

# Anticipated Acquisition by Muller Dairy (UK) Limited of Yew Tree Dairy Holdings Limited

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

**ME/7109/24**

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 22 October 2024. Full text of the decision published on 6 December 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 Some numbers have been replaced by a range, which are shown in square brackets.

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# SUMMARY

## OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) has found that the acquisition by Müller Dairy (UK) Limited (**Müller**) of Yew Tree Dairy Holdings Limited (**Yew Tree**), is a relevant merger situation that does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
2. Müller agreed to acquire Yew Tree pursuant to an agreement entered into on 2 April 2024. The CMA refers to this acquisition as the **Merger**. Müller and Yew Tree are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

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

3. Müller is a fully-owned subsidiary of Unternehmensgruppe Theo Müller S.e.c.s (together with its subsidiaries, the **Müller Group**), an international producer of dairy products. Müller procures raw milk from its milk pool of approximately 1,200 dairy farms in the UK. It converts this raw milk into a range of dairy products, including conventional and organic fresh milk, which it supplies to national multiple customers (ie national supermarket chains) and middle ground customers (ie high-street retailers, foodservice and wholesale customers).
4. Yew Tree is a UK-based and family-owned company that processes raw milk into a range of dairy products, including conventional and organic fresh milk at its processing site in Skelmersdale, in the north-west of England. Yew Tree also has two milk drying facilities, which it uses to dry milk into milk powders. In addition to its own use of the facilities, Yew Tree is one of only two drying sites in Great Britain (**GB**) made available to third parties for milk drying.
5. The focus of the CMA's investigation was conventional and organic fresh milk, in particular, the supply of these products to middle ground customers (described in further detail below).

### Why did the CMA review this merger?

6. 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.
7. In this case, the CMA has concluded that it has jurisdiction to review this Merger because arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation. As a result of the

Merger, Müller will acquire control over Yew Tree, at which point Müller and Yew Tree will cease to be distinct. The value of Yew Tree's UK turnover in its most recent financial year exceeded £70 million and therefore the CMA considers that the turnover test is met.

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

8. In assessing this Merger, the CMA considered a wide range of evidence in the round.
9. In addition to the evidence submitted by the Parties, the CMA also spoke to and gathered evidence from other companies and organisations to better understand the various levels of the supply chain making up the dairy sector and the competitive landscape in the relevant markets, and to get their views on the impact of the Merger. In particular, the CMA received evidence from the Parties' middle ground customers (of varying sizes and business type), national multiple customers and other dairy processors. The CMA also reached out to several industry bodies to obtain their views on the Merger.

### **What did the evidence tell the CMA about the effects of the Merger on competition?**

10. The CMA looked at whether the Merger would lead to a substantial lessening in competition as a result of horizontal unilateral effects in the supply of (i) conventional fresh milk and (ii) organic fresh milk, to middle ground customers. The middle ground customer segment is a broad category of customers that captures those customers who do not fall into the following categories: (a) national multiples (ie the large supermarket chains) and (b) doorstep customers (ie direct milk sales to households). Middle ground customers would include customers such as convenience stores and coffee shops.
11. In its assessment, the CMA looked at shares of supply, closeness of competition between the Parties and the competitive constraint imposed by remaining suppliers.
12. The Merged Entity's shares of supply in both conventional and organic milk to middle ground customers are material. However, several credible competitors remain alongside a long tail of smaller dairy processors.
13. With regard to the supply of conventional fresh milk, the CMA found that the Parties are not close competitors because:
  - (a) There is limited direct competition between the Parties for customer opportunities, as they generally appear to focus on different customers – while Yew Tree supplies a wide range of middle ground customers including

food service and wholesale customers, by contrast, Müller has sought to expand its supply to particular, large middle ground customers that are complementary to its supply of fresh milk to national multiple customers; and

(b) The Parties' offerings reflect the different product requirements and/or preferences of their respective customers, such that they are not considered to be realistic alternatives to each other by the large majority of customers that responded to the CMA's market investigation.

14. The CMA found that a number of other dairy processors would continue to impose a competitive constraint on the Merged Entity, including for the large middle ground customers targeted by Müller.
15. With respect to the supply of organic fresh milk to middle ground customers, the CMA similarly found that the Parties do not compete closely. In addition to the Parties' different offerings, the CMA found that Müller's activities in this market were limited and related in the main to supplying [X].<sup>i</sup>
16. The CMA also found that a number of other dairy processors were well-placed to compete to supply organic fresh milk to middle ground customers, namely Arla, Freshways, Graham's and Cotteswold Dairy, particularly when procured together with conventional fresh milk.
17. In connection with both theories of harm assessed by the CMA, the CMA considered the importance of Yew Tree's drying facilities as a milk balancing option for other third-party dairy processors. Some third-party dairy processors use Yew Tree's drying facilities to dry excess milk during the 'flush' period (ie the season in which dairy cows' production of milk exceeds customer demand for fresh milk, leading to an over-supply of fresh milk) via third-party tolling arrangements or by selling excess milk to Yew Tree. The CMA, however, found that the volumes of milk dried by third parties at Yew Tree were small, and that sufficient other milk balancing options would remain available in the absence of Yew Tree's facilities.
18. The CMA therefore concluded that the Merger does not give rise to a realistic prospect of an SLC.
19. During the course of this investigation, the CMA received a number of complaints about the rate of consolidation and the strength of Müller's market position in the dairy industry generally. The CMA notes that the outcome of one merger investigation is not an indication of the outcome of potential future merger investigations in the same sector. In any market where concentration levels are high and the Merged Entity has a large share of supply, horizontal unilateral effects are more likely. The CMA will continue to review carefully any potential future relevant merger situations in this sector and, depending on the evidence

available at the time and the parties involved, may find that the removal of any further competitive constraint constitutes an SLC.

### **What happens next?**

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

# ASSESSMENT

## PARTIES, MERGER AND MERGER RATIONALE

### Müller

21. Müller is a wholly-owned subsidiary of the Müller Group, an international producer of dairy products.<sup>1</sup> Müller's dairy business is run across two business divisions: Müller Milk & Ingredients (**MMI**) produces branded and private label milk, cream, butter, milk drinks and ingredients products; Müller Yoghurt & Desserts produces chilled desserts.<sup>2</sup> The turnover of the Müller Group in 2023 was approximately £8 billion worldwide and approximately £[X] in the UK.<sup>3</sup> <sup>ii</sup>
22. Müller procures raw milk from its milk pool of approximately 1,200 of the 7,100 dairy farms in the UK.<sup>4</sup> <sup>iii</sup> The raw milk is converted into dairy products through Müller's [X] dairy processing sites in the UK.<sup>5</sup> Müller then uses [X] depots for fresh milk distribution throughout the UK.<sup>6</sup> Müller also has a milk drying facility at its site at Severnside through which it produces skimmed milk powder (**SMP**).<sup>7</sup>
23. Müller controls the Culina Group, an indirect subsidiary within the Müller Group, through which it self-supplies logistics services (including transporting raw milk to its processing sites and delivery of its finished dairy products) and provides them to other third-party dairy processors.<sup>8</sup>
24. Müller generates [a significant majority] of its revenue from the supply of fresh milk, which includes conventional and organic fresh milk under both branded and private labels.<sup>9</sup> Müller produces approximately [X] litres of conventional and approximately [X] litres of organic fresh milk per annum.<sup>10</sup>
25. Müller is active throughout the supply chain for fresh milk and has grown, both organically and inorganically, such that it is now a key player in the GB dairy industry. Müller, together with Arla Foods Limited (**Arla**) supplies over three quarters of conventional fresh milk to middle ground and national multiple

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<sup>1</sup> Final Merger Notice submitted to the CMA on 23 August 2024 (**FMN**), paragraphs 1–2.

<sup>2</sup> FMN, paragraph 52. The Müller Yogurt & Deserts unit produces under licence from Mondelez International and also supplies the UK private label yoghurt market from a dedicated yoghurt facility.

<sup>3</sup> FMN, paragraph 2.

<sup>4</sup> FMN, Table 5.

<sup>5</sup> FMN, paragraph 233.

<sup>6</sup> FMN, paragraph 234.

<sup>7</sup> This drying facility is for Müller's captive use only.

<sup>8</sup> [Unternehmensgruppe Theo Müller | Our Logistics Services \(muellergroup.com\)](#); Müller Group Management Report for FY2022. The Müller Group describes Culina Group as the market leader for third-party logistics for fast moving consumer goods and as 'one of the three largest solution providers in the entire logistics and warehousing sector in the UK'.

<sup>9</sup> FMN, paragraph 232.

<sup>10</sup> FMN, paragraph 232.

customers in GB and over [90-100]% of conventional fresh milk to national multiples.<sup>11</sup>

## Yew Tree

26. Yew Tree Dairy Holdings Limited is a UK-based and family-owned company that processes milk into liquid milk, whole milk powder (**WMP**), SMP and cream.<sup>12</sup> The turnover of Yew Tree in 2023 was approximately £[<] worldwide and approximately £[<] in the UK.<sup>13</sup>
27. Yew Tree has one site in Skelmersdale, in the north-west of England.<sup>14</sup> Yew Tree produces approximately [<] litres of conventional and approximately [<] litres of organic fresh liquid milk per annum.<sup>15</sup>
28. Yew Tree has two milk drying facilities at its Skelmersdale site, which represent approximately [40-50]% of the total drying capacity in GB.<sup>16</sup> Over 70% of the raw milk that enters Yew Tree's Skelmersdale site is converted into milk powders.<sup>17</sup>
29. In addition to its own use of the facilities, Yew Tree is one of two drying sites in GB which makes capacity available to third parties.<sup>18</sup> Yew Tree makes a proportion of its drying capacity available to third-party dairy processors by drying raw milk as a service, known as 'toll manufacturing'.<sup>19</sup> [<] is one of the third parties which currently makes use of capacity at Yew Tree's drying facilities via third-party toll processing and has been its largest user since at least 2021. A small number of other suppliers to middle ground customers have used Yew Tree's toll processing services to process a limited amount of milk.<sup>20</sup>
30. Third parties can also utilise Yew Tree's drying facilities indirectly, by selling their excess raw milk to Yew Tree (directly or indirectly via traders) which may then dry this milk and sell it on as SMP or WMP.<sup>21</sup>

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<sup>11</sup> Annex 122 to the FMN, 'Market share calculations (updated on 2024.08.16)', 16 August 2024. CMA calculation, based on Annex 122 to the FMN 'Market share calculations (updated on 2024.08.16)', 16 August 2024.

