

Anticipated Acquisition by Boparan Private Office Limited (via 2 Agriculture Limited) of ForFarmers UK Limited’s Burston and Radstock feed mills

Decision on relevant merger situation and substantial lessening of competition

ME 7106/24

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 6 November 2024. Full text of the decision published on 11 December 2024.

The Competition and Markets Authority (**CMA**) has excluded from this 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 [X]. Some numbers have been replaced by a range, which are shown in square brackets.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 2 Agriculture Limited (**2Agriculture**), of ForFarmers UK Limited's (**ForFarmers UK**) Burston feed mill, gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of (i) loss of competition in the supply of meat poultry feed to third-party customers in a number of local areas; and (ii) as a result of vertical effects in the downstream supply of poultry meat, as the Merger could lead to foreclosure of poultry meat producers (including growers) in the same local areas.
2. 2Agriculture has agreed to acquire two of ForFarmers UK's feed mills located at Burston (Norfolk, East Anglia) and Radstock (Somerset, South West), further to Asset Purchase Agreements (**APAs**) entered into on 5 April 2024. The APAs do not provide for the transfer of customer contracts or customer volumes.
3. The CMA refers to the arrangements contemplated in the two APAs as the **Merger**.
4. As the CMA has found that the Merger gives rise to a realistic prospect of an SLC as a result of a loss of competition in the supply of meat poultry feed to third-party customers at a local level and as a result of vertical effects in the supply of poultry meat in the UK, the Parties have until 13 November 2024 to offer undertakings in lieu of a reference (**UILs**) to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).
5. The CMA has found that the Merger does not give rise to a realistic prospect of an SLC at a local level within the catchment centred on ForFarmers UK's Radstock mill.

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

6. 2Agriculture is active in the UK animal feed milling business specialising in the production of conventional (ie non-organic) compound poultry feed. 2Agriculture is part of a group of companies, which are active in food production and supply and are under the common ownership of Mr Ranjit Singh Boparan and Mrs Baljinder Kaur Boparan (together with the companies directly or indirectly controlled by them referred to as '**Boparan**').
7. ForFarmers UK produces a range of feed products, including conventional compound feed for monogastric animals (eg poultry and pigs). ForFarmers UK is

an indirectly owned subsidiary of ForFarmers N.V., (**FF**) a European animal feed producer, listed on Euronext Amsterdam.

8. The CMA refers to FF, together with its subsidiaries, collectively as '**ForFarmers**'.
9. For the purposes of this investigation, the CMA has focused on the loss of competition in the supply of meat poultry feed to third-party customers in a number of local areas and as a result of vertical effects in the downstream supply of poultry meat.
10. Boparan and ForFarmers are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

Why did the CMA review this merger?

11. The CMA has a statutory duty to promote competition for the benefit of consumers. This includes a duty to investigate mergers that could raise competition concerns in the UK where it has jurisdiction to do so. In this case, the CMA has concluded that the CMA has jurisdiction to review this Merger because a relevant merger situation has been created: each of (i) Boparan and (ii) ForFarmers' Burston and Radstock feed mills, is an enterprise that will cease to be distinct as a result of the Merger and the turnover test is met.

What evidence has the CMA looked at?

12. To understand the impact of the Merger on competition, the CMA considered a wide range of evidence in the round.
13. The CMA received several submissions and responses to information requests from the Parties and reviewed a number of the Parties' internal documents to understand their businesses, strategies and plans, and the competitive landscape in which they operate. The CMA also gathered data, directly from the Parties and other feed suppliers, on the levels of total capacity and available spare capacity at feed mills in the relevant local areas.
14. The CMA spoke to and gathered evidence from other sector participants, including competitors and customers of poultry feed in the relevant local areas, which included both written and oral submissions to better understand the competitive landscape and to get their views on the impact of the Merger.

What did the evidence tell the CMA...

...about what would have happened had the Merger not taken place?

15. In order to determine the impact that the Merger could have on competition, the CMA has considered what would have happened had the Merger not taken place. This is known as the counterfactual.
16. In this case, the CMA has assessed the Merger against a counterfactual where ForFarmers' Burston mill would have been sold to an alternative purchaser (as evidence shows that ForFarmers ran a sales process to an advanced stage with multiple purchasers in parallel) and Boparan's Stoke Ferry mill would have continued to operate.

...about the effects on competition of the Merger?

17. The CMA looked at whether the Merger would lead to a substantial lessening in competition as a result of loss of competition in the supply of meat poultry feed to third-party customers in a number of local areas and as a result of vertical effects in the downstream supply of poultry meat, as the Merger could lead to foreclosure of poultry meat producers (including growers) in the same local areas.
18. The CMA found that the Merger gives rise to a realistic prospect of an SLC for the reasons below.

Theory of harm 1: Loss of competition in the supply of meat poultry feed to third-party customers locally

19. The CMA considered the reduction in total capacity for supply to third parties and the level of spare capacity remaining post-Merger in the local areas of (i) Burston (ie the mill Boparan is proposing to acquire), (ii) Stoke Ferry and (iii) Bawsey (these mills are in the Burston catchment area and are operated by Boparan).
20. The CMA considers that the structure of the Merger is such that it results in the removal of capacity for supply to third parties, which may affect rivalry between firms, including Boparan and ForFarmers, as well as other feed suppliers. The CMA estimated the total capacity for supply to third parties and the total spare capacity for supply to third parties which remains in each catchment post-Merger, based on submissions from the Parties and other feed suppliers .
21. The CMA found that the Merger would remove a material amount of total capacity for supply to third parties in each of the relevant catchment areas when compared to the counterfactual, leaving only a limited amount of spare capacity for supply to third parties, with high rates of capacity utilisation in the local areas assessed.

22. The CMA also received evidence from customers, most of whom expressed negative views of the Merger. Further, the CMA heard that barriers to entry are high in the supply of poultry feed, including due to high capital investments.
23. For the reasons set out above and detailed in the decision, the CMA believes the Merger gives rise to a realistic prospect of an SLC as a result of a loss of competition in the supply of meat poultry feed to third-party customers at a local level, within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills.

Theory of harm 2: Foreclosure of poultry meat producers (including growers)

24. The CMA considered whether the loss of competition upstream in the supply of meat poultry feed to third-party customers results in Boparan (and other suppliers), harming the competitiveness of customers who compete with Boparan downstream in the supply of poultry meat.
25. The CMA found that (i) Boparan would have the ability to foreclose meat poultry feed customers within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills, as a result of reducing capacity for supply to third parties and weakening competition upstream in the supply of meat poultry feed; (ii) Boparan would have the incentive to do so; and (iii) a foreclosure strategy would result in substantial harm to overall competition downstream in the supply of poultry meat in the UK (including both growers and processors). The CMA is particularly concerned that the foreclosure strategy could substantially harm smaller, independent chicken growers and processors, considering the overall market for the supply of chicken is already concentrated with three vertically integrated firms accounting for the vast majority of supply. Further, the downstream supply of poultry meat in the UK, and in particular chicken, is an important sector and this may further increase the CMA's concern about the significance of the harm.

What happens next?

26. As a result of these concerns, the CMA believes the Merger gives rise to a realistic prospect of an SLC as a result of a loss of competition in the supply of meat poultry feed to third-party customers at a local level and as a result of vertical effects in the supply of poultry meat in the UK. The Parties have until 13 November 2024 to offer an undertaking which might be accepted by the CMA to address the SLC. If no such undertaking is offered, or the CMA decides that any undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

PARTIES, MERGER, AND MERGER RATIONALE

Parties

27. 2Agriculture is a UK based animal feed milling business specialising in the production of conventional (ie non-organic) compound poultry feed. It has five feed mills in the UK¹ and does not sell any of its feed outside the UK. 2Agriculture had a total turnover of £492.8 million for the year ending 31 December 2023.²
28. 2Agriculture is part of the Boparan group of companies,³ which are active in food production and supply and are under the common ownership of Mr Ranjit Singh Boparan and Mrs Baljinder Kaur Boparan. In particular:
- (a) 2 Sisters Food Group Limited (**2SFG**), an indirectly owned subsidiary of Boparan, is active in the processing and supply of chicken in the UK and Europe.
 - (b) 2SFG also holds a 50% interest in Hook 2 Sisters Limited (**H2S**), which is a joint venture with PD Hook (Group) Limited (UK). H2S is active in the rearing of broiler chickens for supply to entities in the retail and food service sectors, including entities ultimately owned by Mr and Mrs Boparan including 2SFG and Banham Poultry (2018) Limited.⁴
29. FF is a European animal feed producer, listed on Euronext Amsterdam, and is active in the UK through its indirectly owned subsidiary ForFarmers UK.⁵ ForFarmers UK produces a range of feed products, including conventional compound feed for monogastric animals (eg poultry and pigs). It has 10 feed mills and five blend plants at 13 sites throughout the UK and also operates one toll-milling blend site. ForFarmers UK does not sell any of its feed produced in the UK outside the UK.⁶

¹ 2Agriculture also has an extrusion plant which manufactures Extrupro. Extrupro is a blend of full fat rapeseed and field beans produced by an extrusion process. It is used as a partial soy replacement; Final Merger Notice submitted to the CMA on 10 September 2024 (**FMN**), footnote 1.

² Ashurst LLP's email to the CMA dated 28 October 2024, 13:51.

³ 2Agriculture is a wholly owned subsidiary of Amber REI Holdings Limited (**AREIL**), which in turn is wholly owned by Boparan Private Office Limited (**BPO**); FMN, paragraph 2.2.

⁴ FMN, paragraphs 2.2–2.3.

⁵ FMN, paragraph 2.4. ForFarmers UK's direct parent company is ForFarmers UK Holdings Limited.

⁶ FMN, paragraph 2.5.

