
11. The evidence collected from the Parties includes internal documents, customer and tender overlaps, and data on financial performance (including prices, volumes and margins). The evidence collected from third parties includes their views on the competitive landscape and potential impact of the Merger, as well as entry and expansion plans.

What did the evidence tell us about what would have happened absent the Merger?

12. To determine the impact that the Merger may have on competition, we have considered what would likely have happened absent the Merger. This is known as the counterfactual. At phase 2, we select the most likely conditions of competition as the counterfactual against which to assess the Merger.

13. Tereos submitted that absent the Merger it would have [redacted] the UK B2C channel. We refer to this as an ‘exiting firm counterfactual’, and we have assessed this by following the framework set out in our Merger Assessment Guidelines. This states that, in forming a view on an exiting firm counterfactual, the CMA will use the following framework of cumulative conditions:¹
- (a) ‘**Limb 1**’: the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) ‘**Limb 2**’: there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.
14. To assess Limb 1, we have gathered extensive evidence from Tereos’ internal documents, including Board minutes and materials, as well as email exchanges between Tereos’ senior management. We have also analysed several years of detailed financial data and considered the steps taken by Tereos to improve the financial performance of the Target.
15. This evidence shows that the Target has consistently failed to meet its strategic objective, which is to achieve a higher price for Tereos in the UK than it could achieve by selling the surplus sugar that it produces from its crops in France in other export markets. The Target’s financial performance has been consistently poor for a sustained period of time, generating material losses on both a standalone and ‘economic’ basis (ie relative to alternative sales channels). These losses have persisted despite a range of efforts from Tereos to improve the Target’s financial performance, including [redacted] reductions in personnel and other costs.
16. To assess Limb 2, we have analysed the sales process for the Target in detail, reviewing a broad range of Tereos’ internal documents (including emails) and speaking to relevant third parties involved in the process. We have also contacted several other third parties to test whether there may have been any alternative purchasers for the Target.
17. Our analysis shows that Tereos received [redacted] binding offer (from TLS) for the Target as a result of its sales process. An initial bid was also received from another potential purchaser ([redacted]), but the evidence shows that this was conditional on [redacted] being struck with Tereos for [redacted], and negotiations did not progress beyond a very early stage. Our view is that it would have been very challenging for Tereos and [redacted] to agree a workable and sustainable [redacted], and we do not consider this to be the most likely scenario absent the Merger. We have received no evidence from other third parties (including those with whom we have

¹ [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 3.21.

directly consulted) to indicate that there may have been an alternative, less anti-competitive purchaser for the Target.

18. In view of the above, we consider that absent the Merger, the most likely scenario is that Tereos would have closed the Target and exited the UK B2C channel. Under the counterfactual, there would therefore have been no competition between TLS and the Target, and on this basis, our view is that the Merger may not be expected to result in an SLC.

CONCLUSION

19. Our conclusion is therefore that the Merger, if implemented, will result in the creation of a relevant merger situation, but that situation may not be expected to result in an SLC within any market or markets in the UK.

FINDINGS

1. THE REFERENCE

- 1.1 On 22 March 2024, the Competition and Markets Authority (**CMA**) in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the **Act**),² referred the anticipated 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**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
- 1.2 TLS, TUKI and Tereos are each a **Party** to the Merger; together they are 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**.
- 1.3 In exercise of its duty under section 36(1) of the Act,³ the CMA must decide:
- (a) whether arrangements are in process or contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.4 In assessing the competitive effects of the Merger, we must decide whether there is an expectation (ie a more than 50% chance) that the Merger will result in the SLC.
- 1.5 We are required to prepare and publish our final report by 5 September 2024.
- 1.6 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A and Appendix B respectively.
- 1.7 This document, together with its appendices, constitutes the CMA's final report published and notified to the Parties in line with the CMA's rules of procedure.⁴ Further information relevant to this inquiry can be found on the CMA webpage.⁵

² Section 33(1) of the Act.

³ Section 36(1) of the Act.

⁴ CMA rules of procedure for merger, market and special reference groups (**CMA17**), March 2014, Rule 11.

⁵ See: TLS/Tereos merger inquiry.

2. THE PARTIES AND THE MERGER

The Parties

- 2.1 TLS, the acquirer, 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 (**USA**).⁶ The turnover of TLS for financial year 2022/23 was approximately £533 million worldwide, of which approximately £505 million was generated in the UK.⁷
- 2.2 Tereos, a sugar cooperative headquartered in Moussey-Le-Vieux, France, is primarily active in the processing of agricultural raw materials, in particular sugar, alcohol and starch.⁸ TUKI is an indirect subsidiary of Tereos which packs and distributes sugar products, sourced primarily from Tereos, to customers in the UK. The Target comprises a collection of assets, currently owned by TUKI, which are used to pack and distribute sugar to B2C customers in the UK.⁹ The Target includes a packing facility, the lease of a warehouse and offices in Normanton, West Yorkshire, a licence for the 'Whitworths' brand, the novation or assignment of customer contracts and the TUPE transfer of 53 employees. The turnover of the Target in financial year 2022/23 was approximately £[X] million, all of which was generated in the UK.¹⁰
- 2.3 TLS and the Target overlap in the supply of packed sugar to B2C customers in the UK. TLS refines and packs sugar from its facilities in London, whereas the Target imports refined sugar from its parent company Tereos in France and packs the sugar at its Normanton facility in the UK.¹¹

The Merger

- 2.4 On 26 July 2023, TLS signed a Business Purchase Agreement (**BPA**) to acquire the Target from TUKI for approximately £[X] million.¹² Post-Merger, the Target will be integrated into TLS's existing business. The Merger is conditional on receiving merger control clearance from the CMA.
- 2.5 TLS submitted that the Merger represents an opportunity to acquire a purpose-built packing facility in the north of England, which will complement its existing

⁶ Final Merger Notice (**FMN**), 18 January 2024, paragraph 2.6.

⁷ [TLS accounts for the period ended on 24 September 2023](#), page 25 [last accessed 2 August 2024].

⁸ FMN, paragraph 2.8.

⁹ FMN, paragraph 2.7. The B2C channel comprises grocery customers (retailers and wholesalers) and 'out of home' (foodservice) customers. Post-merger, Tereos will remain active in the UK in the business-to-business (**B2B**) channel, ie the supply of sugar products to UK industrial customers (FMN, paragraph 2.8).