<sup>12</sup> FMN, paragraph 3.

<sup>13</sup> FMN, paragraph 3.

<sup>14</sup> FMN, paragraph 54.

<sup>15</sup> FMN, paragraphs 236 - 237. The Skelmersdale site has capacity to process up to [<] litres of liquid milk per annum: Müller's Internal Document, Annex 15 to the FMN, 'ME.7109.24 - Annex 015 - [<]'. January 2024, page 5. The supply of fresh milk accounts for [more than a third]% of Yew Tree's revenue.

<sup>16</sup> Müller's Internal Document, Annex 15 to the FMN, '[<]', January 2024, page 9.

<sup>17</sup> Annex 119 to the FMN, 'Parties' revenue splits', tab 2; Yew Tree's response to the CMA's section 109 Notice, 4 September 2024, Annex A.

<sup>18</sup> FMN, paragraph 462; Müller's Internal Document, Annex 15 to the FMN, '[<]', January 2024, page 9.

<sup>19</sup> Parties' response to the CMA's Request for Information 6, 3 September 2024, paragraph 4.1a; Annex 118 to the FMN, 'Percentage powder produced for third parties', 10 July 2024. Third-party tolling arrangements involve Yew Tree drying milk from third parties for a fee into milk powder that is subsequently owned and sold on by the respective third parties.

[<]

<sup>20</sup> Annex 118 to the FMN, 'Percentage powder produced for third parties', 10 July 2024. The other third parties that have used capacity available at Yew Tree's drying facilities recently are [<].

<sup>21</sup> [<]. Yew Tree dried raw milk it purchased from several dairy processors including [<].

## The Merger

31. On 2 April 2024, Müller entered into an agreement with Yew Tree to acquire the entire issued share capital of Yew Tree.<sup>22</sup> The transaction value is approximately £[redacted].<sup>23</sup>

## Merger rationale

32. The Parties submitted that the main strategic rationales for the Merger are:
- (a) For Müller, to provide the opportunity to better manage surplus milk supply through ownership of Yew Tree's milk drying facilities.<sup>24</sup> Müller stated that it has [redacted].<sup>25</sup> The acquisition of a fully functioning milk drying facility will provide a more stable balancing function in the long-term.<sup>26</sup> In addition, the Merger would allow Müller to expand in the growing SMP market and increase its capacity to export SMP and WMP.<sup>27</sup> Collectively, this will lower Müller's costs of balancing its fresh liquid milk in the UK, enabling it to price more competitively for consumers and businesses.<sup>28</sup>
  - (b) For Yew Tree, [redacted].<sup>29</sup>
33. The CMA considers that Müller's internal documents are consistent with its stated rationale.<sup>30</sup> Müller's internal documents show that Müller estimated that drying surplus milk [redacted] generated a £[redacted] average annual benefit for Müller compared to selling surplus milk on the spot market.<sup>31</sup> Müller's internal documents also indicate that Müller has [redacted] and that the global SMP market is growing strongly.<sup>32</sup> In addition, Müller's internal documents indicate that [redacted]. One internal document stated that by acquiring Yew Tree, Müller would [redacted].<sup>33</sup>

## PROCEDURE

34. The CMA's mergers intelligence function identified the Merger as warranting an investigation.<sup>34</sup>

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<sup>22</sup> Yew Tree's Internal Document, Annex 1 to the FMN, '[redacted]', 2 April 2023, paragraph 2.1.

<sup>23</sup> FMN, paragraph 28.

<sup>24</sup> FMN, paragraphs 32 and 37.

<sup>25</sup> FMN, paragraph 36.

<sup>26</sup> FMN, paragraph 37.

<sup>27</sup> FMN, paragraph 39.

<sup>28</sup> FMN, paragraph 40.

<sup>29</sup> FMN, paragraphs 5 and 42.

<sup>30</sup> Yew Tree only provided [redacted] documents that were prepared in relation to the proposed sale of the Yew Tree business. These documents were prepared in relation to the divestment process more broadly as opposed to the sale to Müller. They do not provide any information regarding Yew Tree's rationale for the merger.

<sup>31</sup> Müller's Internal Document, Annex 23 to the FMN, '[redacted]', October 2023, slide 7.

<sup>32</sup> Müller's Internal Document, Annex 22 to the FMN, '[redacted]', July 2022, slides 6 and 8.

<sup>33</sup> Müller's Internal Document, Annex 3 to the FMN, '[redacted]', October 2023, slide 2.

<sup>34</sup> [CMA2](#), paragraphs 6.4-6.6.



35. The CMA commenced its phase 1 investigation on 27 August 2024. As part of its phase 1 investigation, the CMA gathered a range of evidence from the Parties to understand the product and geographic scope of the Parties' business activities and the competitive landscape of the markets in which the Parties are active. The Parties also had opportunities to make submissions and comment on our emerging thinking throughout the phase 1 investigation. For example, on 26 September 2024 the CMA invited the Parties to attend an Issues Meeting, and the Parties submitted their views in writing.
36. The CMA gathered evidence from other market participants, such as middle ground customers (of varying sizes and complexities), national multiple customers and other dairy processors. The CMA also reached out to several industry bodies to obtain their views on the Merger, including the Agriculture and Horticulture Development Board (**AHDB**). Given the limited amount of relevant internal documents and tender data-based evidence available, the CMA's assessment has been heavily informed by the evidence collected from this broad range of third parties.
37. 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.
38. Where necessary, this evidence has been referred to within this Decision.
39. The Merger was considered at a Case Review Meeting.<sup>35</sup>

## JURISDICTION

40. Each of Müller and Yew Tree is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
41. The UK turnover of Yew Tree exceeds £70 million in 2023.<sup>36</sup> Therefore, the CMA considers that the turnover test in section 23(1)(b) of the Act is satisfied. The CMA therefore currently 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.
42. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 27 August 2024 and the statutory 40 working day deadline for a decision is therefore 22 October 2024.<sup>iv</sup>

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<sup>35</sup> [CMA2](#), page 39.

<sup>36</sup> FMN, paragraph 62(b).

## COUNTERFACTUAL

43. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).<sup>37</sup>
44. In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the parties to a merger than under the prevailing conditions of competition.<sup>38</sup> In determining the appropriate counterfactual, the CMA will generally focus only on changes to the prevailing conditions of competition where there is a realistic prospect of two or more counterfactuals, and there are reasons to believe that they would make a material difference to its competitive assessment.<sup>39</sup>
45. The Parties submitted that the appropriate counterfactual is the prevailing conditions of competition.<sup>40</sup> The Parties further submitted that it is [X].<sup>41</sup>
46. The CMA has considered various other counterfactual scenarios, including whether Müller would have [X] or [X], absent the Merger and the extent to which this would have a material impact on its competitive assessment – for example by strengthening the competitive position of Müller or weakening its rivals. As set out in its competitive assessment below, the CMA considers that irrespective of Müller's strategy to secure drying capacity in the counterfactual, this would not have a material impact on competition as other dairy processors only use Yew Tree's drying facilities to a limited extent and have a range of other options available for managing excess fresh milk. Moreover, there is no evidence to suggest that Müller would have offered [X] to third parties. As such, the CMA considers that the most appropriate counterfactual is the prevailing conditions of competition.

## COMPETITIVE ASSESSMENT

### Market definition

47. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'. An SLC can affect the whole or part of a market or markets. Within that context, the assessment of the relevant

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<sup>37</sup> [Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

<sup>38</sup> [CMA129](#), paragraph 3.2.

<sup>39</sup> [CMA129](#), paragraphs 3.9 and 3.12.

<sup>40</sup> FMN, paragraph 69.

<sup>41</sup> FMN, paragraph 71.

market(s) is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.<sup>42</sup>

48. Market definition involves identifying the most significant competitive alternatives available to customers of the merger parties and includes the sources of competition to the merger parties that are the immediate determinants of the effects of the merger.
49. While market definition can be an important part of the overall merger assessment process, the CMA's experience is that in most mergers, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger parties' behaviour, captures the competitive dynamics more fully than formal market definition.<sup>43</sup>

### **Product market**

50. The CMA took the overlaps between the Parties as the starting point for its assessment of the relevant market. The Parties overlap in:
  - (a) the supply of conventional and organic fresh liquid milk;
  - (b) the procurement of conventional and organic raw milk;
  - (c) the supply of cream, both (i) bulk cream in tankers and (ii) non-bulk cream sold to wholesalers or foodservice and smaller manufacturers; and
  - (d) the supply of SMP.
51. The CMA focused its investigation on the theories of harm that could give rise to plausible competition concerns based on the evidence it received from the Parties and third parties during the course of its investigation. As such, the CMA does not consider it necessary to conclude on the markets for the supply of cream and SMP (or consider these markets further in its assessment) as the Parties have only a limited presence in these activities and there are a significant number of alternative suppliers offering a competitive constraint.<sup>44</sup>
52. In the supply of fresh liquid milk, the CMA has previously distinguished between organic and conventional milk. The CMA considers that there continue to be

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<sup>42</sup> [CMA129](#), paragraph 9.1.

<sup>43</sup> [CMA129](#), paragraph 9.2.

<sup>44</sup> As noted by the Parties in the FMN, Tables 38, 41 and 43, in the supply of bulk cream the Parties would have a combined UK market share of [10-20]%. In the supply of non-bulk cream to wholesalers, foodservice and manufacturers the Parties would have a combined UK market share of [10-20]%. In the supply of SMP, the Parties would have a combined share of [0-5]%. No third party has raised any concerns regarding the impact of the Merger on the supply of cream or SMP.

separate markets for conventional and organic milk, due to limited demand-side substitutability.<sup>45</sup>

53. The CMA has considered the Parties' activities in the procurement of raw milk, both conventional and organic, in its assessment of the theories of harm regarding the supply of fresh milk. More specifically, the CMA considered how Müller's strong position in the procurement of milk, through the significant number of dairy farms contracted to supply Müller, could strengthen its position in the market to supply middle ground customers.
54. Regarding the Parties' activities in the supply of fresh milk, the Parties primarily overlap in the supply of fresh milk to middle ground customers. Müller is a significant supplier of fresh milk to national multiple customers, and Yew Tree has some marginal activities supplying national multiple customers, but these are generally limited to providing milk in tetra-cartons. Given the very limited nature of Yew Tree's activities in supplying national multiple customers, the CMA does not consider it necessary to consider the national multiple markets further in its assessment.