30. The combined turnover of ForFarmers in the year ending 31 December 2023 was approximately €2,974.7 million⁷ worldwide and approximately €747.2 million⁸ in the UK.⁹

Merger

31. On 5 April 2024, Boparan (via 2Agriculture) and ForFarmers (via ForFarmers UK) entered into two APAs¹⁰, whereby ForFarmers agreed to the sale of two of its feed mills located at Burston (Norfolk, East Anglia) and Radstock (Somerset, South West), respectively, along with certain related assets. The assets that are agreed to be transferred to Boparan under the APAs comprise:
- (a) the Burston and Radstock feed mills, including freehold property and equipment located at each of the sites (eg machinery, tools, furniture, vehicles (but excluding trucks/lorries), trade utensils, IT equipment);
 - (b) production employees (excluding transport related employees), who are to be transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE regulations**) (ForFarmers' employees engaged in management, marketing, sales, finance or IT etc will not be transferred); and
 - (c) operational supply contracts (eg forklift hire, waste services, on-site cleaning).¹¹
32. The Parties submitted that no customer contracts or customer volumes will be transferred, and all current assets and liabilities in relation to the businesses conducted from the Burston and Radstock sites will remain with ForFarmers.¹²

Merger rationale

33. The Parties submitted that the strategic rationale for entering into the Merger is as follows.
- (a) From Boparan's perspective, with respect to the East Anglia region, the Merger allows it to reduce production at its Stoke Ferry site by transferring volumes to Burston in order to address environmental, health and safety, and local community concerns (in relation to dust, noise and traffic) at Stoke Ferry. The Parties added that in 2020, 2Agriculture applied for planning

⁷ £2587.4 million when using the [average exchange rate for EUR v GBP for the period 1 January 2023 to 31 December 2023](#).

⁸ £649.9 million when using the [average exchange rate for EUR v GBP for the period 1 January 2023 to 31 December 2023](#).

⁹ FMN, paragraphs 2.4 and 2.6.

¹⁰ Annex 2.005 to the FMN, 'Final APA for Radstock', 5 April 2024 and Annex 2.006 to the FMN, 'Final APA for Burston', 5 April 2024.

¹¹ FMN, paragraph 2.7.

¹² FMN, paragraph 2.8.

permission (which was granted in 2021) for the construction of a new mill at Snetterton to [X]. However, in light of the significant [X] in [X] and [X], 2Agriculture has concluded that the project is [X] and has [X] of the facility at the site for the [X]. Therefore, the acquisition of the Burston mill is the most viable option for 2Agriculture to maintain and enhance the production of its in-house volumes, and to continue to serve third-party customers in East Anglia.¹³

- (b) With respect to the South West region, the acquisition of the Radstock feed mill allows Boparan to expand into a new geographic area, in order to ensure increased [X] for the feed supplied [X], as well as to compete for third-party sales in the region.¹⁴
- (c) From ForFarmers' perspective, the Merger allows ForFarmers to serve its customers in East Anglia and the South West region more efficiently from a reduced number of sites, by allowing it to spread lower fixed costs over the same volumes. In recent years, ForFarmers has experienced a fall in demand for pig and poultry feed, which has resulted in significant spare capacity at a number of its sites. In particular, ForFarmers will [X] in East Anglia to supply feed to [X].¹⁵

34. The CMA's assessment of the Parties' stated rationale in view of the evidence in the Parties' internal documents is discussed in the counterfactual section below.

PROCEDURE

35. The CMA's mergers intelligence function identified the Merger as warranting an investigation.¹⁶

36. The CMA commenced its Phase 1 investigation on 11 September 2024. As part of its Phase 1 investigation, the CMA gathered a significant volume of evidence from the Parties. In response to targeted information requests, the CMA received and reviewed internal documents from Boparan and ForFarmers. The Parties also had opportunities to make submissions and comment on our emerging thinking throughout the Phase 1 investigation. For example, on 9 October 2024 the CMA invited the Parties to attend an Issues Meeting, and the Parties submitted their views in writing. The CMA also gathered evidence from other market participants, such as competitors and customers of poultry feed. 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.

¹³ FMN, paragraph 2.37(a).

¹⁴ FMN, paragraph 2.37(c).

¹⁵ FMN, paragraph 2.37(b) and (d).

¹⁶ [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), 25 April 2024, paragraphs 6.4–6.6.

37. Where necessary, this evidence has been referred to within this Decision.
38. The Merger was considered at a Case Review Meeting.¹⁷

JURISDICTION

39. A relevant merger situation exists where arrangements are in progress or in contemplation which, if carried into effect, will lead to two or more enterprises ceasing to be distinct, and either the turnover or the share of supply test is met.

Arrangements in progress or contemplation

40. The Parties submitted that each of the two APAs should be considered independently on the basis that each of Burston and Radstock was marketed separately by ForFarmers, ForFarmers received offers from potential purchasers that wished to acquire only one of the sites, the sale of each of Burston and Radstock is governed by a separate APA, and the transactions were not inter-conditional.¹⁸
41. The CMA considers that both the Burston and Radstock arrangements should be taken together and constitute a single relevant merger situation, for the following reasons:
- (a) Both transactions are between the same parties, ie Boparan and ForFarmers;
 - (b) Both transactions were entered into on the same day (5 April 2024)¹⁹ and following signing of the APAs completion was aligned to take place on the same day, ie 30 June 2024. Boparan and ForFarmers then agreed to amend the completion date for both transactions to 31 August 2024;²⁰ and
 - (c) While the transactions were not inter-conditional and ForFarmers did receive offers from potential purchasers to acquire only one of the sites, ultimately ForFarmers accepted Boparan because, among others, it had offered to buy both the Burston and Radstock feed mills.²¹

¹⁷ CMA2, page 39.

¹⁸ FMN, paragraph 5.1(b).

¹⁹ Annex 2.005 to the FMN 'Final APA for Radstock' dated 5 April 2024 and Annex 2.006 to the FMN, 'Final APA for Burston' dated 5 April 2024.

²⁰ FMN, paragraph 2.11. At the date of the Phase 1 decision announcement, completion is prohibited from taking place further to the CMA's decision on 1 August 2024 to impose an initial enforcement order.

²¹ FMN, paragraph 10.7(a).

Enterprises ceasing to be distinct

42. The term 'enterprise' is defined in section 129 of the Act as the activities, or part of the activities, of a business.²²
43. An 'enterprise' may comprise any number of components, most commonly including some combination of the assets and records needed to carry on certain activities of the business, employees working in the business, and existing contracts and/or goodwill. However, the Act does not require that a business (or part thereof) be of any minimum scale, or include any particular combination of components, in order to constitute an enterprise.²³
44. In some cases, the transfer of assets or employees alone may be sufficient to constitute an enterprise: for example, where the facilities or site transferred, or a group of employees and their know-how, enables a particular business activity to be continued.²⁴
45. The Merger will result in Boparan acquiring the Burston and Radstock feed mills and certain related assets from ForFarmers by way of two APAs. As described in paragraph 31 above, the assets to be transferred include the freehold property and equipment located at each of the feed mills, production employees, who are to be transferred under the TUPE regulations, and operational supply contracts. The CMA considers that the above items contained in the APAs enable the business activity, ie manufacturing of feed, to be continued. The CMA therefore considers that each of (i) Boparan and (ii) ForFarmers' Burston and Radstock feed mills, is an enterprise within the meaning of section 129 of the Act, and that as a result of the Merger, these two enterprises will cease to be distinct.

Turnover test

46. The Parties submitted that the assets acquired pursuant to each of the APAs did not generate turnover in excess of £70 million and therefore the turnover test is not met, ie in 2023, Burston's turnover was £[<] and Radstock's turnover was £[<].²⁵
47. As explained above, the CMA considers the arrangements contemplated by the two APAs form a single relevant merger situation. Therefore, taking both the Burston and Radstock transactions together, the UK turnover exceeds £70 million

²² [CMA2](#), paragraph 4.6.

²³ [CMA2](#), paragraph 4.8.

²⁴ [CMA2](#), paragraph 4.9.

²⁵ FMN, paragraph 5.1(b).

in 2023 (ie £[<]). The turnover test in section 23(1)(b) of the Act is therefore satisfied.²⁶

Conclusion

48. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
49. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 12 September 2024 and the statutory 40 working day deadline for a decision is therefore 6 November 2024.

COUNTERFACTUAL

50. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).²⁷
51. For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.²⁸
52. In this case, the prevailing conditions of competition would be a scenario in which the Burston and Radstock²⁹ mills continue to be operated by ForFarmers for third-party feed supply. The CMA has gathered evidence on whether ForFarmers would have continued to operate the Burston mill absent the Merger, or instead would have either closed or sold the mill. The CMA has also gathered evidence on the operation of Boparan's Stoke Ferry mill and its planned development of a mill at Snetterton and any impact these developments may have on the supply of feed to third parties in the relevant local areas.
53. In particular, the CMA has assessed whether, absent the Merger:

²⁶ Even if the sale of each of the mills was treated separately, the CMA considers that the share of supply test would be met in relation to the Burston mill alone, given that the Parties hold more than 25% of both the (i) capacity for supply to third parties of all feed (this includes pig feed, layer poultry, meat poultry and other poultry; ie turkey/game feed); and (ii) volumes sold to third parties, centred on Burston, with an increment.

²⁷ [CMA's Merger Assessment Guidelines \(CMA129\)](#), March 2021, paragraph 3.1.

²⁸ [CMA129](#), paragraph 3.12.

²⁹ The CMA believes that no plausible competition concerns arise in relation to Radstock under any counterfactual scenario (eg under prevailing conditions or in the event of a sale to an alternative purchaser) and therefore the counterfactual in relation to this mill is not discussed further in this section.

- (a) the Burston mill would remain operating as it is (supplying third parties);
- (b) the Stoke Ferry mill would continue to operate; and
- (c) the Snetterton mill would be built.

