

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

SUMMARY OF FINAL REPORT

3 SEPTEMBER 2024

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.

¹ Merger Assessment Guidelines (CMA129), 18 March 2021, paragraph 3.21.

17. Our analysis shows that Tereos received [X] binding offer (from TLS) for the Target as a result of its sales process. An initial bid was also received from another potential purchaser ([X]), but the evidence shows that this was conditional on [X] being struck with Tereos for [X], and negotiations did not progress beyond a very early stage. Our view is that it would have been very challenging for Tereos and [X] to agree a workable and sustainable [X], 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 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.