#### *CMA decisional practice on customer segmentation*

55. The CMA has previously identified separate markets for the supply of fresh liquid milk to different categories of customers, namely for (i) national multiple, (ii) middle ground and (iii) doorstep customers. This was based on the differing requirements of customers within each segment.<sup>46</sup>
  - (a) The 'national multiples' customer segment has been comprised of national supermarket chains including Sainsbury's, Tesco, Waitrose, Asda, M&S, Morrisons, Co-operative Food, Aldi, Lidl and Iceland.
  - (b) The 'middle ground' customer segment has been comprised of those customers that are neither national multiples nor 'doorstep' customers, including high-street retailers, foodservice and wholesale customers.<sup>47</sup> The nature of this segment as a 'catch-all' means that middle ground customers have a wide variety of purchasing behaviours and product requirements.
56. The CMA previously considered the following demand characteristics as distinguishing national multiple from middle ground customers:<sup>48</sup>

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<sup>45</sup> As noted by the Parties in the FMN, paragraph 261, organic milk has a higher price than conventional milk, and consumers tend to have specific preferences either for organic or conventional milk.

<sup>46</sup> [Anticipated acquisition by Müller UK & Ireland Group LLP of the dairy operations of Dairy Crest Group plc.\(Müller/Dairy Crest\)](#), paragraphs 106-131.

<sup>47</sup> The CMA previously included in the 'doorstep' category direct sales of milk to households delivered to the customer's doorstep by a milkman on a delivery round. This category is not considered in the Decision as neither Party is active in this segment.

<sup>48</sup> [Müller/Dairy Crest](#), paragraph 111.

- (a) Volumes of fresh milk procured – national multiples generally require larger volumes of fresh milk;
- (b) Aligned farmers – most national multiples have aligned farmers (ie a dedicated milk pool) and most require segregation of this milk from milk procured from other farmers;
- (c) Site audits – all national multiple customers audit dairy processors' facilities to check whether they are complying with the production and welfare standards required by the customer; and
- (d) Direct to store delivery – most national multiple customers require delivery direct to stores rather than to regional distribution centres.

57. Whilst the CMA identified these characteristics as distinguishing between the two customer segments, it recognised that some blurring might exist between the segments. Even amongst national multiples, not all fulfil the full set of demand characteristics outlined above, but all of them fulfil several of them. In addition, certain middle ground customers have adopted some of the requirements listed above. As such, it is not possible to draw bright line distinctions between the customer segments.

#### *Parties' submissions*

58. The Parties agreed with the CMA's decisional practice to identify separate markets for the supply of organic and conventional milk, each segmented by national multiple and middle ground customer groups.<sup>49</sup>

59. However, the Parties further submitted that, in addition to the four demand characteristics previously identified by the CMA, the segmentation between national multiple and middle ground customers should take into account customer preferences for: (i) lightweight bottles versus sturdier bottles; (ii) deliveries direct to store in milk trolleys versus on pallets to distribution centres; (iii) formal tender processes versus *ad hoc* arrangements; (iv) publicly stated climate targets; (v) farm sustainability plans; (vi) contingency capacity; and (vii) additional support services.<sup>50</sup> The Parties submitted that, due to the broadening of the list of distinct demand-side requirements and some customers' increasingly stringent requirements, the category of national multiple customers should be expanded to include several customers previously considered to be middle ground customers.<sup>51</sup>

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<sup>49</sup> FMN, paragraph 246.

<sup>50</sup> FMN, paragraph 249.

<sup>51</sup> FMN, paragraphs 252-253.

60. The Parties added that the types of customers that should be considered as national multiples generally have stricter and more exacting requirements across most or all of these additional criteria.<sup>52</sup>
61. The Parties further submitted that when trying to identify customers as national multiple or middle ground, it is important to recognise the different nature of the demands posed by different customers within themes such as sustainability.<sup>53</sup>

### *CMA's assessment*

62. The CMA has applied its previous decisional practice on customer segmentation in this case. The evidence received by the CMA confirms that the national supermarket chains tend to have more demanding requirements consistent with the four characteristics previously identified by the CMA (volume, segregation, audits and direct to store distribution), which mark them out as distinct from middle ground customers.
63. In this instance the CMA considers that there continue to be relevant demand-side differences between the large national retailers and other customers. The conditions of competition are different between the national multiple and middle ground customer segments, and this segmentation is widely recognised in the industry. One large middle ground customer which would likely be reclassified as a national multiple under the approach proposed by the Parties, described to the CMA various bases on which it should be distinguished from national multiples. Whilst it requires certain standards of farmers, it stated that national multiples tend to have more defined standards, such as traceability throughout the processing system and certain animal welfare standards.<sup>54</sup>
64. The CMA has considered the broader list of factors submitted by the Parties as distinguishing between national multiple and middle ground customers and notes that many different types of customers considered these factors to be important to varying degrees, including both large and small middle ground customers. For example:

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<sup>52</sup> Parties Annotated Response to the Issues Letter submitted to the CMA dated 30 September 2024 (**Annotated Issues Letter**), paragraph R3.

<sup>53</sup> Annotated Issues Letter, paragraph R3. For example, whilst climate targets and sustainability plans are becoming more important to a wide range of customers, the Parties submitted that national multiple-type customers have more precise requirements, will pay a premium for them to be fulfilled due to facing public scrutiny on their supply chain arrangements and will impose them as a condition for supply. In contrast, whilst middle ground customers may, for example, express a commitment to sustainability, they are less likely to commit to more sustainable supply arrangements if it comes at a premium.

<sup>54</sup> Note of call with a third party, August 2024, paragraph 8 [X<].

- (a) Across various types of middle ground customer, including foodservice and wholesale customers, preferences for packaging types were mixed.<sup>55</sup>
- (b) Some middle ground customers engage in formal tendering processes to procure fresh milk from dairy processors, but many do not.<sup>56</sup>
- (c) Sustainability plans and climate-related concerns were raised as important considerations by many different types of customers.<sup>57</sup> Ensuring security of supply and contingency planning was also raised by multiple different types of customers as an important factor when choosing a dairy processor.<sup>58</sup>

As such, the CMA considers that there is insufficient evidence to expand the list of demand characteristics associated with national multiples beyond the four previously identified by the CMA.

- 65. Notwithstanding this distinction between middle ground and national multiple customers, the CMA notes that there is some evidence to suggest that customer preferences may continue to evolve such that it may not be appropriate or possible to segment the market for the supply of fresh milk by customer type in future.
- 66. On the basis of the evidence gathered in this investigation, the CMA considered that the appropriate markets in which to assess the Merger are the supply of (i) conventional; and (ii) organic fresh milk to middle ground customers. Whilst the CMA considers that at present national multiple and middle ground customers constitute separate markets, the distinction between the two is not perfectly clear, and there are some borderline cases. The CMA took the interaction between the two customer-segmented markets into account in its competitive assessment.

## Geographic market

### *Parties' submissions*

- 67. The Parties submitted that the market for the supply of fresh liquid milk is national in scope across all customer segments.<sup>59</sup> The Parties stated that:

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<sup>55</sup> Across middle ground and national multiple customers, there is a trend for customers to experiment with new packaging formats, varying the sizes of bottles and cartons and the materials from which they are made, including using tetra-cartons. Note of call with a third party, August 2024, paragraph 12 [redacted] and note of call with a third party, July 2024, paragraph 9 [redacted]. Response to the CMA questionnaire from a third party, September 2024, question 7 [redacted].

<sup>56</sup> The CMA found that a range of wholesale, foodservice and high-street coffee chains engage in formal tenders but that some middle ground customers prefer to contract with suppliers on a more ad hoc or rolling basis. Note of call with a third party, August 2024, paragraph 3 [redacted]; note of call with a third party, July 2024, paragraph 4 [redacted]; note of call with a third party, August 2024, paragraph 14 [redacted]; note of call with a third party, September 2024, paragraph 7 [redacted].

<sup>57</sup> Note of call with a third party, August 2024, paragraph 27 [redacted]; note of call with a third party, July 2024, paragraph 18 [redacted]; note of call with a third party, July 2024, paragraph 25 [redacted].

<sup>58</sup> Note of call with a third party, August 2024, paragraph 22 [redacted]; note of call with a third party, September 2024, paragraph 9 [redacted]; note of call with a third party, July 2024, paragraph 14 [redacted].

<sup>59</sup> National market refers to a GB-wide market as neither Party supplies milk to Northern Ireland.

- (a) many dairy processors – including the Parties – are active in all regions of GB and operate national supply networks;
- (b) dairy processors are able to transport milk further distances than in previous CMA decisions, as transport costs have decreased; and
- (c) there are many examples of dairy processors winning contracts to supply customers based hundreds of miles away from their dairy processing sites.<sup>60</sup>

68. The Parties noted that the CMA has previously considered competition for the supply of conventional fresh liquid milk to have national and regional elements.<sup>61</sup> However, the Parties submitted that it would not be appropriate to consider regional markets within GB because any differences in the Parties' shares regionally are not driven by material differences in competitive conditions in different regions, rather by where customers' stores or regional distribution centres happen to be based.<sup>62</sup> The Parties also noted that regional shares do not accurately reflect where milk will be transported to, as many deliveries are made to customers' regional distribution centres, before being transported on by the customer to other sites.<sup>63</sup>

#### *CMA's assessment*

69. As set out in paragraph 2222, Müller has multiple dairy processing sites and depots throughout GB. Yew Tree has one site in Skelmersdale, in the north-west of England, from which it manages distribution of fresh milk to customers throughout GB. The CMA found that Yew Tree's ability to supply customers throughout GB from its single site supports the Parties' submission that the market for the supply of fresh liquid milk is national in scope.
70. The CMA considers that proximity of the processing facility and/or milk pool is of varying importance across both national multiple and middle ground customers. However, for most customers, procurement reflects competition on a national basis:
- (a) Some of Müller's internal documents indicate that tender opportunities can be specific to regions of GB, for example '[redacted]', '[redacted]' and '[redacted]' tenders.<sup>64</sup> Other

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<sup>60</sup> FMN, paragraph 341.