54. Each of the above scenarios is discussed in turn below.

Operation of the Burston mill

55. The Parties submitted an alternative counterfactual, ie it is likely that the Burston mill would have been purchased by another party as an 'empty asset'³⁰ or, in the absence of a sale, ForFarmers would have closed the Burston site and transferred the animal feed volumes produced at Burston to Bury.³¹
56. The Parties submitted that Burston is operating significantly [~~]~~ and is a [~~]~~ site,³² and further that there are no circumstances in which ForFarmers would have continued to operate the Burston mill for third-party feed supply.³³ The Parties also submitted that ForFarmers' willingness to close sites is supported by the fact that it has closed a large number of mills in the UK (ie in 1990, ForFarmers operated 32 animal feed mills in the UK and following the Merger, its' footprint would be reduced to 10 mills).³⁴
57. As set out in the CMA's guidance, for the CMA to accept an exiting firm argument at Phase 1, it would need to see compelling evidence that it was inevitable that, absent the Merger:
- (a) the firm is likely to have exited (through failure or otherwise); and, if so
 - (b) there would not have been an alternative, less anti-competitive purchaser for the firm or its assets to the acquirer in question.³⁵
58. Using the above framework, the CMA has considered whether it is realistic that ForFarmers would have continued to operate the Burston mill with reference to ForFarmers' internal documents, public announcements and the sales process it carried out for the Burston mill.

³⁰ ie without any customer contracts or volumes being transferred.

³¹ FMN, paragraph 10.5.

³² Parties' response to the Issues Letter, dated 9 October 2024, slide 6.

³³ Parties' response to the Issues Letter, dated 9 October 2024, slide 10.

³⁴ Parties' additional response to the Issues Letter, dated 10 October 2024, paragraph 11.

³⁵ [CMA129](#), paragraph 3.21 and 3.23.

Internal documents

59. For the purposes of its assessment, the CMA considered evidence of ForFarmers' plans for its UK feed milling business, as reflected in its internal documents.
60. Evidence from ForFarmers' internal documents shows that following the abandonment of the joint venture in 2023 between Boparan and ForFarmers,³⁶ ForFarmers undertook a strategic review of its UK feed milling business and considered several options before choosing to pursue the divestment of the Burston and Radstock feed mills. The internal documents show that ForFarmers' feed mills were operating with significant spare capacity following a loss in volumes, including as a result of the market trend towards vertical integration and consolidation, and this was impacting profitability. ForFarmers therefore explored several options to [redacted] and [redacted] as part of a long-term strategy.
- (a) A number of ForFarmers documents refer to the difficulties faced by the business. For example, a [redacted] extract from an FF board pack provides an update on the UK strategy and indicates that ForFarmers' pig, poultry and leisure (**PPL**) business is facing difficulties, especially in view of further market integration, which has put the '[redacted] of the [redacted] under pressure'. In this context, the document discusses various options, such as a full [redacted] to [redacted], which was not considered viable, and [redacted] of a mix of feed mills, including [redacted] Burston to [redacted] and the sale of Radstock to another feed supplier.³⁷ Similarly, minutes from an FF meeting on [redacted] note on UK strategy that there is 'hardly any [redacted] left for broiler and pigs in East Anglia' and options such as [redacted] sale of [redacted], Burston and Radstock are considered.³⁸
- (b) A [redacted] Executive Team meeting document discusses the issues the ForFarmers UK business has faced over the years, such as not being able to meet its [redacted]³⁹ with the current business model, [redacted] of business with [redacted],⁴⁰ [redacted] and a reduction in the [redacted] of the pig and poultry business. The document notes that ForFarmers' PPL business is 'not [redacted] in current format'.⁴¹ In this light, the document discusses potential [redacted] combinations including the [redacted] of ForFarmers' [redacted] business, [redacted] business, a [redacted] arrangement or the [redacted] of specific feed mills in East Anglia and the South West.⁴² The CMA understands that during [redacted], ForFarmers engaged with Boparan (through 2Agriculture) for a potential [redacted] arrangement, while also continuing to explore the divestment of [redacted], Burston and Radstock,⁴³ at least

³⁶ Internally referred to as Project Voeden. FMN, paragraph 2.29.

³⁷ ForFarmers internal document, Annex 8.007 to the FMN, 'UK E Board', [redacted], pages 1-3.

³⁸ ForFarmers internal document, Annex 8.014A to the FMN, [redacted], page 2.

³⁹ Earnings Before Interest and Taxes (EBIT) Return on Average Capital Employed (ROACE).

⁴⁰ [redacted], FMN, footnote 48.

⁴¹ ForFarmers internal document, FF_Annex_000994, [redacted], pages 2-3.

⁴² ForFarmers internal document, FF_Annex_000994, [redacted], pages 4-5.

⁴³ ForFarmers internal document, Annex 8.008 to the FMN, 'UK E Board', [redacted], pages 1-2.

until [X].⁴⁴ In parallel, ForFarmers reached out to other potential purchasers with respect to the Burston and Radstock mills.⁴⁵

- (c) A [X] ForFarmers UK board paper details ForFarmers' '[X] Status'.⁴⁶ The document refers to ForFarmers' various plans of '[X] to [X]' for its PPL business and refers to the need for a 'total [X]' owing to absence of 'material [X]'.⁴⁷ Around this time, ForFarmers carried out an assessment of the offers it received from prospective purchasers for the Burston and Radstock mills.⁴⁸

61. The CMA understands that after months of assessing the various options described above, ultimately ForFarmers decided to sell the Burston and Radstock feed mills. Minutes of a meeting of the FF Supervisory Board dated [X] state that a loss is expected on pig feed, with poultry volumes expected to [X] for the ForFarmers UK business and refers to the effect of [X] in the UK, being the sale of Burston and Radstock.⁴⁹ The CMA notes that this document does not refer to a decision to close the Burston mill, but only reflects a decision to sell the Burston and Radstock mills, following internal discussions on various available options.⁵⁰
62. Following its decision to sell, on 22 February 2024, ForFarmers publicly announced a reorganisation of its UK business involving the divestment of two factories, citing a loss of volumes due to increasing supply chain integration in the market for pigs and broilers.⁵¹ Following the announcement, ForFarmers circulated a document to its senior leadership team, with frequently asked questions (**FAQs**) relating to the divestment announcement. The document refers to ForFarmers' intention to 'sell [X]' the two mills at Radstock and Burston, as it needs fewer factories to meet demand for feed in the area. It further refers to its intention to find a suitable buyer for the mills, and in the absence of a buyer, ForFarmers states that it will close the sites.⁵²

⁴⁴ Annex 8.021 to the FMN, 'MA Pipeline Update', [X], page 3. This M&A pipeline update notes that 2Agriculture expressed an interest to acquire [X] 'Radstock & Burston [X]'.

⁴⁵ FMN, paragraphs 10.7 and 10.15 and Annex 2.10, to the FMN, Witness Statement of Rob Kiers, 5 September 2024, paragraphs 59–62.

⁴⁶ [X] was used to refer to the overall strategy of improving the [X] of ForFarmers UK. Its primary focus was to implement [X] measures to transform ForFarmers UK into a [X] business by reference to three key objectives: (a) achieving a material [X] in [X]; (b) fine-tuning [X] (including by developing a strong [X] to try to [X] additional [X]); and (c) optimising the [X] of the ForFarmers UK business by bringing [X] into line with [X]. FMN, paragraph 2.31.

⁴⁷ ForFarmers internal document, Annex 8.009 to the FMN, 'EB [X] UK PPL', [X], pages 2, 3 and 5.

⁴⁸ ForFarmers internal document, Annex_002385, [X].

⁴⁹ ForFarmers internal document, Annex 8.016 to the FMN, [X], page 5.

⁵⁰ The Parties told the CMA that the minutes of the board meeting specifically referred to a decision to [X] Burston if the sale of the mill did not go ahead. The CMA requested a copy of the relevant document, but as at the date of the issuance of this decision, this document has not been provided. Instead, the Parties submitted the FAQ document referred to in paragraph 62 below.

⁵¹ Annex 7.001 to the FMN, 22 February 2024, page 8.

⁵² Appendix 1d to the Parties' additional response to the Issues Letter, dated 10 October 2024, page 1.

CMA's assessment

63. ForFarmers' internal documents show a wide range of long-standing strategies being considered to improve the [X] of the UK business, and to [X] capacity in East Anglia to address the fall in demand for pig and poultry feed, including several [X] measures, [X] arrangements and varying [X] combinations. While some of the documents from [X] indicate the possibility of [X], the rest of the documents (including later documents) focus on other measures described above.⁵³ Even the documents which do refer to [X], such as the minutes of the Executive Board Meeting dated [X] referred to in paragraph 60(a) above, do so in the context of [X] being one of two possibilities (ie the other being sale), for either [X] or Burston, and therefore do not refer to a specific decision to [X] the Burston mill.
64. Further, as demonstrated by the interest shown by potential purchasers (and as confirmed in the internal documents of ForFarmers), evidence seen by the CMA suggests the Burston mill was an attractive asset capable of being divested. This is also supported by the fact that ForFarmers chose to publicly announce the divestment, before signing any contracts, and considered that the risk of the announcement devaluing the sales value was minimal.⁵⁴
65. The available evidence indicates that after considering a range of options, described above, ForFarmers came to a decision to divest a mill in the East Anglia region, and chose to pursue the sale of the Burston mill. Further, as noted in paragraph 69 below, ForFarmers also reached an advanced stage in its negotiations with an alternative purchaser, choosing to run a sales process with [X] potential purchasers in parallel to achieve the sale in a timely manner. As such, the CMA does not consider that it is realistic that ForFarmers would continue operating the Burston mill, as it does today for the supply of feed to third parties in the future, absent the Merger.