¹⁰ FMN, paragraph 3.17; and Tereos response to the CMA's request for information dated 15 May 2024.

¹¹ FMN, paragraphs 3.1 and 3.11.

¹² FMN, paragraphs 2.1-2.3.

production and warehouse capacity at its operations in London.¹³ TLS further submitted that the Merger is motivated by a desire to achieve resilience and optionality in its operations, [REDACTED], and that the Merger will enable TLS to focus on [REDACTED].¹⁴

2.6 Tereos submitted that the Merger is motivated by its desire to [REDACTED] in the UK.¹⁵ It stated that the Target has never been profitable, and that Tereos can sell its surplus sugar (ie the remaining sugar once it has satisfied demand in France) more profitably in other export markets. We consider this in detail as part of the counterfactual assessment below.

¹³ FMN, paragraph 2.10.

¹⁴ [TLS response to the Issues Statement](#), 10 May 2024, paragraphs 1.3-1.4.

¹⁵ FMN, paragraph 2.12.

3. RELEVANT MERGER SITUATION

Introduction

3.1 This chapter addresses the question of whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.¹⁶ The concept of a relevant merger situation has two principal elements: (a) two or more enterprises cease to be distinct enterprises within the statutory period for reference;¹⁷ and (b) the turnover test and/or the share of supply test is met.¹⁸

Enterprises ceasing to be distinct

3.2 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.¹⁹ A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.²⁰ The enterprise in question does not need to be a separate legal entity.²¹

3.3 Each of TLS and the Target supplies goods otherwise than free of charge, generating turnover in the UK (see chapter 2). Our view is therefore that each of TLS and the Target is a 'business' within the meaning of the Act and that, accordingly, the activities of each of TLS and the Target are an 'enterprise' for the purposes of the Act.

3.4 The Act provides that any two enterprises 'cease to be distinct' if they are brought under common ownership or common control.²² It distinguishes between three levels of control, which in ascending order of the level of control are: material influence, *de facto* control and a controlling interest (also referred to as *de jure* or legal control).²³

3.5 According to the terms of the BPA, on completion of the Merger, TLS will acquire the entirety of the Target. Accordingly, TLS will have a controlling interest in the

¹⁶ This is the first of the two statutory questions which we are required to answer under [section 36](#) of the Act and pursuant to our terms of reference (see Appendix A).

¹⁷ Sections [23](#) and [24](#) of the Act.

¹⁸ [Section 23](#) of the Act.

¹⁹ [Section 129\(1\)](#) of the Act.

²⁰ [Section 129\(1\)](#) of the Act. See also sections [129\(3\)](#) and [130](#) of the Act.

²¹ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), as amended on 4 January 2022, paragraph 4.6. Nor is there a requirement that the transferred activities have generated, or are expected to generate, a profit or dividend for shareholders: indeed, the transferred activities may be loss-making or conducted on a not-for-profit basis.

²² [Section 26](#) of the Act.

²³ [Section 26\(3\)](#) of the Act.

Target within the meaning of section 26 of the Act,²⁴ and therefore the enterprises of TLS and the Target will be brought under common ownership and control.

- 3.6 Our conclusion is therefore that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises (namely, the enterprises of TLS and the Target) ceasing to be distinct.

Turnover test

- 3.7 The turnover test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.²⁵ As the turnover of the Target in the UK in its last business year preceding the date of reference of the Merger was approximately £[~~8~~] million, the turnover test is not met.

Share of supply test

- 3.8 The share of supply test is met where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.²⁶ The requirement that the condition prevails or prevails to a greater extent means that the Merger must result in the creation or increase in a share of supply of goods or services of a particular description and the resulting share must be 25% or more.
- 3.9 The description of goods or services identified for the purposes of the jurisdictional test does not have to correspond with the economic market adopted for the purposes of determining the SLC question.²⁷ The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.²⁸ Importantly, however, parties must together supply or acquire the same category of goods or services.²⁹
- 3.10 TLS and the Target have 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 2022,³⁰ in

²⁴ Section 26 of the Act.

²⁵ Section 23(1)(b) of the Act.

²⁶ Section 23(2), (3) and (4) of the Act. The reference to supply 'by' or 'to' one and the same person catches aggregations with regard to the supply or purchase of goods or services. The test is also met where at least one quarter of the goods or services is supplied by the persons by whom the enterprises concerned are carried on, or are supplied to or for those persons.

²⁷ CMA2, paragraph 4.59(a).

²⁸ CMA2, paragraph 4.59(b).

²⁹ CMA2, paragraph 4.59(e).

³⁰ 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 marketing year 2022 ran from 1 October 2022 to 30 September 2023) (FMN, paragraph 13.12.1).

relation to which TLS and the Target had a combined share of [50-60%] with an increment of [10-20%] arising from the Merger.³¹

3.11 Our view is therefore that the share of supply test in section 23 of the Act is met.³²

Conclusion on relevant merger situation

3.12 In view of the above, we have found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in respect of the acquisition of a controlling interest in the Target by TLS.

³¹ The CMA's share of supply estimates of packed sugar to B2C customers, split by sugar type (including for white granulated sugar), for marketing year 2022 are based on its analysis of data provided by the Parties and third parties. The estimates are for pack sizes below 25kg because the large majority of B2C volumes (ie more than [80-90%]) are retailed in bags below 25kg.

³² [Section 23](#) of the Act.

4. COUNTERFACTUAL

Introduction

- 4.1 Determining whether there is an SLC in the assessment of a merger involves a comparison of the prospects for competition with the merger against the competitive situation without the merger, which is referred to as the counterfactual.³³
- 4.2 At phase 2, we select the most likely conditions of competition as the counterfactual against which to assess the merger.³⁴ For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition (that is existing levels of competition between market participants), or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.³⁵
- 4.3 Tereos submitted that the relevant counterfactual is one in which, absent the Merger, Tereos would have [X] the UK B2C channel (the '**exiting firm counterfactual**').³⁶ Tereos submitted that [X].³⁷
- 4.4 As set out in our Merger Assessment Guidelines, in forming a view on an exiting firm counterfactual the CMA will use the following framework of cumulative conditions:³⁸
- (a) '**Limb 1**': the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) '**Limb 2**': there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.
- 4.5 We have considered each of these limbs in turn below. Where the CMA concludes that the most likely scenario is that a firm would have exited absent a merger (Limb 1), and that there would have been no alternative, less anti-competitive purchaser for the firm or its assets (Limb 2), then it will find that the merger may not be expected to result in an SLC.³⁹

³³ [Merger Assessment Guidelines \(CMA129\)](#), 18 March 2021, paragraph 3.1.