<sup>61</sup> [Müller/Dairy Crest](#), paragraph 103.

<sup>62</sup> FMN, paragraph 345.

<sup>63</sup> FMN, paragraph 348.

<sup>64</sup> Müller's Internal Document, Annex 39 to the FMN, '[redacted]', November 2022, slide 2; Müller's Internal Document, Annex 70 to the FMN, '[redacted]', August 2022, slide 138; and Müller's Internal Document, Annex 13 to the FMN, '[redacted]', April 2023, slide 12.



internal documents show that Müller services some customers on a national basis, for example [redacted].<sup>65</sup>

- (b) Customers who responded to the CMA's investigation rated the proximity of the dairy supplier's processing facility to the delivery point as the second least important factor when choosing a supplier of fresh milk.<sup>66</sup>
- (c) Customers expressed more mixed views regarding the importance of using locally sourced milk (ie milk produced on local or regional farms, as opposed to using a locally based dairy processing facility). Some customers expressed a preference for sourcing fresh milk more locally, on price and sustainability grounds, whilst others were content to use one supplier nationally and were indifferent to the location of the farms from which the processor sourced its milk.<sup>67</sup>

71. The CMA found that while some customers express a preference for sourcing milk on a local or regional basis, competition to supply conventional and organic milk to middle ground customers occurs on a national basis, as (i) many customers are agnostic about where their milk is processed and/or sourced within GB; (ii) many dairy processors, including Yew Tree, supply customers over a broad area from a limited number of sites; and (iii) any regional differences in competitive dynamics do not correlate closely with the proximity of a dairy processor to customers.

72. The CMA has therefore assessed the impact of this Merger on the supply of conventional and organic fresh milk to middle ground customers in GB.

## Theories of harm

73. The CMA assesses the potential competitive effects of mergers by reference to theories of harm. Theories of harm provide a framework for assessing the effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.<sup>68</sup>

74. In its investigation of this Merger, the CMA has considered the following theories of harm:

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<sup>65</sup> Müller's Internal Document, Annex 49 to the FMN, [redacted], February 2023, slide 3. While the tenders referenced in Müller's internal documents tend to relate to national multiple rather than middle ground customers, the CMA considers the implication that some customers are supplied on a national basis and some on a regional basis is broadly applicable across different categories and sizes of customer, as this is reinforced by other evidence sources.

<sup>66</sup> This low rating was consistent across national multiple and middle ground customers. Other factors listed were price, capacity to meet quantity requirements, product quality, geographic coverage, consistent level of service, animal welfare accreditation and sustainability.

<sup>67</sup> One middle ground customer [redacted] explained that 'some customers want milk which is produced locally' but that it is 'currently not large enough to consider regional contracts'. Note of call with a third party, July 2024, paragraph 9 [redacted]. Another middle ground customer [redacted] noted that it used one supplier for the majority of its business across GB but used a different supplier to service its business in one particular region to limit transport costs. Note of call with a third party, August 2024, paragraph 22 [redacted].

<sup>68</sup> [CMA129](#), paragraph 2.11.

- (a) horizontal unilateral effects in the supply of conventional fresh milk to middle ground customers; and
- (b) horizontal unilateral effects in the supply of organic fresh milk to middle ground customers.

75. Each of these theories of harm is considered below.

### **Theory of Harm 1: Horizontal unilateral effects in the supply of conventional fresh milk to middle ground customers**

76. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>69</sup> Horizontal unilateral effects are more likely when the parties to a merger are close competitors.<sup>70</sup>
77. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in the supply of conventional fresh milk to middle ground customers. The CMA has considered evidence from the Parties (including submissions, internal documents and sales data), third-party competitors and customers. In particular, the CMA has assessed:
- (a) the Parties' submissions;
  - (b) shares of supply;
  - (c) internal documents; and
  - (d) third-party evidence.
78. During its investigation, the CMA also considered whether:
- (a) Müller's significant presence in the national multiple customers market could strengthen its position in the market to supply middle ground customers, eg by benefiting from significant economies of scale and its presence at multiple stages of the milk supply chain (eg extensive milk pool, dairy processing facilities and in-house logistics);<sup>71</sup> and
  - (b) Yew Tree's drying facilities (see paragraph 28 above) would strengthen Müller's competitive position and whether removing the third-party access to

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<sup>69</sup> [CMA129](#), paragraph 4.1.

<sup>70</sup> [CMA129](#), paragraph 4.8.

<sup>71</sup> According to the Parties' data and calculations, Müller has a share of supply of [50-60]% in the supply of conventional fresh milk to national multiples in 2023; Annex 122 to the FMN, 'Market share calculations (updated on 2024.08.16).

these facilities would reduce the competitive constraint exerted by affected third parties.

### *Parties' submissions*

79. The Parties submitted that there is no realistic prospect that the Merger would lead to an SLC by means of horizontal unilateral effects in the supply of conventional fresh milk to middle ground customers, on the basis that the Parties are not close competitors as they focus on different customers and have fundamental differences across their supply chain.<sup>72</sup> In particular, the Parties submitted that:
- (a) Müller focuses on national multiple customers from which it derives [the vast majority]% of its fresh liquid milk revenues.<sup>73</sup> Its remaining fresh milk revenues are generated from middle ground customers that are similar to national multiples.<sup>74</sup> It is therefore optimised to service customers who require milk in lightweight bottles delivered in trolleys and are willing to pay for more exacting requirements (eg sustainability, animal welfare).<sup>75</sup>
  - (b) In contrast, Yew Tree focuses on more typical middle ground customers (eg wholesale and foodservice customers), which make up the vast majority of its supply of conventional fresh milk ([90-100]%).<sup>76</sup> Yew Tree is optimised to serve customers who require milk in sturdier bottles delivered in pallets and for whom price is the primary consideration.
  - (c) Müller cannot compete for the type of middle ground customers that Yew Tree focuses on from its existing operation. The capital expenditure that would be required to install new processing equipment to do so would be cost-prohibitive given the [X].<sup>77</sup> Moreover, the changes that customers would typically need to make to accommodate upstream supply chain changes were characterised by the Parties as significant given customers would need to change their entire supply chain.<sup>78</sup>
  - (d) Following Müller's acquisition of Dairy Crest in 2015, Müller made [X] national multiples.<sup>79</sup> Müller cited this strategy as evidence that it is unlikely to expand its operation to target the [X] customer segment at large.

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<sup>72</sup> Annotated Issues Letter, paragraphs R1 and R6;

<sup>73</sup> Annotated Issues Letter, paragraph R6.

<sup>74</sup> Annotated Issues Letter, paragraph R6.

<sup>75</sup> The Parties also stated that they differ in the types of farms from which they can procure milk from. For instance, Müller's customers typically impose higher animal welfare, traceability and, occasionally, milk-segregation requirements on its farmers; annotated Issues Letter, paragraphs R1 and R6;

<sup>76</sup> Annotated Issues Letter, paragraph R6.

<sup>77</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5f. The Parties added that pivoting to service ordinary middle ground customers would also add 'an unacceptable degree of [X] "national multiples" part of the Müller business'.

<sup>78</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5b; Parties' response to the CMA's request for information 7, 7 October 2024, paragraph 2.7a

<sup>79</sup> Parties' Issues Meeting slides, slide 13.

80. The Parties submitted that the focus on different types of customers is further reflected in the lack of competitive overlap between the Parties in practice:
- (a) Only [X] of Yew Tree's [X] middle ground customers between 2021 and 2023 were supplied by Müller during this timeframe, with these customers accounting for a very small proportion of both Parties' sales.<sup>80</sup>
  - (b) [X] of Yew Tree's remaining [X] customers are listed in Müller's formal tender data.<sup>81</sup>
  - (c) Regarding more informal approaches, only [X] of the above [X] Yew Tree customers approached Müller between 2021 and 2023.<sup>82</sup>
81. The Parties also stated that they face vigorous competition for their respective target customers, and that their competitors are investing and expanding:
- (a) Yew Tree's [X]-largest middle ground customer of conventional milk in 2023 ([X]), switched from [X] to [X] in September 2024.<sup>83</sup> Yew Tree noted [X] customer losses to [X].<sup>84</sup>
  - (b) Müller won the supply contract for [X] from [X], and competed against [X] in the process.<sup>85</sup> Müller also competed against [X] for the joint [X] tender, with [X] winning the [X] part of the business.
  - (c) The Parties listed examples of rival dairy processors investing in improved infrastructure, eg Freshways investing into a new processing site and Trewithen, which was recently acquired by a large German milk processing company, expanding its existing facilities.<sup>86</sup> The Parties also identified Puffin (Pembrokeshire Creamery) as a recent new entry that is now processing milk for Lidl and Asda in Wales and has committed to further investment.<sup>87</sup>
82. The Parties submitted that Müller is not able to leverage its presence in supplying national multiple customers to benefit its activities in supplying middle ground customers. The Parties submitted that Müller is optimised to service national multiple and national multiple-type customers (see paragraph 79(a) above) and

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<sup>80</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5c(i).

<sup>81</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5c(i).

<sup>82</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5c(i).

<sup>83</sup> This customer made no approach to Müller and noted that it had 'a number of options' to choose from; parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5h(iv); Annotated Issues Letter, paragraph R45.

<sup>84</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5h(iv); Yew Tree stated that it lost [X] to [X] and [X]; [X] to [X]; and [X] (for organic packaging) [X]. Other [X] customer losses mentioned by Yew Tree include [X] to [X] and [X] to [X].

<sup>85</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5h(i)

<sup>86</sup> Parties' Issues Meeting slides, slides 23 and 25.