Sale of Burston mill to an alternative purchaser

66. The Parties submitted that ForFarmers had approached 2Agriculture, [X], [X],[X], [X] and [X] in relation to the potential sale of the Burston mill. Similar to the proposed Merger, the terms of the sale were for the acquisition of the Burston mill alone (ie without any customer contracts, customer volumes or goodwill).⁵⁵

⁵³ For completeness, the CMA notes that one internal document dated [X] refers to [X] of the sites. However, the same document also refers to communicating the divestment ([X]) via a press release; Annex 8.010 to the FMN, 'EB[X]Strategy in Action – UK – Comms plan', [X]. Another internal document from [X] refers to divestment [X] of two mills, however this reference is made in the context of describing the options that were presented in the summer of [X]. Annex 8.012 to the FMN, 'UK [X] ET Meet', [X].

⁵⁴ Annex 8.010 to the FMN, 'EB [X] Strategy in Action – UK – Comms plan', [X].

⁵⁵ FMN, paragraph 10.7.

67. The Parties submitted that both [X] and [X] are active in the downstream supply of [X] and [X] and as such a sale to either of these potential purchasers would have resulted in Burston being dedicated to in-house supply.⁵⁶ The Parties further submitted that during ForFarmers' discussions, [X] stated that it intended to use the Burston mill to produce in-house volumes and it is important for the CMA to ensure that any potential supply by a vertically integrated purchaser to third-party customers is not to third-party farms that are contracted to that purchaser, as these are effectively in-house supplies.⁵⁷
68. The Parties further submitted that while the remaining potential purchasers (ie [X], [X] and [X]) are not vertically integrated and it is likely that these companies would have used the Burston mill to supply third-party customers, ForFarmers only received verbal expressions of interest as opposed to formal offers for the Burston mill from these potential purchasers and it is unclear whether these reflected a serious interest to purchase the site.⁵⁸

Sale to [X]

69. As submitted by the Parties, evidence shows that [X] made an indicative non-binding offer for the purchase of the Burston mill and until [X], ForFarmers and [X] were in discussions about the terms of a potential sale.⁵⁹ ForFarmers' internal documents show that from as close as [X] to the date of the Merger, ForFarmers had plans to 'enter into final discussions with buyers', including both 2Agriculture and [X] in parallel, [X], with a goal to sign the asset purchase agreements.⁶⁰
70. Similarly, [X] submitted that it had completed its due diligence, was substantially through with negotiation of legal agreements and considered itself very close to completing the deal with ForFarmers, at which point ForFarmers notified [X] that it could not progress as another potentially interested party had made contact and was proposing to acquire both the Burston and Radstock feed mills as a package.⁶¹ [X] told the CMA that it would be [X] if [X].⁶²
71. Moreover, [X] submitted that its strategy to [X] played a key role in its decision to bid for the Burston feed mill⁶³ and whilst [X] would intend to internalise some of the volume of Burston, a small but material proportion of the capacity would be used for third-party feed.⁶⁴ The CMA notes that [X] is not currently active in the

⁵⁶ FMN, paragraph 10.9.

⁵⁷ Parties' response to the Issues Letter, dated 9 October 2024, slide 10.

⁵⁸ FMN, paragraph 10.11–10.12.

⁵⁹ FMN, paragraph 10.7(a).

⁶⁰ ForFarmers internal document, Annex 8.013 to the FMN, 'UK Projects EB approval', [X], page 1.

⁶¹ Note of call with a third party, June 2024.

⁶² Note of call with a third party, June 2024.

⁶³ Note of call with a third party, June 2024.

⁶⁴ Third-party response to the CMA's request for information. [X] confirmed to the CMA that the reference to capacity for third-party feed is intended for independent growers, and not to [X] contracted farms and that the latter would be considered as part of its own supply chain.

supply of meat poultry feed to third parties in East Anglia, so the use of capacity at Burston for third-party feed supply would result in [X] entering the market for the supply of meat poultry feed to third parties.

Evidence from other third-parties

72. The CMA also gathered evidence directly from other potential alternative purchasers, and considers this evidence supports the Parties' submissions that there was some interest from a range of purchasers, including purchasers who would have operated the Burston mill for supply to third parties.⁶⁵
73. The CMA received the following evidence from third parties.
- (a) [X] told the CMA that following an initial visit to the Burston site, it did not proceed to submit a bid given the response timescales for bid submission and for internal business reasons. [X] noted that had it purchased the Burston mill, it would have used it predominantly for its own supply.⁶⁶
 - (b) [X] had briefly considered acquiring the Burston mill and made an initial enquiry, but ForFarmers communicated that they had almost completed a deal. [X] did not pursue this any further as its [X] aspiration has been to [X]. If there was a chance to buy the mill, [X] interest would have been restricted to using the Burston mill [X].⁶⁷ The CMA notes that [X] is [X] third-party supplier in East Anglia.
 - (c) [X] declined ForFarmers' invitation for a potential sale of the Burston mill as geographically, Burston was not a good fit for its business. [X] is a multi-species business and there is not an opportunity for multi-species businesses to operate in East Anglia as there would be in other parts of the country.⁶⁸
 - (d) [X] told the CMA that it indicated some interest initially due to its long-established presence in East Anglia, where it manufactures multi-species feed. It engaged with ForFarmers for nearly a month but did not eventually make an offer as it considered the Burston mill too large for its requirements. Specifically, the Burston mill is structured to do pig and poultry feed for long runs, whereas [X] also wants to manufacture cattle and game feed, as well as do feed bags and smaller runs. Overall, the purchase did not fit strategically for [X].⁶⁹

⁶⁵ FMN, paragraph 10.7.

⁶⁶ Response to the CMA questionnaire from a third party, September 2024.

⁶⁷ Note of call with a third party, June 2024.

⁶⁸ Note of call with a third party, July 2024.

⁶⁹ Note of call with a third party, July 2024.

CMA's assessment

74. In view of the evidence set out above, the CMA considers that while there was some initial expression of interest from non-integrated third-party feed suppliers, they did not eventually submit formal offers to ForFarmers because the Burston mill was not a strategic fit, including because of its location or size. Considering the evidence the CMA received, none of these third parties submitted formal offers to buy the Burston mill, and all withdrew their interest in the mill early on. The CMA does not therefore consider these third parties to be realistic alternative purchasers. Further, in line with the CMA's practice not to have as its counterfactual a sale of the target firm to a purchaser that could realistically result in a referral for an in-depth Phase 2,⁷⁰ an acquisition by [X] should not be used as the counterfactual scenario.
75. Evidence received from one of the vertically integrated feed suppliers, [X], indicates that not only did they not submit a formal offer for business reasons, but the Burston mill would have been predominantly used for in-house volumes, had they purchased it. Therefore, the CMA does not consider this third-party to be a more competitive realistic alternative purchaser.
76. Finally, the CMA considers that the evidence it has received shows that ForFarmers had reached a very advanced stage in negotiations with [X] (which is not currently active in the supply of meat poultry feed to third parties in East Anglia), it remained an interested purchaser and also intended to use a small but material proportion of the Burston mill capacity for third-party feed supply. Therefore, the CMA considers that the evidence received supports the existence of a less anti-competitive purchaser (further discussed in the competitive assessment section below); as such the CMA considers that limb 2 of the exiting firm test, which provides that there would not have been an alternative, less anti-competitive purchaser, is not met. Since the second limb of the test is not met, the CMA considers that it does not need to conclude on limb 1 of the exiting firm test, ie on whether it is inevitable that ForFarmers would have closed the Burston mill absent the Merger.

Conclusion

77. As set out in further detail above, the CMA considers that [X] was at an advanced stage of negotiations with ForFarmers for the sale of the Burston mill and would use a small but material proportion of the Burston capacity for third-party feed supply. Therefore, the CMA considers that the evidence supports the existence of an alternative less anti-competitive purchaser, and the second limb of the exiting firm test is not met.

⁷⁰ [CMA129](#), paragraph 3.11.

78. As explained in paragraph 65 above, the CMA does not consider the prevailing conditions of competition, where ForFarmers continues to operate the Burston mill for third-party feed, to be the relevant counterfactual, as the evidence suggests that ForFarmers had a long-term strategy to reduce capacity in East Anglia, and after considering numerous options decided to proceed with the sale of Burston, running a sales process to an advanced stage with [redacted] purchasers in parallel.
79. The CMA therefore considers a sale to an alternative purchaser to be the relevant counterfactual.

Operation of the Stoke Ferry mill

80. To identify the relevant counterfactual, the CMA has considered what would have happened to Boparan's Stoke Ferry mill absent the Merger, ie whether it would have remained independent and operational.
81. The CMA has also considered evidence of Boparan's plans in relation to the continued operation of the Stoke Ferry mill post-Merger in this section, the impact of which is discussed further in the competitive assessment section, below at paragraphs 137 to 140. The Stoke Ferry mill produces a significant amount of feed for supply to third parties in the relevant local area, and as such, the continued operation of this mill post-Merger would make a material difference to the competitive assessment (ie in terms of the level of capacity available to third parties in the relevant local areas).

Parties' submissions

82. The Parties submitted that in the absence of the Merger, Boparan would have sought to keep the Stoke Ferry mill operational [redacted], whilst managing the health and safety and environmental issues, which are referred to below.⁷¹
83. The Parties submitted that post-Merger Boparan intends to transfer [redacted] volumes produced at its Stoke Ferry mill to the Burston site (as described in paragraph 33(a) above). They submitted this will allow Boparan to utilise the Stoke Ferry site to continue to produce poultry feed for both internal use and for third parties.⁷² The Parties submitted that post-Merger approximately:⁷³
- (a) [50-100] kilo-tonnes (kT) of capacity at Stoke Ferry will be dedicated to the production of in-house volumes (including approximately [0-50]kT of capacity that will be used to produce breeder feed for [redacted]); and

⁷¹ FMN, paragraph 14.29.

⁷² FMN, paragraph 10.13.

⁷³ FMN, paragraph 14.30–14.34.

- (b) [100-150]kT of capacity at Stoke Ferry will be dedicated to the production of poultry feed supplied to third-party customers (ie [100-150]kT to serve existing customers and [0-50]kT of spare capacity to compete for additional third-party customers) in East Anglia.