³⁴ [CMA129](#), paragraph 3.13.

³⁵ [CMA129](#), paragraph 3.2.

³⁶ FMN, paragraph 11.2; and [Tereos response to the Issues Statement](#), 10 May 2024, paragraphs 3-4, 7 and 10.

³⁷ FMN, page 4 and paragraph 2.12; and [Tereos response to the Issues Statement](#), 10 May 2024, paragraph 8.

³⁸ [CMA129](#), paragraph 3.21.

³⁹ [CMA129](#), paragraph 3.23.

Limb 1: Likelihood of exit

Introduction

- 4.6 To assess Limb 1, we have considered the Target's strategic objective, its performance against that objective, and the actions taken by Tereos to improve the Target's performance over time. We have also considered the internal decision-making of Tereos' senior management in the period leading up to the sale of the Target.
- 4.7 Our analysis draws on an extensive review of Tereos' internal documents – including Board minutes and materials, strategy documents and email exchanges between Tereos' senior management – and a detailed analysis of the Target's financial performance. We have attached greater weight to evidence that has not been prepared in contemplation of the Merger.⁴⁰
- 4.8 We have also considered evidence received from TLS and third parties, for example regarding the wider market context in which to assess the Target's financial performance.
- 4.9 We first summarise Tereos' submissions on Limb 1, before providing our detailed assessment of the evidence.

Tereos' submissions

- 4.10 Tereos submitted that its main focus is to sell its French sugar crops each year primarily to Western European customers in the B2B segment, and that its acquisition of Napier Brown (now TUKI) in 2015 was motivated by the acquisition of the UK B2B rather than B2C business.⁴¹ The strategic purpose of the acquisition was to provide a more profitable market for Tereos' surplus sugar production (ie sugar not sold to Western European B2B customers), compared to what Tereos could achieve by exporting the surplus sugar elsewhere. Tereos stated that the [REDACTED] of the Target (ie its UK B2C business) is therefore wholly dependent on the ability to sell sugar in the UK at a price above the **Export Parity** price.⁴²
- 4.11 Tereos told us that following a [REDACTED], Tereos had made a loss selling sugar in the UK to B2C customers compared to what it could achieve by selling its surplus

⁴⁰ CMA129, paragraph 3.24.

⁴¹ FMN, paragraphs 11.8-11.9.

⁴² Tereos defined the Export Parity price as the price at which it sells sugar that is exported to markets outside Europe via its internal trading platform, Tereos Commodities. The Export Parity price is set by Tereos via Tereos Commodities in euros per tonne, using the following formula: [REDACTED]. Tereos submitted that the prices are indexed against [REDACTED]. Also, Tereos sells INF5 certificates to third parties (which enable holders to import sugar into the European Union without paying duties), [REDACTED]. Tereos response to the CMA's section 109 notice dated 12 April 2024, question 4. In Table 4.2 below we assess the economic profitability of the Target on this basis.

sugar in other export markets [REDACTED] since Financial Year (FY) 2017/18.⁴³ It submitted that there are several drivers of the Target's profitability challenges, including (i) higher transport costs as a result of double handling, as sugar from France is transported to its packing plant in Normanton and then transported to final customers, (ii) excess capacity and loss of economies of scale at the Normanton packing plant due to the decline of volumes, and (iii) the absence of synergies, as Normanton is Tereos' only packing plant that is not located in the vicinity of a sugar production asset.⁴⁴ Tereos told us that the Target's lack of profitability is a structural issue, and that it has never been, and never would be, profitable under Tereos' business model.⁴⁵

- 4.12 Tereos stated that, following a change in its senior leadership in December 2020, there was a strategic review of its global operations, including the Target. It told us that it had attempted unsuccessfully to restructure the Target over two years between 2020 and 2022, before deciding in November 2022 to [REDACTED] either through a sale of the Target or [REDACTED]. Tereos referred to this as a [REDACTED].⁴⁶
- 4.13 Tereos also submitted that at a Board meeting of 13 February 2024, a formal decision was made [REDACTED].⁴⁷

Our assessment

The Target's strategic objective and performance

- 4.14 We note first that a number of Tereos' internal documents support its submissions that the strategic purpose of the Target was to sell Tereos' surplus sugar at a higher price than it could obtain on other export markets. Internal documents also indicate that the Target had failed to meet this strategic objective, and made [REDACTED] losses, for several years prior to the decision to sell the Target in November 2022. For example:
- (a) In October 2021, a presentation to the Tereos Board stated that the objective of the Target was to find a 'better-valued alternative' to exports, that UK B2C prices had dropped significantly since 2015, and that despite a [REDACTED] reduction in headcount, the Target had not proven able to generate positive profits or to achieve prices higher than export prices.⁴⁸

⁴³ FMN, paragraphs 11.11 and 15.27. The Target's financial year ends on 31 March.

⁴⁴ [Tereos response to the Issues Statement](#), 10 May 2024, paragraph 11e.

⁴⁵ FMN, paragraph 11.35; and [Tereos response to the Issues Statement](#), 10 May 2024, paragraph 3a.

⁴⁶ Tereos response to the Issues Letter (counterfactual), 19 February 2024, paragraphs 19-22; and Tereos main party hearing presentation, 5 June 2024, slide 6.

⁴⁷ Tereos response to the Issues Letter (counterfactual), 19 February 2024, Annex IM-1 (EN): 'Extract from the Minutes of the Board of Directors Meeting', 13 February 2024.

⁴⁸ FMN Annex 163, 'Draft TUKI Strategic Review Presentation', October 2021, slide 27.

- (b) In February 2022, a presentation to the Finance Commission of the Tereos Board stated that the Target was not profitable, with losses [REDACTED].⁴⁹ The presentation noted that the [REDACTED] losses were despite 'post-restructuring cost structures' (including a [REDACTED] reduction in headcount).
- (c) In September 2022, Tereos' Chief Financial Officer (**CFO**) stated at a Board meeting that the Target was loss-making [REDACTED].⁵⁰
- (d) In November 2022, Tereos' Commercial Director told the Board that the Target had never been profitable [REDACTED] and produced [REDACTED]. He also noted that Tereos' interest was in the B2B operations of its UK subsidiary.⁵¹

4.15 To understand the Target's performance in more detail, we have undertaken our own analysis based on financial data over a seven-year period covering 2017/18 to 2023/24. Table 4.1 presents data taken directly from TUKI's management accounts, which report the Target's profit and loss on a purely standalone (or 'accounting') basis. These figures show that the Target made a loss [REDACTED] from 2017/18 to 2021/22, with accumulated losses totalling over £[REDACTED] million over the five-year period.⁵² The Target's [REDACTED] also fell sharply over the same period, each reducing by around [REDACTED]%.