<sup>87</sup> Parties' Issues Meeting slides, slide 26.

would have to invest significantly to pivot its business to servicing typical middle ground customers.<sup>88</sup>

83. As mentioned above (see paragraph 78(b)), the CMA also considered the effect that Müller's acquisition of Yew Tree's drying facilities would have on wider competitive dynamics.<sup>89</sup> In this regard, the Parties submitted that:
- (a) Only [X] third parties have used Yew Tree's drying facilities in the past four years.<sup>90</sup> Of those [X] businesses, only [X] are material competitors in the middle ground customer segment. As a result of third parties' limited usage of Yew Tree's drying facilities, these facilities could only have accounted for a negligible proportion (<[0-5]%) of the hypothetical balancing needs of middle ground rivals in the past four years.<sup>91</sup>
  - (b) Very limited exceptions aside, Yew Tree [X] will not dry milk for third parties unless it is commercially attractive to do so.<sup>92</sup>
  - (c) Third party processors make use of alternative milk balancing options, some of which often return a higher price for the excess milk than drying the milk into powder, eg milk swaps, milk balancing contracts, selling on the spot market to a range of buyers, including cheese producers. Yew Tree itself sells milk on the spot market to cheese producers and other dairy processors when it is commercially advantageous to do so.<sup>93</sup>
  - (d) Müller has no incentive to prevent independent dairies' access to spare capacity at Yew Tree's drying facilities, as this is a profitable part of Yew Tree's business. Müller expects [X] following the Merger.<sup>94</sup>

### *Shares of supply*

84. Shares of supply can be useful evidence when assessing closeness of competition, particularly when there is persuasive evidence as to which potential substitutes should be included or excluded or when the degree of differentiation

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<sup>88</sup> Annotated Issues Letter, paragraph R10.

<sup>89</sup> In doing so, the CMA considered both toll processing, whereby Yew Tree dries milk for rival processors for a fee and returns the milk powder to the respective third party, and raw milk purchases by Yew Tree from rival processors that are ultimately dried and turned into milk powder.

<sup>90</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5g.

<sup>91</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5g; Parties' Issues Meeting slides, confidential annex slide 38; the only middle ground competitor to use Yew Tree's drying facilities via a toll processing arrangement in 2024 is [X], who has dried [X] litres (YTD). Therefore, the total 2024 (YTD) toll drying volumes run through Yew Tree's facilities are approximately [0-5]% of the middle ground customer segment's total balancing need.

<sup>92</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5g.

<sup>93</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 5g; Parties' Issues Meeting slides, slide 35.

<sup>94</sup> Annotated Issues Letter, paragraph RN12.

between firms is more limited. In such circumstances, a firm with a higher share of supply is more likely to be a close competitor to its rivals.<sup>95</sup>

85. In other cases, such as where the boundaries of the market are not as clear-cut or where there is a high degree of differentiation, the CMA may rely to a greater extent on other sources of evidence. Where products are more differentiated or customer preferences are more diverse, shares of supply may not provide evidence on the closest alternatives available to the merger firms' customers as these may be different from the products that achieve the greatest sales across a wider body of customers.<sup>96</sup>
86. Table 1 below shows the CMA's estimates of national (GB) shares of supply of conventional fresh milk to middle ground customers in 2023, based on the Parties' and competitors' data and estimates.

**Table 1: Shares of supply of conventional fresh milk to middle ground customers by volume (GB, 2023)**

<b>Processor</b>	<b>GB Share of supply (%)</b>
Müller	[10-20]%
Yew Tree	[5-10]%
<b>Parties (combined)</b>	<b>[20-30]%</b>
Freshways	[20-30]%
Arla	[5-10]%
Cotteswold Dairy	[5-10]%
Payne's	[5-10]%
Creamline Dairies	[0-5]%
Grahams	[0-5]%
Lanchester	[0-5]%
Pattemores Dairy Ingredients	[0-5]%
Trewithen	[0-5]%
Other	[10-20]%
<b>Total</b>	<b>100.0%</b>

Source: CMA estimates based on the Parties' and competitors' data and estimates.

Note: (i) The Parties estimated the size of the market based on data from Circana, Nielsen, Kantar and the Parties' own estimates; (ii) where the CMA could not collect competitors' data, the Parties' estimates of competitor volumes were used.

87. Table 1 shows that in 2023 the Parties were two of the six largest suppliers of conventional milk to middle ground customers. The Merged Entity would be one of the two biggest suppliers in the market, with Freshways having a similar share.
88. Aside from the Parties and Freshways, a considerable number of competitors remain in the market, including Arla, Cotteswold Dairy and Payne's. The remaining suppliers have lower shares of supply than the combined business, in the region of [5-10]% or lower.

<sup>95</sup> [CMA129](#), paragraph 4.14.

<sup>96</sup> [CMA129](#), paragraph 4.15.

89. The CMA notes that the Parties have mentioned [X] (see paragraph 81(a) above). This may suggest that the Parties' shares are in fact currently lower than illustrated in Table 1 above.

### *Internal documents*

90. The CMA considered evidence from the Parties' internal documents regarding their market position, future plans, and/or competitive constraints. The Parties' internal documents do not consistently state whether they cover conventional or organic milk, or whether documents (and statements therein) relate to the supply of fresh milk as a whole or any particular segment within it (eg middle ground customers). The CMA assessed the documents with these caveats in mind.
91. In the relatively few documents where the Parties monitor their competitors, there are only limited instances of the Parties referring to each other.<sup>97</sup> For example, in a 2022 presentation to the Müller board, Müller considered competing for [X]'s contract with [X] (and other middle ground processors for specific middle ground customers, see paragraph 94(a) below),<sup>98</sup> in addition to having won volumes from [X] for [X].<sup>99</sup>
92. Generally, where Müller engaged in competitive monitoring in internal documents, it benchmarked itself against [X] and made few references to other dairy processors. Documents show that Müller and [X] overlapped in customer opportunities for larger middle-ground customers (eg [X]), with other internal documents monitoring [X]'s milk balancing capabilities and financial results.<sup>100</sup>
93. The CMA considers that the frequency with which Müller references [X] in its internal documents is likely due to the strength of both processors in the market for supplying national multiple customers (and across the dairy sector more broadly).
94. Müller's documents also include references to other competitors in the supply of conventional milk to middle ground customers, including processors such as [X]. These references were less frequent than those made to [X] but more frequent than Müller's references to Yew Tree and indicated that Müller competes against these dairy processors, particularly for large middle ground customer contracts.<sup>101</sup>

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<sup>97</sup> Yew Tree only provided a small number of internal documents.

<sup>98</sup> Müller's Internal Document, Annex 70 to the FMN, '[X]', August 2022, slide 137.

<sup>99</sup> Müller's Internal Document, Annex 2 to the FMN, '[X]', July 2022, slides 17-18.

<sup>100</sup> Müller's Internal Document, Annex 2 to the FMN, '[X]', July 2022, slide 21; Müller's Internal Document, Annex 70 to the FMN, '[X]', August 2022, slide 138; Müller's Internal Document, Annex 22 to the FMN, '[X]', July 2022, slide 15; Müller's Internal Document, Annex 24 to the FMN, '[X]', slides 1-4.

<sup>101</sup> As above, there is uncertainty of the milk type in question for certain listed examples.

- (a) In a 2022 presentation to the Müller board, Müller considered competing for middle ground customer contracts held by [redacted].<sup>102</sup>
  - (b) In the meeting minutes for Müller’s business review dated July 2022, [redacted] is mentioned as a competitor in the [redacted] tender, for which [redacted] and [redacted] competed.<sup>103</sup>
  - (c) Müller’s strategic plan from July 2022 showed that a proportion of Müller’s prioritised opportunities are held by [redacted].<sup>104</sup>
95. With regard to general competitive dynamics, Müller’s internal documents acknowledge its own [redacted].<sup>105</sup> A 2022 Müller strategy document considered that Müller has [redacted] which is [redacted], including that it is unlikely that competitors will be able to replicate Müller’s capabilities by [redacted].<sup>106</sup>
96. Finally, Müller’s internal documents indicate that it may have some plans to [redacted] in the middle ground, having consistently identified [redacted] middle ground customers over several years. The CMA considered that these documents indicate Müller’s stated strategy to target specific middle ground customers that are complementary to its existing national multiple operations:
- (a) One strategy document prepared in 2022, and covering the years 2023 to 2026, identified middle ground volumes [redacted] and refers to the opportunity of [redacted] based on the strength of Müller’s proposition in what is described as a [redacted] market.<sup>107</sup> The same document later mentions Müller’s [redacted] and includes [redacted].<sup>108</sup>
  - (b) Another document that appears to have been produced in 2022 suggests a prioritisation of [redacted] customers;<sup>109</sup>
  - (c) Another document prepared in 2024 outlining new customer opportunities mentions [redacted] customers, amongst others.<sup>110</sup>
97. Overall, the CMA considered that the internal documents provided by the Parties do not show them to be close competitors in the supply of conventional milk to middle ground customers. Müller’s documents were consistent with the Parties’

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<sup>102</sup> Müller’s Internal Document, Annex 70 to the FMN, ‘[redacted]’, August 2022, slides 137-138. It is not clear whether these opportunities relate to conventional or organic milk. All [redacted] are grouped under ‘Middle Ground’ alongside other [redacted] business opportunities.

<sup>103</sup> Müller’s Internal Document, Annex 74 to the FMN, ‘[redacted]’, July 2022, page 2.

<sup>104</sup> The same document estimates Müller’s ‘prioritised volumes’ as a percentage of [redacted]. Müller’s Internal Document, Annex 2 to the FMN, ‘[redacted]’, July 2022, slides 17-18.

<sup>105</sup> Müller’s Internal Document, Annex 2 to the FMN, ‘[redacted]’, July 2022, slide 21. This appears to be a general comment, not specifically referencing conventional or organic milk.

<sup>106</sup> Müller’s Internal Document, Annex 2 to the FMN, ‘[redacted]’, July 2022, slides 21-24. This analysis of Müller’s ability to influence [redacted] included a strategy for [redacted].

<sup>107</sup> Müller’s Internal Document, Annex 2 to the FMN, ‘[redacted]’, July 2022, slide 11.

<sup>108</sup> Müller’s Internal Document, Annex 2 to the FMN, ‘[redacted]’, July 2022, page 17.

<sup>109</sup> Müller’s Internal Document, Annex 43 to the FMN, ‘[redacted]’, June 2022.