84. The Parties further submitted that Boparan’s intention, based on compelling business reasons, is to continue operating the Stoke Ferry mill and supply third-party customers, post-Merger.⁷⁴ Referring to a [X] investment paper prepared for the 2Agriculture Board, the Parties submitted that whilst this paper refers to the possibility of [X] Stoke Ferry and transferring volumes to Burston, this was in the context of the enforcement notice that was issued by the Health & Safety Executive (**HSE**) in February 2024 that could have resulted in the forced closure of the Stoke Ferry site.⁷⁵

85. With respect to keeping the Stoke Ferry mill open post-Merger, the Parties submitted that:

- (a) Boparan has [X] demand for poultry feed in East Anglia and it anticipates that demand will [X] in future. Buying Burston and running Stoke Ferry at reduced volumes allows Boparan to [X] in East Anglia, in order to meet current and future demand, whereas [X] of the Stoke Ferry mill would leave it with [X].⁷⁶
- (b) Keeping Stoke Ferry open allows Boparan to [X] volumes from [X] and [X] and produce [X] feed at a [X] cost. [X] volumes from [X] and [X] will avoid [X].⁷⁷
- (c) Stoke Ferry’s [X] has improved, and it is more [X] to keep Stoke Ferry open [X] (eg EBITDA is higher in the scenario when Stoke Ferry is kept open). There are also strategic benefits to keeping the mill open, as it allows Boparan to deal with [X] at [X] and avoid having to [X] in such circumstances. Running two sites also reduces [X] by reducing the number of ‘[X]’ completed by its drivers and trucks;⁷⁸ and
- (d) No 2Agriculture documents contain detailed plans for the [X] of Stoke Ferry.⁷⁹

86. With respect to supplying third-party customers post-Merger, the Parties submitted that:

⁷⁴ Parties’ response to the Issues Letter, dated 9 October 2024, slide 20.

⁷⁵ Parties’ additional response to the Issues Letter, dated 10 October 2024, paragraph 3.

⁷⁶ Parties’ response to the Issues Letter, dated 9 October 2024, slides 23–24.

⁷⁷ Parties’ response to the Issues Letter, dated 9 October 2024, slides 24.

⁷⁸ Parties’ response to the Issues Letter, dated 9 October 2024, slides 25–26.

⁷⁹ Parties’ response to the Issues Letter, dated 9 October 2024, slide 39.

- (a) Third-party sales have a [X] than in-house sales and third-party customers provide a strategic benefit to Boparan by allowing it to [X];⁸⁰
- (b) Boparan has a history of supplying third-party customers since 2013 and the business plan for Snetterton underlines Boparan's commitment to third-party volumes in the long-term, which are crucial to the future mill's profitability;⁸¹ and
- (c) Boparan prioritises third-party volumes in the event of a breakdown, as otherwise customer relationships could be damaged, resulting in a loss of third-party volumes.⁸²

Internal documents

87. The CMA received a number of internal documents from Boparan, which discuss its strategic options with respect to the Merger and the Stoke Ferry mill in particular.
88. Regarding the situation absent the Merger, internal documents consistently indicate that the Stoke Ferry mill would have remained operational in the absence of alternative capacity in East Anglia. For instance, despite ongoing issues with the Stoke Ferry mill, it produces a significant volume of poultry feed for internal use (and third-party customers), and as such remains an important mill for Boparan in the absence of alternative capacity in the area.⁸³
89. Broadly, the internal documents produced since [X] describe a series of issues with the Stoke Ferry mill. In this context, 2Agriculture's Board recommended the [X] of the Stoke Ferry mill with [X] its volumes (including [X] and [X] volumes) moving to the Burston mill post-Merger. For example:
- (a) A presentation on strategic options from [X], prepared for the 2Agriculture Board, discusses the Burston opportunity and considers a number of 'pros and cons' of purchasing the Burston mill, retaining the Stoke Ferry mill, and building the new Snetterton mill. Importantly, the document views the Burston acquisition as a [X] opportunity [X] the Stoke Ferry mill and puts forward a proposal to [X] the Stoke Ferry mill ([X]) with its volumes transferred to Burston. In a scenario where Boparan retains Stoke Ferry, it describes the '[X]' of the mill as having a [X] of [X], '[X]', difficult to maintain [X], [X] site to run, inevitable environmental issues, and not taking advantage of the

⁸⁰ Parties' response to the Issues Letter, dated 9 October 2024, slide 28.

⁸¹ Parties' response to the Issues Letter, dated 9 October 2024, slide 29.

⁸² Parties' response to the Issues Letter, dated 9 October 2024, slide 30.

⁸³ Boparan internal documents, Annex 8.003 to the FMN, [X], page 2 and 2AG_Annex_003170, [X], page 1. Further, as referred to in paragraph 82 above, the Parties did not contest that the Stoke Ferry mill would have been kept operational, absent the Merger.

site's planning permission for housing.⁸⁴ The 2Agriculture Board ultimately recommended to move forward with the Burston acquisition, which would provide a 'timely solution to the current [redacted] Stoke Ferry... and allow the [redacted] of the Stoke Ferry site [redacted]'.⁸⁵

- (b) 2Agriculture's '[redacted] strategic plan' presentation from [redacted] describes Stoke Ferry as being at '[redacted]' and that it 'may only [redacted] another [redacted] even with substantial [redacted]'.⁸⁶ While a 2Agriculture Board investment paper from [redacted] considers in an annex a scenario where both Stoke Ferry and Burston are kept open and indicates that 'running [Stoke Ferry] at [redacted] will reduce [redacted] requirements and increase its [redacted]', the proposal presented in the main document is to [redacted] Stoke Ferry and transfer volumes to Burston, noting an enterprise value of [redacted], based on producing [redacted] current Stoke Ferry volume at Burston.⁸⁷
- (c) Shortly thereafter, on [redacted], an email exchange between senior group management highlights the HSE's recent enforcement notice and notes that the Burston acquisition '[redacted] Stoke Ferry' which is at [redacted] and a [redacted] to the supply chain.⁸⁸ Similarly, a 2Agriculture investment paper considers the Merger 'will mitigate the real possibility of [redacted] of Stoke Ferry (current enforcement notice served by HSE – Dust)'.⁸⁹
- (d) As described above in paragraph 84, a [redacted] investment paper prepared for the 2Agriculture Board (ie [redacted] before signing the APAs), reiterates the rationale of the Burston acquisition as one where the Stoke Ferry mill would be [redacted], allowing 2Agriculture to maintain its [redacted] without having to spend in excess of £[redacted] to build a new mill at Snetterton or to spend £[redacted] over the next [redacted] years 'just to keep the [redacted]'. The document also notes that management does not consider that external customers would have concerns with the transaction.⁹⁰

90. Since the signing of the APAs (on 5 April 2024), internal documents propose a reduction of volumes at Stoke Ferry, as opposed to [redacted] the mill. For example, a [redacted] Merger investment case presentation, while acknowledging the issues with

⁸⁴ The CMA notes that an earlier document from [redacted], which provides an update on Amber REI's 'strategic land and planning' refers to ensuring that the planning permission in place for 100 dwellings at Stoke Ferry is preserved. Boparan internal document, 2AG_Annex_000959, page 2.

⁸⁵ Boparan internal document, Annex 8.003 to the FMN, [redacted], pages 2-6. The CMA also notes that during its phase 1 investigation, Stoke Ferry mill experienced [redacted] resulting in a [redacted] of poultry feed volumes, suggesting that the Stoke Ferry mill is [redacted] and in [redacted]; Ashurst LLP's emails to the CMA dated 4 September 2024, 21:18 and 13 September 2024, 13:51.

⁸⁶ Boparan internal document, 2AG_Annex_003293, [redacted], page 2.

⁸⁷ Boparan internal document, Annex 8.006 to the FMN, [redacted], pages 3 and 21.

⁸⁸ Boparan internal document, 2AG_Annex_003433, [redacted].

⁸⁹ Annex 8.004 to the FMN, '[redacted] slides', [redacted], page 3.

⁹⁰ Boparan internal document, Annex 8.004 to the FMN, [redacted], pages 2-4. Earlier documents from [redacted] and [redacted], both set out the intention to transfer [redacted] volumes from Stoke Ferry to Burston. See Boparan internal document, 2AG_Annex_003456, slide 7 and 2AG_Annex_003491.

Stoke Ferry mill, proposes to reduce volumes at Stoke Ferry by transferring [redacted] volumes to Burston and thereby increasing the [redacted] of Stoke Ferry to [redacted]. The document indicates that this would give 2Agriculture ‘valuable [redacted]’ in the East Anglia region.⁹¹

91. Similarly, on [redacted], updated financials are shared internally which show the revised impact to the budget of the Merger now keeping Stoke Ferry open⁹² followed by an investment case paper from [redacted], which proposes the purchase of the Burston mill and retention of Stoke Ferry as the correct strategy from a financial, operational, employment and feed supply chain perspective in that region and includes a financial justification for keeping Stoke Ferry open, including an expected increase in EBITDA.⁹³

CMA’s assessment

92. The CMA considers that the internal documents leading up to the Merger from [redacted] until [redacted], including board level documents, discuss the potential [redacted] of the Stoke Ferry mill following the Merger owing to a range of issues with the site and the benefit Boparan can gain from converting the site to housing. While the Parties submitted that the [redacted] investment paper discusses the possibility of [redacted] Stoke Ferry only in the context of the HSE enforcement notice, the evidence set out above shows that internal documents from at least as far back as [redacted], ie before the issuance of the enforcement notice, discuss [redacted] of Stoke Ferry following the Merger. Further, with respect to the Parties’ submission that there are no 2Agriculture internal documents that discuss detailed plans to [redacted] Stoke Ferry, the CMA notes that the Parties’ acknowledged that there are also no internal documents that discuss detailed plans to reduce capacity at Stoke Ferry to keep it operational post-Merger.⁹⁴ Therefore, the CMA cannot place any weight on the Parties’ submission that the lack of detailed plans to [redacted] Stoke Ferry suggests it would remain open.
93. The documents, therefore, show a clear rationale of the Merger is to allow for the closure of the Stoke Ferry mill, with volumes transferred over to the Burston mill. The CMA considers that, absent the Merger, it is realistic that Boparan would continue to operate Stoke Ferry in the absence of alternative capacity in East Anglia (eg if it does not build a new mill at Snetterton) given the significant volume of poultry feed produced at Stoke Ferry and its importance for internal (and third-party) supply.⁹⁵

⁹¹ Boparan internal documents, 2AG_Annex_003627, [redacted], pages 2, 5 and 17.