4.16 Table 4.1 also shows, however, that (on a standalone basis) the Target's financial performance improved over the most recent two years. Most notably, in 2023/24 the Target experienced a [REDACTED] increase in [REDACTED], and reported [REDACTED]. We note that this improved performance is also reflected in several of TUKI's monthly management account presentations during 2023 and 2024.⁵³

⁴⁹ FMN, paragraph 11.6.13. See also, FMN Annex 148, 'Commission finance dédiée à tsuki'. Losses are in terms of Earning Before Interest and Tax (**EBIT**).

⁵⁰ FMN Annex 160, 'Minutes of the Board Of Directors Information Meeting' held on 20 September 2022; and [Tereos response to the Issues Statement](#), 10 May 2024, paragraph 6e.

⁵¹ FMN Annex 162, 'Extract from the Minutes of the Directors' Information Meeting', held on 22 November 2022. The November 2022 Board meeting is discussed further in paragraphs 4.27 to 4.30 below.

⁵² Based on EBIT excluding exceptional variances.

⁵³ The management account presentations are prepared by the finance team within TUKI and presented to the senior management team of TUKI, including [REDACTED] (MD TUKI until 2014 and Head of Business Planning), [REDACTED] (MD TUKI since May 2024) and [REDACTED] (Commercial Director, recently appointed CEO of the Tereos Group). See for example Tereos response to the CMA's section 109 notice dated 12 April 2024, question 6, 'TUKI&I Monthly Meeting', December 2023, slides 11-12; and 'TUKI&I Monthly Meeting', March 2024, slides 5 and 19.

Table 4.1: The Target's profit and loss statement

	FY 17/18	FY 18/19	FY 19/20	FY 20/21*	FY 21/22†	FY 22/23‡	FY 23/24
EUR/GBP Ex. Rate	[X]	[X]	[X]	[X]	[X]	[X]	[X]
TSF Exw price (Euro)	[X]	[X]	[X]	[X]	[X]	[X]	[X]
TSF Exw price (GBP)	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Volumes (White & Brown) (kt)	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Volumes (White Only) (kt)	[X]	[X]	[X]	[X]	[X]	[X]	[X]
	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Revenue	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Gross Profit	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Fixed Overheads excluding Electricity	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Management fees	[X]	[X]	[X]	[X]	[X]	[X]	[X]
People Costs	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Restructuring Costs	[X]	[X]	[X]	[X]	[X]	[X]	[X]
Total Fixed Costs	[X]	[X]	[X]	[X]	[X]	[X]	[X]
B2C EBITDA reported	[X]	[X]	[X]	[X]	[X]	[X]	[X]
B2C EBITDA excluding exceptional variances	[X]	[X]	[X]	[X]	[X]	[X]	[X]
B2C EBIT excluding exceptional variances	[X]	[X]	[X]	[X]	[X]	[X]	[X]

Source: Tereos (Tereos response to the CMA's RFI3 dated 24 November 2023, Annex 05 - RFI 1 Annex 03 - CMA RFI1 Q23 - Updated V5.xlsx).

* [X].

† [X].

‡ [X].

- 4.17 Table 4.2 considers the Target's profitability on an 'economic' basis, which factors in the opportunity cost to Tereos of selling its sugar elsewhere. This is based on comparing Tereos' transfer price to the Target (row (b)) against the Export Parity price (row (d)). We consider that this analysis more accurately reflects both (i) the Target's performance against its strategic objective (which is to achieve a higher price than Export Parity), and relatedly, (ii) the Target's profitability from the perspective of Tereos as a whole.
- 4.18 Table 4.2 shows that, on an economic basis, the Target has been consistently loss making in [X] the last seven years, including 2023/24.⁵⁴ Indeed, although the Target made [X] meaning that Tereos made an overall loss of £[X] million compared to what it could have achieved [X] other export markets (row (h)).
- 4.19 The figures in Table 4.2 therefore show that although the Target has recently been profitable on a standalone basis, it has continued to be loss making when compared to the Export Parity price. Taken together, Tables 4.1 and 4.2 indicate that the Target's recent improved performance most likely reflects cyclical movements in the price of sugar. In particular, although UK prices have risen in each of the last two years, prices have also risen elsewhere.⁵⁵ As shown in row (e)

⁵⁴ We note that even [X], the Target has incurred losses [X].

⁵⁵ This is consistent with evidence provided by TLS. At the TLS main party hearing for example, [X] (Vice President, Finance and International Operations, ASR Group) stated: '[the] price rise in the UK needs to be looked at relative to the European and the world market price. For example, the world market price, raw sugar went up 30, 40 per cent in the last year and a half or so' (TLS main party hearing transcript, 5 June 2024, pages 53-54).

of Table 4.2, Tereos' [REDACTED] remains lower than Export Parity, meaning that the Target continues to make economic losses for Tereos.

Table 4.2: Tereos economic loss from FY 17/18 to FY 23/24

			FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
(a)	UK & Ireland – TUKI B2C	Volumes white sugar only kt	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(b)		TUKI Price Exw £/t*	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(c)	Export	Volumes kt	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(d)		Export Price Exw £/t†	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(e)	Price difference TUKI vs Export [(b)-(d)]	£/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(f)	Tereos Opportunity Cost [(a)x(e)]	£m	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(g)	EBIT TUKI	£m	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
(h)	Tereos loss [(f)+(g)]	£m	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis based on Tereos data (Tereos response to the CMA's RFI3 dated 24 November 2023, Annex 05 - RFI 1 Annex 03 - CMA RFI1 Q23 - Updated V5.xlsx).

* [REDACTED].

† [REDACTED].

4.20 In Table 4.3, we have extended this analysis to compare Tereos' UK B2C prices (captured in its transfer price to TUKI) against prices in other European channels. This shows that since 2018/19 the UK B2C channel has consistently been less profitable for Tereos than other European outlets, including in the most recent financial years. For example, [REDACTED]. However, [REDACTED].⁵⁶ Consistent with the figures in Table 4.2 above, Table 4.3 also shows that prices have recently risen not only in the UK but throughout Europe (and globally) and Tereos continues to make a loss on its UK sales compared to alternative channels.