<sup>110</sup> Müller’s Internal Document, Annex 65 to the FMN, ‘[redacted]’, March 2024, slide 44.



submissions that Müller focusses on supplying larger volume middle ground customers with some similar requirements to national multiple customers. Where Müller did record its monitoring of rivals, this was generally focused on [redacted]. Müller's internal documents also included references to other rival processors in the supply of milk to middle ground customers, including [redacted]. The CMA considers that the inclusion of these processors in Müller's internal documents indicates that they exert some degree of competitive constraint over Müller's activities in the middle ground customer segment.

### *Third-party evidence*

#### *Closeness of competition and alternative constraints*

98. Evidence received from customers indicates that whilst the Parties both compete in the middle ground customer segment, they are not close competitors. Overall, this evidence indicated that Yew Tree is not a significant constraint for the supply to middle ground customers that procure larger volumes and have more complex requirements, which is Müller's focus. A number of other dairy processors are considered by customers to be credible alternatives to the Parties. For example:
- (a) In response to the CMA's questionnaire, Müller, Arla, Payne's and Freshways were frequently identified as alternatives to Yew Tree. Dales Dairies, Graham's, Trewithen, and Estate Dairy were also identified as alternatives to Yew Tree by some customers.<sup>111</sup> When it came to identifying alternatives to Müller, Arla was most frequently identified by customers, along with Payne's, Freshways, Graham's, Lanchester, Creamline and Wells Farm to a lesser extent.<sup>112</sup> Only one customer identified Yew Tree as an alternative to Müller in the CMA's questionnaire.<sup>113</sup>
  - (b) One large middle ground customer [redacted] stated that Müller was an alternative supplier to Yew Tree, particularly for wholesale customers.<sup>114</sup> However, another large middle ground customer [redacted] described using Yew Tree for price benchmarking to inform its negotiations with Müller only but confirmed that it would not consider Yew Tree to be a viable supplier for the majority of its business.<sup>115</sup> Another large middle ground customer [redacted] confirmed that Yew Tree did not participate in its recent tender process because it does not supply the bottle-type it required.<sup>116</sup>

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<sup>111</sup> Response to the CMA questionnaire from a number of third parties, September 2024, question 9.

<sup>112</sup> Response to the CMA questionnaire from a number of third parties, September 2024, question 9.

<sup>113</sup> Response to the CMA questionnaire from a third party, September 2024, question 8 [redacted].

<sup>114</sup> Note of call with a third party, August 2024, paragraph 18 [redacted].

<sup>115</sup> Note of call with a third party, September 2024, paragraph 16 [redacted].

<sup>116</sup> Note of call with a third party, August 2024, paragraph 3 [redacted].

99. The CMA found that the evidence submitted by third parties supports the Parties' submissions that they are not close competitors for middle ground customers, and that a number of other dairy processors exert a competitive constraint in the market for supplying conventional fresh milk to middle ground customers.

### *Entry and expansion*

100. The CMA received mixed evidence on entry and expansion in the dairy processing sector. Third parties explained that barriers to entry are high but that expansion by existing dairy processors may be more feasible than new entry. For example:
- (a) One dairy processor [X] explained that it is 'rare' that a new competitor enters the market for the supply of fresh milk, citing 'exceptional' costs, legislative barriers and the significant time (estimated to be approximately two years) required to set up a new operation.<sup>117</sup>
  - (b) Two other dairy processors [X] [X] identified examples of smaller dairy processors improving their sites and/or targeting new regions.<sup>118</sup>
  - (c) Another third party [X] explained that it is difficult to set up a new facility as it requires expensive machinery and expertise and provided examples of recent failed attempts at new entry into the dairy processing sector.<sup>119</sup> This third party explained that ease of entry and expansion varies. The third party noted that there has been significant investment in the dairy sector recently, but that this has come from existing dairy processors.<sup>120</sup>

### *Views on the Merger*

101. Customers responding to the CMA's investigation provided mixed views about the impact of the Merger. Whilst almost two thirds of the middle ground conventional fresh milk customers that responded expressed concerns, most concerns were about the increasing consolidation in the dairy sector more generally, rather than specific to the impact of this Merger on competition for middle ground customers, and most of these customers also did not identify the Parties as competitors to each other. The remaining one third of customers expressed neutral views.
- (a) One customer [X] stated that 'when considering mid-sized milk suppliers, the options are limited, and Müller's acquisitions further reduce competition'.<sup>121</sup> Another customer [X] said 'this will have a detrimental effect

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<sup>117</sup> Note of call with a third party, August 2024, paragraph 20 [X].

<sup>118</sup> Note of call with a third party, August 2024, paragraph 29 [X]; note of call with a third party, August 2024, paragraph 20 [X].

<sup>119</sup> Note of call with a third party, July 2024, paragraph 21 [X].

<sup>120</sup> Note of call with a third party, July 2024, paragraph 21 [X].

<sup>121</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [X].

on the market due to an already limited supply base into the foodservice sector'.<sup>122</sup>

- (b) Other customers expressed concerns about consolidation in the dairy sector and the strength of Müller's position in the sector more generally:
  - (i) One customer [redacted] said that the Merger would 'place more control of the dairy market in the hands of the key players'.<sup>123</sup>
  - (ii) Another customer [redacted] said that 'Müller already has the largest share of the own-label milk market in the UK' and that it would 'prefer to see more competition within the market place'.<sup>124</sup>
  - (iii) Another customer [redacted] stated that 'there is a very uncomfortable lack of competition developing [...] milk processors are declining to the point there will only be a handful left and some of those won't be interested in business outside of the supermarkets'.<sup>125</sup>
- (c) One customer [redacted] questioned whether the Merger would have a material impact, noting that 'Arla and Müller tend to dictate farm gate pricing across the market anyway', and that this impacts the price the customer pays for milk currently. As a result, the customer was not sure whether the Merger would make much difference to pricing overall.<sup>126</sup>

102. Competitors expressed more neutral views about the impact of the Merger on the supply of fresh conventional milk to middle ground customers. Where competitors expressed views on the Merger, they tended to relate to the importance of Yew Tree's drying facilities as a route to milk balancing, and the relative availability or appeal of alternative options.

#### *Views on the importance of Yew Tree's drying facilities*

103. The CMA has considered the role that Yew Tree's drying facilities may play in supporting competition in the dairy sector in the UK. Milk supply and demand fluctuate over the course of the year and as a result dairy suppliers may need access to various balancing options to manage their supply – that is various means to dispose of excess milk that cannot be sold as fresh milk at times when that processor's supply exceeds demand. Balancing options may include sales on the spot market, sales to cheese processors or drying the milk to produce milk powder. The CMA considered whether, as a result of the transaction, there was a

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<sup>122</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [redacted].

<sup>123</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [redacted].

<sup>124</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [redacted].

<sup>125</sup> Submission to the CMA from a third party, September 2024 [redacted].

<sup>126</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [redacted].

risk that Yew Tree's drying facility might no longer be available to third-party processors and that this could affect the competitive strength of those processors.

104. Several third parties outlined the importance of Yew Tree's milk drying facilities to their operations or operations of dairy processors more generally:
- (a) One dairy processor [redacted] expressed concerns that Müller would use Yew Tree's drying facilities for its own excess milk and not make any space available to independent dairies, and that this would be detrimental to a lot of the independent dairies.<sup>127</sup>
  - (b) Another dairy processor [redacted] noted that there is limited capacity across the market and the removal of Yew Tree's drying capacity for third parties will put pressure on any remaining alternatives.<sup>128</sup>
  - (c) Another dairy processor [redacted] stated that the costs of balancing milk have reduced due to Yew Tree's milk drying activities. The same processor stated that having access to third-party drying facilities has helped to stabilise prices for farmers.<sup>129</sup> It also described how no longer having access to drying facilities could disincentivise processors from expanding their operations, as the risk of being heavily over-supplied with milk is so severe that dairy processors would rather risk being under-supplied than take on new farmers and expand their output significantly.<sup>130</sup>
105. Some third parties expressed concerns about the viability and appeal of other milk balancing routes, should Yew Tree's drying facilities no longer be available:
- (a) Whilst the Parties noted two further dairy processors with milk drying capabilities, these are both based in Northern Ireland.<sup>131</sup> Third parties told the CMA that the costs associated with transporting raw milk from GB to Northern Ireland for the purposes of milk drying would be prohibitive.<sup>132</sup>
  - (b) Several third parties noted that cheese production is not a viable option for managing all excess milk, as milk requires certain protein and fat content in order to realise sufficient value from cheese production.<sup>133</sup>

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<sup>127</sup> Note of call with a third party, August 2024, paragraph 44 [redacted].

<sup>128</sup> Note of call with a third party, September 2024, paragraph 7 [redacted].

<sup>129</sup> Note of call with a third party, August 2024, paragraph 15 [redacted].

<sup>130</sup> Note of call with a third party, September 2024, paragraph 10 [redacted].

<sup>131</sup> FMN, paragraph 469; Müller's Internal Document, Annex 22 to the FMN, '[redacted]', July 2022, page 28.

<sup>132</sup> Note of call with a third party, September 2024, paragraph 13 [redacted]; Third-party response to CMA questions, September 2024 [redacted]. However, the Parties stated that in their experience, it is relatively easy and inexpensive to process milk into concentrate or remove water content from milk through an evaporator (Annotated Issues Letter, paragraph R19). This would reduce the volume of the milk and make it inexpensive to transport over large distances (eg Northern Ireland). The Parties further submitted that they are aware of several processors already doing so.