⁹² Boparan internal document, 2AG_Annex_003616, [redacted].

⁹³ Boparan internal document, Annex 8.005 to the FMN, ‘[redacted] – Investment Summary’, [redacted], slide 2.

⁹⁴ Parties’ oral submission during the Issues Meeting, dated 9 October 2024.

⁹⁵ As noted in paragraph 51 above, the appropriate test for the CMA’s assessment at Phase 1 is whether a scenario is ‘realistic’, as opposed to ‘likely’.

94. The CMA considers that Boparan, at present, supplies feed to third parties, which is important for mill efficiency (as further discussed below in the competitive assessment). While internal documents do not suggest that Boparan would stop supplying feed to third-party customers altogether post-Merger, the CMA considers that the Parties' submissions in relation to avoidance of double marginalisation as a result of in-sourcing volumes (and therefore as a rationale for being vertically integrated from the supply of feed to the production of meat) as set out above in paragraph 85(b), undermine the Parties' argument that Boparan has commercial incentives to continue to supply third-party customers. Moreover, the CMA considers that Boparan's strategy is to remain a vertically integrated player, and it does not currently operate any mills predominantly for supply to third parties. Therefore, while the CMA considers that Boparan intends to transfer some third-party feed volumes from Stoke Ferry to Burston post-Merger, it is not realistic for it to continue operating Stoke Ferry primarily for third-party feed supply in the event the Merger goes ahead.
95. With respect to the internal documents produced after the signing of the APAs, which sees retention of the Stoke Ferry mill along with the purchase of the Burston mill, the CMA considers that it is not apparent why the EBITDA expectations suddenly change, when only [redacted] earlier in [redacted] (and for a considerable period of time before that) it was considered that even substantial [redacted] would not result in improvements to the EBITDA at Stoke Ferry.⁹⁶ The CMA considers that it cannot place significant weight on the later documents as, although like the earlier documents these were prepared in anticipation of the Merger, they were prepared around the time of the Parties' submissions to the CMA in relation to the Merger, suggesting that these may therefore have been influenced by expected engagement with the CMA.

Conclusion

96. Absent the Merger, evidence supports that in the absence of an alternative mill or option to meet Boparan's feed requirements, the Stoke Ferry mill would have been kept operational for as long as possible to ensure the continued supply of feed volumes, in particular for in-house use. Compared with the counterfactual, the CMA considers that there is a realistic prospect that Boparan would close the Stoke Ferry mill post-Merger and supply at least some of the third-party feed volumes from the Burston mill instead, given consistent contemporaneous

⁹⁶ The Parties submitted that the increase in EBITDA at Stoke Ferry (and Burston) which results from keeping Stoke Ferry open occurs as it is not necessary to run the mills at low levels of utilisation while volumes are transferred to Burston, and Stoke Ferry is prepared for [redacted]. However, the CMA notes that the change in EBITDA does not arise as a result of any new information or occurrence of any new event. Even though the information would have been available when earlier documents were prepared, for example when the scenario was set out as part of an annex to the 2Agriculture Board investment paper from [redacted], the financial analysis showing the increase in EBITDA is only calculated later, in [redacted].

evidence showing that Boparan viewed the Merger as an opportunity to close the Stoke Ferry mill.

Snetterton mill

97. As noted above in paragraph 33(a), Boparan submitted that in light of the significant [redacted] in [redacted], it has concluded that the Snetterton project is [redacted] and has [redacted] construction of the facility. While the Snetterton mill is currently [redacted], the Parties further submitted that in order to meet [redacted] over the next [redacted], Boparan has plans to build the said mill, with a capacity of [600-650]kT, ie enough to replace the Stoke Ferry mill and add significant [redacted] in East Anglia.⁹⁷
98. Evidence from Boparan’s internal documents suggests that the rationale behind the Snetterton project was to replace the Stoke Ferry mill,⁹⁸ but this has been [redacted] with no definitive [redacted] for its construction. Monthly board packs between [redacted] until [redacted], and other documents discussing capital projects, describe the Snetterton project as being ‘[redacted]’,⁹⁹ especially due to the [redacted] associated with building the mill.¹⁰⁰ ¹⁰¹ In parallel, evidence also suggests that plans to build the Snetterton mill have not been [redacted] altogether¹⁰² and efforts are being made to ensure that planning permission does not [redacted].¹⁰³
99. The CMA considers that Boparan’s internal documents do not indicate that the decision to proceed with the construction of the Snetterton mill [redacted] (the project has been [redacted] on numerous occasions) but considers that Boparan’s long-term plans envisage [redacted] in [redacted], though at this stage it is not sufficiently clear whether that [redacted] would be through constructing Snetterton, as there may be other options available to Boparan. The CMA also considers that the decision [redacted] with the construction of the Snetterton mill, at present, could be related to the Merger. The internal documents reviewed by the CMA in relation to the Snetterton mill overlap in timing with the consideration of the Merger, and as explained in paragraph 89(d) above, the Merger was seen as a way to replace the Stoke Ferry mill without requiring Boparan to spend in excess of £[redacted] to build the Snetterton mill.
100. The CMA has therefore not taken this new mill into account in the counterfactual but has instead considered this further in the competitive assessment section below.

⁹⁷ Parties’ response to the Issues Letter, dated 9 October 2024, slide 13.

⁹⁸ Boparan internal document, 2AG_Annex_002559, [redacted].

⁹⁹ Boparan internal documents, Annex 9.002 to the FMN, [redacted], page 25 and 2AG_Annex_000959, [redacted], page 3.

¹⁰⁰ Boparan internal document, 2AG_Annex_001223, [redacted], page 5; Boparan internal document, Annex 8.003 to the FMN, ‘Strategic options’, [redacted], page 3.

¹⁰¹ Third-party evidence available to the CMA also suggests that the costs of building a new mill have increased. For example, one third party noted that the costs of building a new mill have increased by nearly 50% in the last three years. Note of call with a third party, July 2024.

¹⁰² Boparan internal document, Annex 16.001 to the FMN, ‘2Agriculture Strategic Growth Plan’, [redacted], page 11.

¹⁰³ Boparan internal document, 2AG_Annex_003552, [redacted], page 1 and 2AG_Annex_003170, [redacted], page 1.

Conclusion on counterfactual

101. Taking the above evidence in the round, the CMA considers a sale of the Burston mill to an alternative purchaser to be the relevant counterfactual. With respect to the Stoke Ferry mill, the CMA considers that it is appropriate to assess the Merger against a counterfactual where the Stoke Ferry mill continues to operate for the rest of its lifespan. As explained above, if the Merger went ahead, the CMA believes that it is realistic that Boparan would proceed with the closure of the Stoke Ferry mill in the foreseeable future.

COMPETITIVE ASSESSMENT

Background and nature of competition

102. ForFarmers and Boparan (through 2Agriculture) overlap in the production and supply of conventional (ie non-organic) compound feeds for poultry in the UK.¹⁰⁴ The UK poultry sector is an important industry for consumers.¹⁰⁵ In addition, the volume of broiler meat production in the UK has increased year on year¹⁰⁶ and evidence suggests that the demand for poultry feed is expected to either rise or stay the same over the next few years.¹⁰⁷
103. Animal feeds typically contain a combination of agricultural products (such as wheat and soy) and pre-mix (ie additives)¹⁰⁸ and can be produced in multiple forms:
- (a) straights or singles, are a single agricultural product (eg soy) that undergoes very limited processing and can be used to home mix feed or as an input into blended and compound feeds;
 - (b) blends, contain a combination of agricultural raw materials (eg soy and wheat) that are mixed together. Blends are not ground and keep their original form; and
 - (c) compounds, contain a combination of agricultural raw materials (similar to blends) but are milled (ie ground) and then formed into pellets, meal or crumble form. The combination of agricultural raw products and the final form

¹⁰⁴ FMN, paragraph 12.4.

¹⁰⁵ [Chicken consumption rockets ahead when compared with other proteins - Poultry Network](#) and [All you need to know about the British poultry meat sector \(countrysideonline.co.uk\)](#)

¹⁰⁶ [United Kingdom Poultry and Poultry Meat Statistics – January 2024 - GOV.UK \(www.gov.uk\)](#), Table 4.4.

¹⁰⁷ Response to the CMA questionnaire from third parties, September 2024. See also Boparan internal document, Annex 16.001 to the FMN, '2Agriculture Strategic Growth Plan', [redacted], page 6, which notes that 'a projected [redacted] in per capita consumption of poultry meat is resulting in [redacted] for poultry feed' and Parties' response to the Issues Letter, dated 9 October 2024, slide 13 which states that 'Boparan Group expects, and is planning for, a [redacted] in the demand for chicken meat volumes over the next [redacted]'.