4.21 Table 4.3 also highlights that Tereos sells considerably higher volumes of sugar through its B2B channels in the UK, France and elsewhere than it does through the UK B2C channel.⁵⁷ We consider that this is important context, as it indicates that it would likely not be difficult for Tereos to divert its UK B2C volumes into alternative channels.⁵⁸

⁵⁶ This comparison is based on the difference between the transfer price which Tereos France sells to TUKI and the prices attained from [REDACTED]. Tereos explained that the Transfer price (Price Exw) has been stripped of packaging and transports costs to the customer to facilitate comparison of TUKI's profitability at a group level (see Tereos response to the CMA's section 109 notice dated 10 May 2024, paragraphs 2.1 and 2.4).

⁵⁷ For example, in 2023/24 Tereos sold [REDACTED] kilo tonnes to UK B2B customers and [REDACTED] kilo tonnes to French B2B customers (Table 4.3). This is compared to [REDACTED] kilo tonnes for the Target, ie the UK B2C channel (Table 4.1).

⁵⁸ Tereos submitted that it sells sugar to the Target at price below what it could achieve on other alternative markets and that the Target's revenue accounts only for a very small proportion of Tereos' total revenues (<0.5%). [Tereos response to the Issues Statement](#), 10 May 2024, paragraphs 3a and 8a.

Table 4.3: The Target's performance compared with other B2B and B2C sales channels

		FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23	FY 23/24
France (B2B)	Volumes sold in kilo tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw £/tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Iberia (B2B)	Volumes sold in kilo tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw £/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Germany & North East Europe (B2B)	Volumes sold in kilo tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw £/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Benelux & Nordics (B2B)	Volumes sold in kilo tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw £/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Italy & South East Europe (B2B)	Volumes sold in kilo tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw £/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
UK & Ireland (B2B)	Volumes sold in kilo tonnes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw Equiv Bulk £/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Betterave France (B2C)	Volumes kt	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	Price Exw Equiv Bulk £/t	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TUKI price £ difference	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis based on Tereos data (Tereos response to the CMA's section 109 notice dated 10 May 2024, Annex 002 s109N2).

4.22 Based on the analysis above, our view is that the Target has been consistently loss making over a sustained period of time, and has failed to meet its strategic objective which is to provide a more profitable sales channel for Tereos in the UK than it could achieve via exports to other markets.

4.23 We recognise that there is evidence of an improved financial performance in recent years, with the Target reporting positive profits on a standalone basis. However, the evidence also shows that the improved performance is likely temporary in nature, driven by a cyclical increase in sugar prices. This is also reflected in internal documents, with a presentation to the Tereos Board in July 2023 for example stating that the Target had [REDACTED].⁵⁹ Indeed, Table 4.1, Table 4.2 and Table 4.3 show that sugar prices have risen not only in the UK but

⁵⁹ Tereos response to the CMA's section 109 notice dated 12 April 2024, 'Minutes of Directors' Information Meeting' held on 18 July 2023.

throughout Europe and globally, and the Target remains loss making compared to these alternative sales channels.

Actions taken to address the Target's performance and the decision to sell

- 4.24 Tereos submitted that it has implemented several measures since at least 2020⁶⁰ to improve the Target's profitability, including (i) a [REDACTED] headcount reduction from [REDACTED] to [REDACTED]; (ii) the sale of its Stallingborough site for £[REDACTED] million; (iii) a reduction in the number of shifts from three to one, [REDACTED] and (iv) ceasing to pack unprofitable products at [REDACTED], such as 5kg and 25kg bags which are now packed in [REDACTED] (France) [REDACTED].⁶¹ Tereos submitted that the Target had also attempted to [REDACTED], but that this had resulted in [REDACTED].⁶²
- 4.25 Tereos told us that it had also explored a range of additional options to restructure the Target's operations, including outsourcing part of its packing to other Tereos sites in France, purchasing sugar from local producers or traders in the UK, and co-packing for third party competitors.⁶³ It submitted that all these measures proved to be [REDACTED] with Tereos' mission to get the most value from the sugar its farmers produce.⁶⁴
- 4.26 Tereos submitted that in February 2022, a meeting of the Finance Committee of the Tereos Board was held to review the TUKI business.⁶⁵ The minutes of this meeting reflect that the Target had been significantly loss making, and that [REDACTED] despite previous restructuring efforts (see paragraph 4.14(b) above). At the meeting, the Board identified five potential options for the Target, namely: [REDACTED].^{66,67} Further, [REDACTED] (TUKI's future Managing Director) was asked to assess whether the Target [REDACTED].⁶⁸
- 4.27 Tereos stated that between February and November 2022, it made further significant efforts to improve the Target's performance, culminating in the decision to initiate a sales process in November 2022.⁶⁹ This period included the following events:
- (a) In April 2022, [REDACTED] (the newly appointed Managing Director of TUKI), presented a strategy for restructuring the TUKI business. This strategy included a [REDACTED] plan which involved buying sugar from suppliers other than Tereos and [REDACTED]; and a [REDACTED] plan which involved co-packing for competitors,

⁶⁰ Tereos response to the Issues Letter, 19 February 2024, paragraph 19.

⁶¹ FMN, paragraph 11.33; and Tereos response to the Issues Letter, 19 February 2024, paragraph 23.

⁶² FMN, paragraph 11.33.6; and [Tereos response to the Issues Statement](#), 10 May 2024, paragraph 13g.

⁶³ FMN, paragraph 11.32.

⁶⁴ FMN, paragraph 11.32; and [Tereos response to the Issues Statement](#), 10 May 2024, paragraph 13f, 13h and 13i.

⁶⁵ FMN, paragraph 11.6.13; and FMN Annex 148, 'Commission finance dédiée à tsuki'.

⁶⁶ [REDACTED].

⁶⁷ FMN Annex 167, 'Finance Committee TSUKI Performance History and Outlook', 23 February 2022, slide 38.

⁶⁸ FMN, paragraph 11.6.13; and FMN Annex 148, 'Commission finance dédiée à tsuki'.

⁶⁹ See for example Tereos main party hearing transcript, 5 June 2024, page 26 and FMN, paragraph 11.6.