<sup>133</sup> Note of call with a third party, September 2024, paragraph 12 [redacted]; note of call with a third party, July 2024, paragraph 10 [redacted]. On this point, the Parties submitted that milk can be used for cheese regardless of its protein and fat content,

106. However, other third parties confirmed that they were in a strong position in terms of milk balancing, and were confident that they could find alternatives to Yew Tree to fulfil their milk balancing needs as and when they arose:
- (a) One third party [X] stated that ‘the sale of Yew Tree potentially takes one available option for handling excess milk away but there are still other outlets to balance including selling milk to liquid processors, and to cheese and milk powder producers both in the UK and across Europe’. The same third party added that it did not see the loss of access to Yew Tree’s drying facilities as likely to have a significant impact on its competitiveness.<sup>134</sup>
  - (b) Another third party [X] stated that ‘it did not have concerns about not having access to milk drying facilities after the transaction’ and was ‘in a good place from a milk balancing perspective’.<sup>135</sup>
  - (c) Another third party [X] stated that it ‘anticipated Müller operating the drying facilities similarly to Yew Tree and at peak milk volume periods looking to maximise the volume of milk going through the driers’.<sup>136</sup>
107. The submissions from third parties on the importance of Yew Tree’s drying facilities were not supported by data on the utilisation of those facilities over the past three years. Moreover, estimates provided by the Parties indicate that the use of Yew Tree’s drying facilities by third parties other than [X] has been limited (see paragraph 83(a) above). Data provided by the Parties also shows that third-party usage of Yew Tree’s drying facilities has been decreasing overall since 2021.<sup>137</sup> In the round, the evidence from several third parties also supported the Parties’ submissions that the Yew Tree drying facilities are not so important to third party processors that losing them could harm their competitiveness significantly. Rather, the evidence indicates that sufficient other milk balancing options would be available post-Merger.
108. Whilst the CMA notes the concerns expressed by several third parties regarding wider dairy industry consolidation in recent years, these third parties largely did not recognise the Parties as close competitors to each other or identify a Merger-specific impact on competition.

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with these factors only affecting the yield given more milk is required to produce the same amount of cheese where milk has a low fat/protein content (Annotated Issues Letter, paragraph R20). The Parties further stated that this is highlighted by the fact that cheese producers buy milk on the spot market without testing its protein and fat content before or at the time of purchase.

<sup>134</sup> Submission to the CMA from a third party, September 2024, [X].

<sup>135</sup> Note of call with a third party, August 2024, paragraph 16 [X].

<sup>136</sup> Submission to the CMA from a third party, September 2024, [X].

<sup>137</sup> Annex A ‘Yew Tree drying facilities’ to the CMA’s Section 109 request, dated 4 September 2024.

### *Conclusion on theory of harm 1*

109. The CMA has seen limited evidence that the Parties compete closely in the market for supplying conventional fresh milk to middle ground customers. Generally, the Parties have different strategic priorities and operational capabilities which are reflective of their customers' requirements and preferences.
110. The Parties' internal documents show that they do not regularly monitor each other as competitors, although the Parties engage in relatively little document-based competitive monitoring altogether. The Parties' data relating to formal tenders and informal approaches also indicates that they do not often compete for the same customers. The majority of the Parties' customers did not identify the other Party as a credible alternative to their current supplier (be that Müller or Yew Tree), and identified other alternative dairy processors as stronger alternatives, such as Arla, Freshways and Payne's.
111. The CMA considers that the Merged Entity will face sufficient competitive constraint from a number of dairy processors in the supply of conventional fresh milk to middle ground customers. Evidence from the Parties and third parties indicates that Arla, Freshways, Payne's, Graham's and Lanchester will continue to exert a sufficient competitive constraint on the Merged Entity with respect to middle ground customers generally, and those larger volume middle ground customers with more exacting requirements targeted by Müller. The CMA also notes that there is a tail of smaller dairy processors that can compete for some middle ground customer opportunities (or portions of these opportunities), including Cotteswold Dairies, Creamline Dairies, Trewithen, Wells Farm and Pembrokehire Creamery. While these smaller competitors may potentially expand their operations in the future, the CMA notes that that barriers to new entry into the dairy processing sector are high, given the investment and expertise required.
112. The CMA also considered the importance of Yew Tree's drying facilities as a milk balancing option for dairy processors active in the supply of conventional fresh milk to middle ground customers, and whether losing access to the facilities could weaken the degree of competitive constraint imposed by other processors on the Merged Entity in future. The CMA considered whether a lack of milk balancing options would disincentivise other processors from taking on new farms and competing for new opportunities, due to the risk of becoming overbalanced. The CMA found that the evidence from third parties presented a mixed picture of the value placed by other dairy processors on having access to Yew Tree's drying facilities. Some third parties expressed concerns about the risk of losing access, whilst others were content with the remaining milk balancing options available. The CMA also considered the weight to place on these views in light of the very small volumes of milk dried at Yew Tree's facilities for third parties over the past three years. The evidence provided to the CMA suggests that there would likely be

sufficient alternative balancing options available for the relatively small volumes of milk that were previously dried at Yew Tree's facilities for third parties, if the Merged Entity opted to restrict third-party access in future.

113. The CMA recognised that many customers expressed concerns about consolidation in the dairy sector generally and voiced concerns about the collective, strong position held by Müller and Arla. The CMA noted that concerns expressed by customers were often not specific to the impact of losing Yew Tree as a potential supplier, or about the impact on competition in the middle ground customer segment, as the majority of customers did not see Müller and Yew Tree as competing closely in this space. Nonetheless, noting the concerns raised, Müller's material market shares in the markets for supplying fresh milk to national multiple and middle ground customers (following the Merger) and strong position in the broader dairy supply chain (ie procurement, in-house logistics and milk drying post-Merger), the degree of concentration and recent consolidation in the industry, there will continue to be a risk of horizontal unilateral effects, in the event of any further consolidation in the industry. The CMA will therefore continue to review carefully any potential future relevant merger situations.
114. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of conventional fresh milk to middle ground customers.

## **Theory of Harm 2: Horizontal unilateral effects in the supply of organic fresh milk to middle ground customers**

### *Parties' submissions*

115. The Parties submitted that the organic fresh milk market is relatively small, with only [0-5]% of Müller's and [5-10]% of Yew Tree's fresh milk sales to middle ground customers being for organic milk.<sup>138</sup> The Parties also stated that the same competitive dynamics apply to both the organic and conventional fresh milk markets.<sup>139</sup> More specifically, the very different nature of the Parties' businesses is also a key feature in the supply of organic milk.<sup>140</sup> As with conventional fresh milk, Müller supplies organic milk to middle ground customers with requirements similar to national multiple customers (eg lightweight bottles delivered in trolleys) which cannot be met by Yew Tree.<sup>141</sup> In particular, the Parties submitted that the vast majority of Müller's volumes in the supply of organic fresh milk to middle ground

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<sup>138</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, 9b; Annotated Issues Letter, 30 September 24, paragraph R44; Parties' response to the CMA's request for information 7, 7 October 2024, paragraph 2.3b.

<sup>139</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024 9b; Annotated Issues Letter, 30 September 24, paragraph R44.

<sup>140</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024 9b.

<sup>141</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024 9b; Parties' response to the CMA's request for information 7, 7 October 2024, paragraph 2.7a.

customers consist of sales to [X], a customer which, the Parties stated, Yew Tree could not supply due to its more sophisticated product requirements.<sup>142</sup> v In comparison, Yew Tree's customers require sturdier bottles delivered on pallets which cannot be supplied by Müller.

116. Further, the Parties submitted that neither Party has the ability or the incentive to supply each other's customer type. Such a shift would be cost-prohibitive given the limited returns the Parties would earn and the impact it would have on the Parties' wider operations. The Parties also noted that, similar to conventional fresh milk customers, organic fresh milk customers requiring lightweight bottles in trolleys cannot switch to accept heavyweight bottles and *vice versa*, given the customer's whole supply chain would need to be altered.<sup>143</sup>
117. The Parties stated that they face significant competition from a wide range of competitors in the supply of organic fresh milk to middle ground customers. In support of this, the Parties pointed to Yew Tree losing a dairy wholesaler to [X] in 2023 as well as a [X] from Yew Tree.<sup>144</sup> The Parties also noted that of Müller's [X] organic fresh milk middle ground customers in 2023, Müller had [X] since July 2023.<sup>145</sup> The Parties stated that they were aware of at least 12 conventional milk processors that have the accreditation to process organic milk, of which at least ten are already active in supplying organic milk to middle ground customers.<sup>146</sup>
118. The Parties further submitted that competition in the supply of organic milk is related to competition for the supply of conventional milk.<sup>147</sup> This is due to organic milk volumes in the middle ground often being tendered alongside conventional milk where the Parties are not close competitors and there is vigorous competition.
119. In support of this, the Parties stated that out of Müller's [X] organic fresh milk middle ground customers only [X] did not also procure conventional milk from Müller in 2023, with organic volumes procured by this customer being described as *de minimis*.<sup>148</sup> Similarly, only [X] of Yew Tree's [X] organic fresh milk middle ground customers did not also procure conventional milk from Yew Tree, with [X] of those customers only acquiring *de minimis* quantities from Yew Tree.<sup>149</sup>
120. In addition, the Parties stated that there are high degrees of supply-side substitutability between the processing of conventional and organic milk, with

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<sup>142</sup> FMN, paragraph 400.

<sup>143</sup> Parties' response to the CMA's request for information 7, dated 7 October 2024, paragraph 2.7a.

<sup>144</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 9c; these include [X], [X] and [X], who are expected to [X] by the end of October 2024.

<sup>145</sup> Parties' response to the CMA's request for information 7, 7 October 2024, paragraph 2.4; Annex A of Parties' response to the CMA's request for information 7, 7 October 2024.

<sup>146</sup> Annotated Issues Letter, paragraph R43.

<sup>147</sup> Parties' written response to the CMA's Issues Letter, 30 September 24, paragraph 9d.

<sup>148</sup> Parties' response to the CMA's request for information 7, 7 October 2024, paragraph 2.5c.

<sup>149</sup> Parties' response to the CMA's request for information 7, 7 October 2024, paragraph 2.5d.



barriers to entry from conventional to organic milk being very low.<sup>150</sup> The Parties further submitted that conventional milk processors would only face marginal costs of entry as they would not need additional equipment to process organic milk; the only additional requirement would be procuring raw organic milk from farmers.<sup>151</sup> The Parties noted that given farmers' ability to easily switch who they supply milk to and the Parties' lack of buyer power in the upstream procurement market, rivals would face no material barriers to procuring the key input for organic milk processing. Consequently, the Parties argued that both conventional and organic milk processors exercise effective competitive constraints over the Parties in the organic middle ground customer segment.

### Shares of supply

121. Table 2 below shows the CMA's estimates of national (GB) shares of supply of organic fresh milk to middle ground customers in 2023, based on the Parties' and competitors' data and estimates.