¹⁰⁸ FMN, paragraph 12.1. Also, [Anticipated joint venture between ForFarmers N.V. and Boparan Private Office Limited, \[ME/7007/22\] \(ForFarmers/Boparan JV\)](#), paragraph 28.

of the feed will depend on the dietary requirements of the animal and the preferences of the farmer.¹⁰⁹

104. Some species, such as pigs and ruminants (cattle and sheep) can be fed all of the feed types described above. However, the digestive systems of poultry typically require the feed to be ground and therefore provided as a compound. In practice, the majority of pigs and poultry (which are both monogastric animals) are fed with compound feed in the UK.¹¹⁰
105. The production lines for pig and poultry are similar. Based on the Parties' submission, switching production between the two is possible and typically requires: (i) the right raw materials, of which c.85%-90% are the same; (ii) flushing between production to avoid cross contamination; and (iii) changing settings to produce different size pellets.¹¹¹
106. Poultry feed comprises two sub-categories of feed:
- (a) meat poultry feed includes feed for 'broiler' chicken (the term used for chickens reared for meat) as well as feed for other poultry reared for meat such as turkey or duck. Meat poultry feed requires pelleting post grinding and mixing to provide the birds with the form of feed they need and has a higher protein content; and
 - (b) layer poultry feed is used to feed egg-laying hens, and has higher proportions of phosphorous, vitamins, minerals and calcium.¹¹²
107. As discussed in paragraph 28, Boparan is active across the poultry food production and supply chain, through its feed milling operations (upstream, via 2Agriculture) and through its farming (via H2S) and processing operations (downstream, via 2SFG).¹¹³ Therefore, it is vertically integrated. Evidence suggests that the poultry industry has been moving towards greater vertical integration in recent years.¹¹⁴
108. As set out below in paragraph 191 the overall market for the supply of chicken¹¹⁵ is concentrated, with three firms – Boparan, Moy Park and Avara – accounting for nearly 80% of the supply. Similarly, the UK compound feed industry has also seen consolidation in recent years.¹¹⁶

¹⁰⁹ FMN, paragraph 12.2. Also, [ForFarmers/Boparan JV](#), paragraph 28.

¹¹⁰ FMN, paragraph 12.3. Also, [ForFarmers/Boparan JV](#), paragraph 29.

¹¹¹ FMN, paragraph 14.42.

¹¹² [ForFarmers/Boparan JV](#), paragraphs 30–31.

¹¹³ FMN, paragraph 11.2. Also, [ForFarmers/Boparan JV](#), paragraph 32.

¹¹⁴ Notes of calls with third parties, June and July 2024.

¹¹⁵ In terms of volume of chickens slaughtered.

¹¹⁶ [ForFarmers/Boparan JV](#), paragraph 35.

Market definition

109. 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 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.¹¹⁷
110. 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.¹¹⁸

Product market

111. The Parties submitted that irrespective of the CMA’s findings on the product market definition, there is no realistic prospect of an SLC in relation to the Merger. However, referring to the CMA’s recent decision in *ForFarmers/Boparan JV*, the Parties submitted that the definition adopted by the CMA is unduly narrow and ignores important supply-side substitution between different forms of animal feed.¹¹⁹ In *ForFarmers/Boparan JV*, the CMA concluded that the most appropriate product market was the supply of meat poultry feed and the supply of layer poultry feed, taken separately.¹²⁰
112. The Parties submitted that there is significant supply-side substitutability between broiler poultry feed and layer poultry feed, which is evidenced by the fact that (i) poultry feed for broilers and layers is produced at the Burston and Radstock mills, using largely the same equipment, (ii) many of the Parties’ competitors produce both broiler and layer poultry feed, very often at the same mill, and (iii) switching between poultry feed products is a straightforward process and can be done on the same day at almost no, or little, cost.¹²¹
113. The Parties also submitted that there is significant supply-side substitution between poultry feed and pig feed, also evidenced by the fact that the Burston and Radstock mills produce feed for poultry and pigs, and the production processes for pig and poultry feeds are similar (eg they involve the same weighing, dosing, mixing and grinding steps, and production lines are therefore the same for both species). The Parties also submitted that in previous merger reviews the CMA concluded that it was not necessary to further segment monogastric feed due to

¹¹⁷ [CMA129](#), paragraph 9.1.

¹¹⁸ [CMA129](#), paragraph 9.2.

¹¹⁹ FMN, paragraph 12.8.

¹²⁰ [ForFarmers/Boparan JV](#), paragraph 72.

¹²¹ FMN, paragraph 12.9.

ease of supply-side substitution and there are recent examples of ForFarmers switching from the production of pig to poultry feed (and vice versa).¹²²

114. The CMA considers that it has not received evidence which warrants a departure from the recent approach adopted by it in *Boparan/ForFarmers JV*, where it considered that the conditions for aggregating meat poultry feed and layer poultry feed on the basis of supply-side substitutability were not met, and further that other types of monogastric feed (ie pig feed) did not form part of the same relevant market.¹²³ Nevertheless, the CMA has taken into account the constraint from capacity which may be switched between feed for (i) poultry and other monogastric animals (ie pigs) and (ii) meat poultry and layer poultry feed, in the competitive assessment below.
115. As regards its assessment of vertical effects as a result of input foreclosure (discussed from paragraph 165 below), the CMA considers that it has not received any evidence which warrants a departure from its recent approach adopted in *Boparan/ForFarmers JV*, where it considered that the appropriate product market was the downstream supply of poultry meat,¹²⁴ which is also consistent with its previous decisions.¹²⁵

Geographic market

116. The Parties referred to the CMA's recent decision in *ForFarmers/Boparan JV*, where the CMA adopted a geographic market of a [70-80] mile catchment area around the parties' mills, by calculating the average 80th percentile distance, based on sales of poultry feed to third parties.¹²⁶ The Parties submitted that whilst they agree that adopting an average catchment area is likely to be more reliable than calculating site-specific catchment areas, they consider that adopting this approach ignores the strong competitive constraint imposed by mills that are located a relatively short distance away.¹²⁷
117. The CMA considers that there is no reason to depart from its recent approach to the geographic market definition in *Boparan/ForFarmers JV* as third-party evidence does not indicate that there has been a significant change in the distance at which feed is delivered.¹²⁸

¹²² FMN, paragraph 12.10.

¹²³ [ForFarmers/Boparan JV](#), paragraphs 66 and 69.

¹²⁴ [ForFarmers/Boparan JV](#), paragraph 71.

¹²⁵ [Completed acquisition by Boparan Private Office, via Amber REI Holdings Limited of Banham Poultry](#), [ME/6975/21] (**Boparan Private Office/Banham**), paragraphs 55-57.

¹²⁶ FMN, paragraph 12.14. Also, [ForFarmers/Boparan JV](#), paragraph 113.

¹²⁷ FMN, paragraph 12.16. The Parties made submissions to the CMA for the purpose of the FMN, using the same approach the CMA adopted in *ForFarmers/Boparan JV* (ie based on a [70-80]-miles radius) as well as on a national basis; FMN, paragraph 12.17.

¹²⁸ Notes of calls with third parties, June and July 2024.

118. Therefore, the CMA considers that the appropriate geographic market is a [70-80] -miles radius.
119. As regards its assessment of vertical effects as a result of input foreclosure (discussed from paragraph 165 below), the CMA considers that it has not received any evidence which warrants a departure from its recent approach adopted in *Boparan/ForFarmers JV*, where it considered that the appropriate geographic market for the supply of poultry meat was UK-wide in scope¹²⁹, which is also consistent with its previous decisions.¹³⁰

Conclusion

120. The CMA has, therefore, assessed the impact of this Merger in the supply of meat poultry feed on a local basis, ie in a catchment area of [70-80] miles and has also considered the national supply of poultry meat.

Theories of harm

121. 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.¹³¹
122. In its investigation of this Merger, the CMA has considered the following theories of harm in relation to the acquisition of the Burston mill:¹³²
- (a) Loss of competition in the supply of meat poultry feed to third-party customers locally; and
 - (b) Foreclosure of poultry meat producers (including growers).
123. Each of these theories of harm is considered below.

Theory of Harm 1: Loss of competition in the supply of meat poultry feed to third-party customers locally

CMA framework

124. The CMA considers that the Merger would lead to a removal of capacity utilised for meat poultry feed supply to third parties. Specifically, it is realistic that Boparan (through 2Agriculture) would close the Stoke Ferry mill post-Merger (see

¹²⁹ [ForFarmers/Boparan JV](#), paragraph 90.

¹³⁰ [Boparan Private Office/Banham](#), paragraphs 54-60.

¹³¹ [CMA129](#), paragraph 2.11.

¹³² The CMA believes that no plausible competition concerns arise in relation to the acquisition of the Radstock mill. The Radstock mill is therefore not discussed further in this Decision.

paragraphs 92 to 96) and that it would utilise the capacity of the Burston mill predominantly for in-house supply (discussed further from paragraph 141).

125. In its assessment of whether it is or may be the case that the Merger may be expected to result in an SLC, the CMA considered the reduction in capacity for supply to third parties in the local areas of Burston, Stoke Ferry and Bawsey,¹³³ and the level of spare capacity remaining post-Merger in each of these areas (taking into account factors such as operational breakdowns and demand fluctuations):
- (a) A significant reduction in capacity for supply to third parties could reduce customer choice and allow Boparan (through 2Agriculture), and its competitors, to compete less aggressively, in turn weakening competition, increasing prices and/or reducing quality or service.
 - (b) Spare capacity¹³⁴ can be a useful indicator to show whether competing suppliers will be able to bid for future upcoming contract opportunities. Where firms have spare capacity, they are better able to compete.¹³⁵

Parties' submissions

126. The Parties submitted that the CMA's theory of harm is an unconventional theory based on a reduction in capacity in the market for third-party meat poultry feed.¹³⁶
127. The Parties submitted that a standard local market assessment shows there is no SLC. Specifically: (i) the Transaction does not increase 2Agriculture's market share in the supply of poultry feed to third parties (ie there is no increment from the Transaction); (ii) 2Agriculture's share of supply is low on all bases; and (iii) there are other constraints on 2Agriculture.¹³⁷
128. The Parties submitted that the CMA's theory of harm relates to meat poultry feed, however, Burston is predominantly a pig-feed mill, historically supplying very limited poultry volumes.¹³⁸ The Parties also submitted that there is no rational basis for the CMA to exclude mills that produce only pig feed or layer feed from its assessment.¹³⁹

¹³³ Stoke Ferry and Bawsey which produce meat poultry feed for internal and third-party supply are mills in the catchment areas operated by Boparan (through 2Agriculture). Burston is the mill Boparan (through 2Agriculture) intends to acquire.