[REDACTED] or selling the assets.⁷⁰ The presentation also included the five options for the Target identified in February 2022, which included – among others – closing the Target.

- (b) In September 2022, the Tereos Board agreed that a [REDACTED]. The Board noted that they were waiting for proposals to improve the business and the CFO stated that they were considering selling the Target.⁷¹
- (c) In November 2022, a presentation entitled '[REDACTED]' was presented to the Tereos Board. This presentation noted an [REDACTED], but stated that [REDACTED]. Tereos would then assess [REDACTED].⁷²

4.28 Tereos submitted that the presentation to the Tereos Board in November 2022 shows that Tereos had initiated a sales process for the Target, and that this is evidence [REDACTED].⁷³ It stated that it was merely [REDACTED] that was in question (ie whether through sale [REDACTED]).

4.29 Our view is that Tereos has undertaken a range of measures to try and improve the Target's financial performance over a period of several years, including reducing the number of products packed at the Normanton site, and [REDACTED] reductions in headcount and other costs. These actions are clearly reflected in Tereos' internal documents, including presentations to the Board, and in our financial analysis (see Table 4.1).⁷⁴ Our financial analysis also shows that the Target has remained loss making despite such measures.

4.30 We agree that the presentation to the Board in February 2022 was largely pessimistic regarding the Target's financial performance and prospects, despite previous restructuring efforts. Nevertheless, we do not consider that the evidence above shows that the Board had agreed on a definitive course of action by November 2022 (when the sales process was initiated), should a sale not proceed. In particular, at least some Board members considered there to still be alternative options available for the Target, and it was noted that there had been some improvement in the Target's performance.⁷⁵

4.31 We also do not consider that any weight should be placed on the subsequent Board resolution of February 2024 to [REDACTED] if the Merger was prohibited by the CMA, or otherwise terminated. This resolution was passed after the BPA with TLS

⁷⁰ FMN, paragraph 11.6.15; and FMN Annex 151, '[REDACTED]'.

⁷¹ FMN Annex 160, 'Minutes of the Board of Directors Meeting' held on 20 September 2022.

⁷² FMN Annex 161, '[REDACTED]', November 2022, slide 3.

⁷³ Tereos response to the Issues Letter, 19 February 2024, paragraphs 6 and 10(c)(i)(D).

⁷⁴ See: FMN Annex 168, 'Presentation of TUKI', October 2022, slide 7; FMN Annex 146, '[REDACTED]', January 2022; and FMN Annex 165, 'TSUKI Finance Committee: In brief', 23 February 2022.

⁷⁵ See: FMN Annex 161, '[REDACTED]', November 2022; and FMN Annex 162, 'Extract from the Minutes of the Directors' Information Meeting', held on 22 November 2022.

had already been signed, and we understand that it was passed at least in part in response to the CMA's review of the Merger.⁷⁶

- 4.32 Our view is therefore that Tereos' internal documents do not show that the Board had made a definitive decision to [redacted] absent the Merger, albeit there is some supportive evidence from internal documents to this effect.⁷⁷ However, considering all the evidence in the round, our view is that the most likely scenario is that Tereos would have closed the Target (and therefore exited the UK B2C channel) absent the Merger. In particular, our analysis of the Target's financial performance in the previous section shows that it has consistently failed to meet its strategic purpose of delivering a profit on Tereos' surplus French sugar crops, relative to the Export Parity price (or other sales channels). The evidence above also shows that Tereos has undertaken significant restructuring efforts, all of which have failed to achieve the Target's strategic objective, and we have not seen any evidence that the Target's performance is likely to improve with further restructuring efforts. Tereos' internal documents are consistent with this assessment.
- 4.33 Further, we recognise that Tereos has previously adopted a [redacted].⁷⁸ We also recognise that the Target is a peripheral and non-core part of Tereos' overall business, accounting for only a very small proportion (<0.5%) of its total revenues.⁷⁹ In this context, we consider that it would not be difficult for Tereos to divert the Target's volumes to more profitable sales channels, as evidenced by the figures in Tables 4.2 and 4.3.

Conclusion on Limb 1

- 4.34 Based on the analysis above, our view is that the evidence corroborates Tereos' submissions that the Target has had a prolonged period of poor financial performance, and has failed to meet its strategic objective of delivering a profit that is above Export Parity. This is clearly reflected both in Tereos' internal documents and our analysis of the Target's financial performance.
- 4.35 The evidence also shows that Tereos has put in place extensive measures, including [redacted] redundancies and other cost cutting measures, to restructure the

⁷⁶ CMA129, paragraph 2.29(a) for example states that 'the CMA may be likely to attach more evidentiary weight to [internal] documents if they were generated prior to the period in which [the merging] firms were contemplating or aware of the merger, or if they are consistent with other evidence'. At Tereos' main party hearing, Tereos' legal advisor stated that the CMA's investigation was the 'catalyst' for the resolution (Tereos main party hearing transcript, 5 June 2024, pages 29-30).

⁷⁷ We requested the minutes and materials presented at Tereos Board meetings (as well as those from the Finance Commission of the Tereos Board and Tereos' shareholders' meetings) from November 2022 onwards. We understand these meetings to be the relevant forums at which strategic decisions regarding the Target would have been made, based on the timeline of events set out in FMN, paragraph 11. These internal documents show that Tereos had undertaken further significant restructuring efforts and that the Target had consistently failed to meet its strategic objective. See in particular an April 2023 presentation prepared in connection with the sale process, which provides some indication that Tereos may have decided [redacted] by at least April 2023 (stating that '[redacted]') (Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 1204 S109N3.).

⁷⁸ FMN, paragraph 11.57; and Tereos main party hearing presentation, 5 June 2024, slide 6.

⁷⁹ Tereos response to the Issues Statement, 10 May 2024, paragraph 8a.

Target to enable it to meet its strategic objective. The evidence shows that these attempts have proven unsuccessful, and we consider it unlikely that, absent the Merger, Tereos would have been able to restructure the Target further successfully.

- 4.36 Our conclusion is therefore that the most likely scenario is that the Target would have closed (ie exited) absent the Merger. We therefore conclude that the conditions for Limb 1 of the exiting firm counterfactual are met.