**Table 2: Suppliers' national (GB) shares of supply of organic fresh milk to middle ground customers, 2023 (volumes)<sup>vi</sup>**

<i>Processor</i>	<i>GB Share of Supply (%)</i>
Müller	[5-10]%
Yew Tree	[20-30]%
<b>Parties (combined)</b>	<b>[30-40]%</b>
Arla	[50-60]%
Cotteswold Dairy	[5-10]%
Freshways	[5-10]%
Creamline Dairies	[0-5]%
Graham's	[0-5]%
<b>Total</b>	<b>100.0%</b>

*Source:* CMA estimates based on the Parties' and competitors' data and estimates.

*Note:* (i) The Parties estimated the size of the market based on data from Circana and the Parties' own estimates; (ii) where the CMA could not collect competitors' data, the Parties' estimates of volumes supplied by competitors were used.

122. The shares of supply in Table 2 indicate that the Merged Entity would be the second largest supplier at [30-40]% behind Arla who has a share of supply of [50-60]%.<sup>vii</sup> Cotteswold Dairy and Freshways, the next largest suppliers, have a share of supply of [5-10]%. Other competitors are active in the market, including Creamline Dairies and Graham's.

123. As outlined in relation to theory of harm 1, the CMA notes that the Parties have mentioned [X] (see paragraph 117 above). This may suggest that the Parties' shares are in fact currently lower than illustrated in Table 2 above.

<sup>150</sup> Parties' written response to the CMA's Issues Letter, 30 September 2024, paragraph 9d; FMN, paragraph 395.

<sup>151</sup> FMN, paragraph 397a.

### *Internal documents*

124. The Parties' internal documents contained only very limited references to the supply of organic fresh milk specifically, as generally these documents did not distinguish the supply of conventional and organic milk. In particular, Yew Tree's internal documents did not reference specific contracts or competitors for the supply of organic milk.
125. Of the internal documents from Müller that refer to organic milk, there is a general focus on supply to national multiples (eg [redacted]) and [redacted] as the incumbent supplier of two organic national multiple opportunities.<sup>152</sup> Müller's internal documents did not contain any references to monitoring Yew Tree with respect to organic milk specifically. The CMA considers that the limited importance of organic fresh milk in Müller's internal documents is consistent with the Parties' submission that this segment makes up a small part of both Parties' operations.

### *Third-party evidence*

#### *Closeness of competition and alternative constraints*

126. Evidence received from customers indicated that whilst the Parties compete to supply organic fresh milk to middle ground customers, as with the supply of conventional fresh milk, they are not close competitors in this market. Evidence received from third parties also suggested that the Merged Entity would continue to face competitive constraint from a number of processors, such as Arla, Freshways, Cotteswold Dairy and Creamline Dairies. For instance:
- (a) While Müller was identified as an alternative to Yew Tree by just two large middle ground customers [redacted] [redacted], Yew Tree was not listed as an alternative to Müller by any middle ground customers in response to the CMA's questionnaire.<sup>153</sup>
  - (b) Middle ground customers identified Arla and Freshways as alternatives to both Müller and Yew Tree. Cotteswold was also identified as an alternative to Müller and Graham's as an alternative to Yew Tree.
  - (c) Several competitors identified providers other than the Parties (including Freshways, Wells Farm, Cotteswold Dairy and Creamline Dairies) as close competitors for the supply of organic milk to middle ground customers.<sup>154</sup>

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<sup>152</sup> Müller's Internal Document, Annex 14 to the FMN, '[redacted]', March 2023, slide 5; Müller's Internal Document, Annex 70 to the FMN, '[redacted]', August 2022, slide 138.

<sup>153</sup> Response to the CMA questionnaire from a number of third parties, September 2024, question 9 [redacted].

<sup>154</sup> Response to the CMA questionnaire from a number of third parties, September 2024, question 9 [redacted].

### *Entry and expansion*

127. Some third parties identified barriers to entry and expansion with respect to organic milk, noting that processing both types of milk adds complexity to manufacturing and delivery processes.<sup>155</sup>
128. In contrast to the Parties' submissions that there are high degrees of supply-side substitutability between the processing of conventional and organic milk (such that suppliers of conventional milk could pivot to supplying organic milk), one third party [X] noted that the competitive landscapes of the conventional and organic milk markets are 'differing' and stated that post-Merger, there would be one less option for customers to choose from in the organic middle ground customer segment.<sup>156</sup>
129. The CMA also notes that the views expressed by third parties in relation to entry and expansion into the processing of conventional fresh milk are likely to be similarly applicable to organic fresh milk, in particular that the investment and expertise required to open a new dairy processing site constitute high barriers to entry, and that expansion by existing processors is more likely.

### *Views on the Merger*

130. Middle ground customers of organic fresh milk responding to the CMA's investigation provided mixed views about the impact of the Merger.<sup>157</sup> Most negative views expressed by customers reflected concerns about wider market trends, such as a general consolidation of the dairy processing industry, rather than Merger-specific outcomes. For example:
- (a) One of the two customers that identified Müller as an alternative to Yew Tree, [X], suggested that the Merger could lead to improved financial stability for Yew Tree, security of supply, better production efficiencies and clearer sustainability strategies but also noted the downside of the increased bureaucracy that comes with working with a larger supplier like Müller instead of a family business like Yew Tree.<sup>158</sup>
  - (b) As noted in paragraph 101(a), two organic fresh milk customers [X] [X] that also procure conventional fresh milk raised concerns that the Merger would reduce competition in the market to supply mid-sized and foodservice

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<sup>155</sup> Note of a call with a third party, September, 2024, paragraph 20 [X]; Note of a call with a third party, August 2024, paragraph 7 [X].

<sup>156</sup> Note of call with a third party, July 2024, paragraphs 22 and 28. [X]

<sup>157</sup> Just over half expressed negative views and the others expressed neutral views. With respect to national multiple customers, almost one third viewed the merger negatively.

<sup>158</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [X].

customers.<sup>159</sup> Only one of these customers, however, identified the Parties as alternatives to each other.

- (c) As noted in paragraph 101(b) above, two organic fresh milk customers [§<] [§<] that also procure conventional fresh milk raised concerns that the Merger represented further consolidation in the dairy sector.<sup>160</sup> Neither of these customers, however, identified the Parties as alternatives to each other.

### *Conclusion on theory of harm 2*

131. As with theory of harm 1, the CMA has found that the Parties do not compete closely for the supply of organic fresh milk to the middle ground customer segment. More specifically, the Parties appear to focus on different customers within the organic middle ground customer segment. While Müller focusses mainly on customers that have complementary preferences to their national multiple customers, Yew Tree supplies a broader range of middle ground customers with different preferences. Based on the Parties' submissions, a shift to supplying each other's customer types would likely be costly and complex.
132. In addition, the Parties' supply data appears to support the Parties' submission that competition in the market for supplying organic fresh milk to middle ground customers is related to competition for the conventional fresh milk market. This is as almost all of the Parties' organic fresh milk customers also procure conventional fresh milk from the Parties. Equally, the CMA noted that one customer of the Parties described the competitive landscapes of the conventional and organic milk markets as 'differing' and stated that post-Merger, there would be one less option for customers to choose from in the organic middle ground customer segment.<sup>161</sup>
133. The CMA considers that the Merged Entity would continue to face competitive pressure from rival dairy processors already active in the organic middle ground customer segment such as Arla, Cotteswold Dairy, Freshways, Creamline Dairies and Graham's. Indeed, both Parties have recently lost supply contracts to a range of competitors. The Parties also identified 12 rival processors that currently hold organic milk accreditations, ten of which currently supply organic fresh milk to middle ground customers.
134. The CMA has received mixed evidence regarding the ease with which conventional fresh milk suppliers could enter the organic fresh milk market. However, the CMA considers that if demand for organic fresh milk among middle

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<sup>159</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [§<] [§<].

<sup>160</sup> Response to the CMA questionnaire from a third party, September 2024, question 10(2) [§<]; Submission to the CMA from a third party, September 2024 [§<].

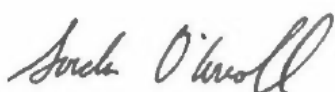
<sup>161</sup> Note of call with a third party, July 2024, paragraphs 22 and 28 [§<].

ground customers were to grow in the future, it is likely that processors currently producing conventional milk could shift existing capacity (including in the same processing facilities) to introduce or expand organic milk supply. The CMA notes that entrants would also need to add organic milk farms to its milk pool and arrange for delivery of organic milk from the farms to the processing site, segregated from conventional milk. The CMA did not receive evidence about how long it would take for dairy processors to make these procurement and logistics arrangements.

135. In light of the evidence received, in particular the lack of competition between the Parties, sufficient alternative constraints and the fact that customers often source organic and conventional milk from the same supplier, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of organic fresh milk to middle ground customers.

# DECISION

136. 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.
137. The Merger will therefore not be referred under section 33(1) of the Act.



**Sorcha O'Carroll**  
**Senior Director of Mergers**  
**Competition and Markets Authority**  
**22 October 2024**

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## ENDNOTE

<sup>i</sup> This sentence should read 'In addition to the Parties' different offerings, the CMA found that Müller's activities in this market were limited and related in the main to supplying a small number of middle ground customers, including [x].'

<sup>ii</sup> This sentence should read 'The turnover of the Müller Group in 2023 was approximately £[x] worldwide and the UK turnover of its UK dairy business amounted to approximately £[x].'

<sup>iii</sup> This sentence should read '... of the approximately 7,100 dairy farms in Great Britain. Footnote 4 should read: [GB producer numbers | AHDB](#)'

<sup>iv</sup> This sentence should read 'The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 28 August 2024...'

<sup>v</sup> This sentence should read 'In particular, the Parties submitted that one of Müller's middle ground customers for organic fresh milk [x] could not be supplied by Yew Tree due to its more sophisticated product requirements.'

<sup>vi</sup> Following the Parties' clarification, Müller's market share should be [0-5]%. The Parties' combined share should be [20-30]%.

<sup>vii</sup> This sentence should read 'The shares of supply in Table 2 indicate that the Merged Entity would be the second largest supplier at [20-30]% behind Arla who has a share of supply of [50-60].'