

Anticipated acquisition by Arla Foods Ingredients Group P/S of Volac Whey Nutrition Holdings Limited

SUMMARY

ME/7105/24

1. On 18 April 2024, Arla Foods Ingredients Group P/S (**AFI**) agreed to acquire Volac Whey Nutrition Holdings Limited (**Volac**) (the **Merger**). AFI is a wholly owned subsidiary of Arla Foods Amba (together referred to as **Arla**). The Competition and Markets Authority (**CMA**) has concluded that it has jurisdiction to review this Merger because a relevant merger situation has been created. Arla and Volac are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.
2. Both Parties manufacture and supply whey protein concentrate (**WPC**) used for sports nutrition and food applications, in particular:
 - (a) WPC with a protein content from 50% to 89% (**WPC50–89**); and
 - (b) Whey protein isolate (**WPI**), which is WPC with a protein content of 90% or more. Within WPI, the Parties both supply:
 - (i) The standard non-clear type of WPI (**regular WPI**); and
 - (ii) A clear type of WPI which does not give a milky texture to drink products (**clear WPI**).
3. The CMA has considered whether the Merger would lead to a substantial lessening of competition (**SLC**) as a result of **horizontal unilateral effects** in the supply of (i) regular WPI for sports nutrition and food applications in Europe and (ii) WPC50–89 for sports nutrition and food applications in Europe. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity to profitably raise prices or degrade quality on its own and without needing to coordinate with its rivals.
4. The CMA has found that the Merger does not give rise to a realistic prospect of an SLC within the markets of regular WPI for sports nutrition and food applications in Europe or WPC50–89 for sports nutrition and food applications in Europe.
 - (a) In relation to regular WPI, the CMA has found that while the Merged Entity will have a significant share of supply, a range of other suppliers will continue to exert sufficient competitive constraint on the Merged Entity. These include, in particular, Tirlán Co-operative Society Limited, Royal FrieslandCampina N.V., Sachsenmilch Leppersdorf GmbH (**Sachsenmilch**), Milk Specialties Global and a range of smaller competitors.

- (b) In relation to WPC50–89, the CMA has found that the Merged Entity will have a moderate market position, the increment as a result of the Merger will be relatively small, the Parties do not compete closely and the Merged Entity will face sufficient competitive constraint from several other suppliers. These include the market leader, the DMK Group, as well as competitors including Fonterra Cooperative Group Limited, Sachsenmilch and a range of other smaller competitors.
5. In relation to clear WPI, the CMA has found that the aggregate value of the market in the UK is well below £30 million. The CMA also considers that (i) the Merger is not one of a potentially large number of similar mergers that could be replicated across the sector and (ii) the Merger is not in a sector which relates to any CMA priority areas or other areas of potential importance.
6. As a result, the CMA believes that the market(s) concerned is/are not of sufficient importance to justify the making of a reference and has decided to exercise its discretion under section 33(2)(a) of the Enterprise Act 2002 (the **Act**) not to refer the Merger (the '**de minimis**' exception). The CMA did not have to conclude on whether the Merger gives rise to a realistic prospect of an SLC in relation to clear WPI because, even if the duty to refer is met, then the discretion under the 'de minimis' exception would be applied.
7. The Merger will therefore **not be referred** under section 33(1) of the Act.