Limb 2: Alternative purchasers

Introduction

- 4.37 As we have found that the Target is likely to have closed absent the Merger (Limb 1), we now consider whether there may have been any alternative, less anti-competitive purchasers of the business other than TLS (Limb 2).
- 4.38 Our Merger Assessment Guidelines state that in undertaking such an assessment, the CMA may consider the marketing process for the target firm and offers received for it, and will not restrict its analysis to alternative purchasers who were willing to pay the same or similar price that 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.⁸⁰
- 4.39 In undertaking our assessment of Limb 2, we have therefore analysed the sales process for the Target in detail, the bids received, and Tereos' internal consideration of those bids. This includes an extensive review of internal documents, including Board minutes and materials, bid documents, and emails between Tereos' senior management. We have also contacted several third parties that were not approached as part of the sales process, to see whether there may have been alternative purchasers for the Target.
- 4.40 We first present Tereos' submissions regarding the sales process for the Target and bids received, followed by our assessment of the evidence.

Tereos' submissions

- 4.41 Tereos told us that it launched an auction process for the Target in October 2022, and assisted by its corporate finance advisors d'Angelin, identified a list of potential buyers based on a 'comprehensive' screening process.⁸¹ Following this

⁸⁰ CMA129, paragraph 3.30.

⁸¹ FMN, paragraphs 11.36-11.37.

screening process and an initial assessment, d'Angelin identified a total of [REDACTED] potential purchasers split across three categories:

- (a) Sugar producers (including TLS, [REDACTED]⁸² and others);
- (b) Food and beverage companies (including [REDACTED] and others); and
- (c) Trading houses.

- 4.42 Following an initial outreach by d'Angelin to each of these potential purchasers, [REDACTED] companies (TLS, [REDACTED] and [REDACTED]) indicated an initial interest in the Target.⁸³ [REDACTED] of these [REDACTED] companies, TLS and [REDACTED], progressed to an indicative bid stage in January 2023, with a final bid phase commencing in February 2023.⁸⁴
- 4.43 Tereos submitted that in late March-early April 2023, it received a binding offer from TLS, and [REDACTED] from [REDACTED].⁸⁵ Tereos stated that [REDACTED] had made it clear that the Target had a '[REDACTED]' in its own right, and constituted an interesting opportunity for [REDACTED] only if it was sold as part of a [REDACTED].⁸⁶ Tereos stated that this was reflected in the fact that [REDACTED] valued the Target's assets [REDACTED].
- 4.44 Tereos told us that, for these reasons, [REDACTED] bid was not regarded as worthy of pursuing further.⁸⁷ In particular, [REDACTED] interest was contingent on Tereos entering into [REDACTED], which would have defeated the transaction rationale from Tereos' perspective ([REDACTED]).
- 4.45 Tereos submitted that [REDACTED].⁸⁸

Our assessment

[REDACTED]

- 4.46 [REDACTED] told us that its bid for the Target was contingent on [REDACTED], and that any deal for the business would have required [REDACTED] to make it viable.⁸⁹ It stated that, without [REDACTED], it was unlikely that it would have been in a position to [REDACTED] the Normanton site. It also considered that the Normanton site was [REDACTED]. However, it stated that it was given very limited access to the Normanton site during the sales process, and as a result it was unable to conduct a property survey [REDACTED], or to carry out any commercial due diligence on the Target business.

⁸² [REDACTED].

⁸³ FMN, paragraph 11.37.

⁸⁴ FMN, paragraphs 11.39-11.44.

⁸⁵ FMN, paragraph 11.44.

⁸⁶ FMN, paragraphs 11.48-11.49.

⁸⁷ FMN, paragraph 11.50.

⁸⁸ FMN, page.45.

⁸⁹ Third party call.

- 4.47 [X] told us that, whilst it considered that [X] would have been possible, no conversations were held between the two parties.⁹⁰ It stated that it was clear that Tereos did not want to engage in [X] at the time, and it therefore withdrew from the sales process.
- 4.48 We note that the evidence we have received from [X] is corroborated by Tereos' internal documents, which show that both (i) a [X], and (ii) that [X].⁹¹ Tereos' internal documents also show that [X] had expressed concerns regarding the [X], which it considered would need considerable [X].⁹²
- 4.49 Internal documents also show, however, that [X] had been exchanged between the two parties during March and April 2023. In particular:
- (a) In March 2023, Tereos sent an email to [X] setting out some '[X]'. This included a proposal for [X].⁹³
 - (b) [X] Position Paper of April 2023 included [X], under which [X].⁹⁴ The Position Paper states that [X].
- 4.50 We note that both sets of [X] were at a very early stage, and the evidence indicates that neither party chose to engage with the other's proposal. Indeed, internal documents show that Tereos had [X], with a presentation from d'Angelin in April 2023 for example stating that '[X]'.⁹⁵ An update to the Tereos Board in April 2023 also stated that the bid received from [X] was '[X]' than that of TLS.⁹⁶
- 4.51 Our own analysis also indicates that it would have been very challenging for any deal to have been struck which was commercially viable for both parties. In particular, Tereos' proposal, based on [X], would most likely have meant that prices were [X] to be competitive in the B2C channel, based on relative historical prices.⁹⁷ [X] proposal would most likely have meant that prices were [X], even with the additional [X].⁹⁸

⁹⁰ Third party call.

⁹¹ For example, Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 0590 s109N3; Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 6231 s109N3; and Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 6226 s109N3.

⁹² For example, Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 1158 s109N3; and Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 1180 s109N3.

⁹³ Annex 6226 s109N3 and Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 0496 s109N3.

⁹⁴ Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 1180 s109N3.

⁹⁵ Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 1204 S109N3.

⁹⁶ Tereos follow-up response dated 13 June 2024 to the CMA's section 109(1) notice dated 12 April 2024, presentation slides for the 'Directors' Information Meeting', dated 18 April 2023; and 'Minutes of the Directors' Information Meeting', held on 18 April 2023.

⁹⁷ For example, Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 0490 s109N3. We consider that based on the Target's historical performance (see Table 4.2), an input price based on [X].

⁹⁸ Table 4.2 above shows that Tereos' loss has been [X]. Further, as we note in paragraph 4.52, there is considerable uncertainty as to whether [X] could have achieved [X] indicated in its Position Paper.

4.52 Our view is that it is unlikely that any sustainable [X] could have been struck between Tereos and [X], which would have enabled both (i) Tereos to attain a [X], and (ii) [X] to be [X]. Indeed, the evidence in paragraphs 4.14 to 4.23 above shows that the Target has been [X] loss making, both on a standalone and economic basis (ie relative to Export Parity), and that Tereos has implemented a range of measures to try and improve the Target's financial performance (including [X] reductions in costs). We therefore consider it unlikely that [X] would have been able to achieve [X] indicated, and even if this were the case, this would not be sufficient [X].⁹⁹

4.53 Overall, whilst we cannot exclude [X] altogether as a potential alternative purchaser, we do not consider that this is the most likely scenario absent the Merger.

Other alternative purchasers

4.54 Consistent with Tereos' submissions above (paragraphs 4.41 to 4.45), internal documents show that [X] bids were received for the Target during the sales process.¹⁰⁰ Although there was some initial interest from [X], it withdrew early in the process during February 2023, without making a bid.¹⁰¹ In any event, [X], and we therefore do not consider that it would be [X].¹⁰²

4.55 We consider that the overall pool of potential purchasers for the Target (that would continue to run it as a supplier of packed sugar to B2C customers) is likely to be limited, due to the need for a reliable supply of bulk refined sugar at a competitive price. Indeed, [X] told us that its bid was reliant on a [X], as it did not consider that it would have been [X] otherwise.¹⁰³ Our view is therefore that the most credible alternative purchasers for the Target would likely have been vertically integrated sugar producers and refiners.

4.56 We note that in its initial market outreach, d'Angelin contacted [X] sugar producers/refiners, including TLS, [X] and [X].¹⁰⁴ As part of our market testing, we have also contacted several European sugar producers/refiners to inquire whether they might have been interested in purchasing the Target around the time at which the sales process took place (including at any price above liquidation

⁹⁹ We note also that [X] told us that it had not been able to undertake any commercial due diligence on the Target, or any detailed analysis [X] (Third party call).

¹⁰⁰ See for example Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 1158 s109N3; and FMN, paragraphs 11.39-11.40.

¹⁰¹ FMN, paragraph 11.41 and Tereos response to the CMA's section 109(3) notice dated 30 May 2024, Annex 0646 s109N3.

¹⁰² [X]. It is [X] (FMN, paragraphs 15.35-15.36). It packs and supplies [X] private label products. The CMA's analysis shows that in marketing year 2022, [X].

¹⁰³ Third party call.

¹⁰⁴ FMN, paragraphs 11.37-11.38. [X] sugar producers were initially identified, namely: TLS, [X]. However, Tereos stated that after further review, [X] was removed from the list, as it was not considered sufficiently credible to be worth contacting. [X] told the CMA that it was not approached as a potential purchaser of the Target, but that if it had been, it would not have been interested (Third party call).

value).¹⁰⁵ Two of these respondents indicated that, in principle, they might have been interested in the Target business, although in our view these expressions of interest were highly speculative. Each of the two respondents indicated that such an acquisition would not have been a [REDACTED], and they each told us that they have [REDACTED] in the UK.¹⁰⁶ We therefore do not consider it likely that either of the two respondents would have been an alternative purchaser for the Target. None of the other third parties that we spoke to indicated that they would have been interested in purchasing the Target.

Conclusion on Limb 2

4.57 On the basis of the evidence above, our view is that there were no alternative, less anti-competitive potential purchasers for the Target than TLS. Tereos ran a sales process for the Target in 2022, assisted by an external advisory firm, and received [REDACTED] binding offer (from TLS). [REDACTED] was received, from [REDACTED], but this was conditional on the negotiation of [REDACTED]. Our analysis shows that it is unlikely that a viable and sustainable [REDACTED] could have been reached between the two parties, and whilst we cannot exclude this possibility altogether, we do not consider it to be the most likely scenario absent the Merger.

4.58 Our view is that the pool of other alternative purchasers for the Target is likely to be limited, due to the need for a reliable and cost-effective supply of bulk sugar. We have undertaken our own market testing, and we have received no evidence which indicates that there would likely have been an alternative, less anti-competitive purchaser for the Target, including at any price above liquidation value. Our view is therefore that the conditions for Limb 2 of the exiting firm counterfactual are satisfied in this case.

Conclusion on the counterfactual

4.59 In view of the above, our view is that the two limbs of the exiting firm counterfactual are satisfied in this case. We consider that the most likely scenario absent the Merger is that the Target would have exited the market, taking account

¹⁰⁵ FMN Annex 31, 'The Landscape of the EU+UK Sugar Market', December 2023, slide 7, provides a list of Europe's [REDACTED] largest sugar producers (one of which is Tereos, and therefore not a potential purchaser). [REDACTED] of these companies ([REDACTED]) were contacted as part of the sales process for the Target, and are discussed above in paragraph 4.54 and footnote 104 respectively. We contacted [REDACTED] to ask if they would have been interested in purchasing the Target in late 2022 or early 2023, including at any price above liquidation value. [REDACTED] are discussed in footnote 106 below; [REDACTED] told us that it would have had no interest in purchasing the Target (Third party email to the CMA); and [REDACTED] did not respond to our requests, although it previously told us that it had no entry or expansion plans in the [REDACTED] (Third party response to section 109 Notice). Separately, we note that [REDACTED] (a sugar producer that was [REDACTED]) told the CMA that it did not consider [REDACTED] due to the uncertainty [REDACTED], and would only consider [REDACTED] (which it does not consider will happen [REDACTED]) (Third party call). We note that the sugar producers/refiners contacted by d'Angelin and/or the CMA regarding the Target business includes [REDACTED].

¹⁰⁶ [REDACTED] told us that 'the acquisition of a UK B2C business would not fit [REDACTED]' but that it 'would not exclude completely' that [REDACTED]. It also stated that its interest in the Target business would have been 'rather unlikely' (Third party emails to the CMA). [REDACTED] told us that it would have looked into the transaction had it been approached, but that [REDACTED] and that it 'would not have been very likely' that it would purchase the Target business (Third party emails to the CMA). It also previously told us that it has [REDACTED] in the UK B2C channel (Third party questionnaire response).

of its consistently poor financial performance and the steps taken by Tereos to improve its performance. We also consider that there would not have been an alternative, less anti-competitive purchaser for the Target than TLS.

- 4.60 As we have found that the exiting firm scenario was the most likely scenario absent the Merger, our conclusion is that the Merger is not expected to result in an SLC within any market or markets in the UK.

5. CONCLUSIONS

5.1 As a result of our assessment set out in the preceding chapters, we have concluded that:

- (a) The anticipated merger constitutes arrangements in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in respect of the acquisition of a controlling interest in the Target by TLS.
- (b) The creation of the relevant merger situation may not be expected to result in an SLC within any market or markets in the UK.