¹³⁴ Spare capacity is calculated as the difference between a mill's total capacity for third-party supply and its total volume of feed produced for third-party supply.

¹³⁵ [CMA129](#), paragraph 4.12(c).

¹³⁶ Parties' response to the Issues Letter, dated 9 October 2024, slide 16.

¹³⁷ Parties' response to the Issues Letter, dated 9 October 2024, slides 5,18-19. FMN, paragraph 14.72 and 14.74.

¹³⁸ Parties' response to the Issues Letter, dated 9 October 2024, slides 7.

¹³⁹ Parties' response to the Issues Letter, dated 9 October 2024, slide 43.

Conclusion on framework for assessing the Merger

129. The CMA considers the framework discussed above in paragraphs 124 to 125 is most appropriate to assess the competitive effects of the Merger for the following reasons:
- (a) A theory of harm is a hypothesis about how the process of rivalry could be harmed as a result of a merger.¹⁴⁰ In formulating theories of harm, the CMA will consider how a merger might affect rivalry between firms.¹⁴¹ In this case, the structure of the Merger is such that it results in the removal of capacity for supply to third parties, and the CMA considers that this may affect rivalry between firms (the Parties' and its competitors in the catchments of Burston, Stoke Ferry and Bawsey). The CMA is therefore of the view that it is appropriate for the assessment to consider this reduction in capacity and the level of spare capacity remaining post-Merger, and that a local market assessment based on shares of customer volumes would not be appropriate in this case.
 - (b) As discussed at paragraph 114 above, the CMA has not received any evidence that warrants a departure from the recent approach adopted by it in Boparan/ForFarmers JV on supply-side substitution. However, to account for the potential out of market constraint from existing suppliers of meat poultry feed to third parties switching capacity allocated to layer poultry and pig feed, the CMA's assessment has considered the total capacity available for supply to third parties at the mills of the Parties and its competitors in the relevant catchment areas around Burston, Stoke Ferry and Bawsey.
 - (c) The CMA also considered the potential out of market constraint from mills in the catchment that do not produce meat poultry feed for supply to third parties but produce pig and layer feed for supply to third parties. The CMA identified one mill that meets this criterion – Cranswick's Kenninghall mill. However, since Cranswick has no spare capacity at Kenninghall,¹⁴² the CMA considers that any constraint exerted by Cranswick's Kenninghall may be limited. Therefore, on a cautious basis, the CMA has not included the capacity at Cranswick's Kenninghall mill in its analysis of total and spare capacity for supply to third parties. Nevertheless, the CMA notes that even if it were to include the Kenninghall mill, this would not substantially change the analysis of total capacity and spare capacity discussed below.¹⁴³
 - (d) While the Burston mill has been predominantly used to produce pig feed, the CMA notes that between 2020 and 2022, production of pig feed reduced, and

¹⁴⁰ [CMA129](#), paragraph 2.11.

¹⁴¹ [CMA129](#), paragraph 2.12.

¹⁴² Third-party response to the CMA's request for information.

¹⁴³ This is because Cranswick has no spare capacity at Kenninghall.

production of meat poultry feed increased.¹⁴⁴ This suggests that capacity utilised between meat poultry and pig feed can vary, and so as discussed in paragraph 121(b) above, the CMA considers it is appropriate to consider the total capacity of the Burston mill despite it being historically used mainly for pig feed.

130. In order to assess the likelihood that the Merger leads to a loss of competition in the supply of meat poultry feed to third-party customers locally, the CMA has considered evidence from the Parties (including submissions and internal documents) and from competitors and customers. In particular, the CMA has assessed:
- (a) the Parties' submissions;
 - (b) the level of total and spare capacity for supply to third parties;
 - (c) entry and expansion; and
 - (d) views on the Merger.

Parties' submissions

131. The Parties submitted the transaction does not raise any local competition concerns. In particular they submitted that:¹⁴⁵
- (a) ForFarmers will continue to compete in East Anglia from its Bury mill;
 - (b) There exists a number of other competing mills in East Anglia; and
 - (c) The Parties will continue to face competition from sites just outside the catchment area.
132. Further, the Parties submitted that even if Stoke Ferry closes, there is no SLC. In particular:¹⁴⁶
- (a) Under the counterfactual sale to an alternative purchaser, the capacity for supply to third parties removed by the Merger is not significant.
 - (b) Rival suppliers have sufficient spare capacity to prevent an SLC:
 - (i) First, there is more than enough capacity in the catchment to absorb third-party feed volumes from Stoke Ferry.

¹⁴⁴ Parties' response to the Issues Letter, dated 9 October 2024, slide 7.

¹⁴⁵ FMN, paragraphs 14.75, 14.78 and 14.81.

¹⁴⁶ Parties' response to the Issues Letter, dated 9 October 2024, slides 41-44.

- (ii) Second, spare capacity in the local area is likely understated because:
 - (i) it is based on operational capacity; (ii) the capacity of ForFarmers' Bury mill includes [X]kT of [X] volumes that Boparan will [X] post-Merger; and (iii) Noble Foods has not responded to the CMA's request for information and it may have spare capacity.¹⁴⁷
- (c) The Parties submitted that AB Agri moves feed production between mills, and the CMA's approach of excluding AB Agri's Flixborough mill likely understates AB Agri's capacity.
- (d) There is no incentive for 2Agriculture to switch capacity at Burston to in-house feed supply only and to close Stoke Ferry (ie to stop supplying third parties). This is because Boparan (through 2Agriculture) would make less profit by closing Stoke Ferry and the higher prices would benefit other suppliers in East Anglia. Further, Boparan (through 2Agriculture) would still require volumes from other suppliers if Stoke Ferry closed, and it would face higher prices to source those volumes.

Level of total capacity and spare capacity for supply to third parties

133. As set out in the following sections the CMA has considered:

- (a) The total capacity for supply to third parties that is removed as a result of the Merger; and
- (b) The spare capacity that would remain post-Merger.

134. For this analysis the CMA has used the best estimate of capacity for supply to third parties based on submissions from the Parties and third parties:

- (a) All third-party responses suggested that operational capacity best represents the capacity available at their mills.¹⁴⁸ One third party's submission showed its technical capacity was higher than its operational capacity, however when asked if it could increase its operational capacity, it submitted that this would not be easy to do because: (i) if it increased staff levels this would impact its routine maintenance programme, and (ii) if it instead invested in more capacity this would require significant expenditure.¹⁴⁹ Another third party's submission showed its operational capacity was very close to its technical capacity, this third party stated that increasing operational capacity would

¹⁴⁷ The figures shown in this Decision include information for Noble Foods in the local area analysis, where appropriate, given the boundaries of the relevant catchment area. Therefore, the Parties' submission on this point is not discussed further in this Decision.

¹⁴⁸ Operational capacity was defined as 'the total output that can be produced at the feed mill in question per year taking account of the current shift patterns.' The CMA tested whether third parties could increase operational capacity without the need for further investment by asking third parties how easily they could adjust their operational capacity in response to changes in demand.

¹⁴⁹ Third-party response to the CMA's request for information, August 2024.

require further investment.¹⁵⁰ Another third party's submission showed its operational capacity is equal to its technical capacity.¹⁵¹

- (b) In relation to the Burston and Bury mill, the Parties submitted that due to customer [redacted] in the last [redacted] years, ForFarmers have run both mills at [redacted] shift patterns, resulting in 'operational capacity' being [redacted] 'technical capacity'.¹⁵² Further, ForFarmers submitted that both mills are not constrained by 'operational capacity' and are capable of producing volumes at their technical capacity (without any additional investments).¹⁵³ Given, as stated by the Parties, Burston and Bury are running at [redacted] capacity, the CMA did not consider current operational capacity to be the best estimate of the available capacity of the mills and technical capacity was instead used (as this would be a closer estimate of what the operational capacity of each mill would be at higher rates of demand).
- (c) In relation to the Stoke Ferry, Bawsey and Billingham mills, the Parties submitted the operational capacity at these mills is [redacted] as technical capacity.¹⁵⁴ However, the CMA notes all three mills are integrated mills, so when estimating capacity for supply to third parties the CMA has considered available capacity to be equal to the current volumes of feed supplied to third parties:
- (i) For the Stoke Ferry mill, this is because the mill is operating at [redacted] capacity.¹⁵⁵
- (ii) For the Bawsey mill, the CMA notes the Parties' submission which suggests that spare capacity at the Bawsey mill is overstated because: (i) Bawsey runs with [redacted] capacity between [redacted] and [redacted] owing to [redacted] demand; and (ii) outside of these months Boparan (through 2Agriculture) is unable to [redacted] this [redacted] capacity.¹⁵⁶ Therefore, taking this into account, the CMA has assumed the current volume of feed supplied to third parties best represents the capacity available for supply to third parties at Bawsey.
- (iii) For the Billingham mill, the Parties data shows that [redacted]% of the mill's total volume of feed supplied in 2023 was to third parties.¹⁵⁷ Given the minimal volumes supplied to third parties at this mill, the CMA has assumed a minimal amount of the capacity at this mill is used for

¹⁵⁰ Third-party response to the CMA's request for information, August 2024.

¹⁵¹ Response to the CMA questionnaire from a third party, September 2024.

¹⁵² FMN, paragraph 14.54.

¹⁵³ FMN, paragraph 14.54.

¹⁵⁴ FMN, paragraph 14.10.

¹⁵⁵ FMN, Table 14.2A.

¹⁵⁶ FMN, paragraph 14.9.

¹⁵⁷ FMN, Table 14.2.

supplying third parties, and this is equal to current volumes supplied to third parties.

135. The CMA has not considered AB Agri's Flixborough mill in its capacity calculations, as this mill is located outside the catchments of Burston, Stoke Ferry and Bawsey. As discussed in the *ForFarmers/Boparan JV*, the CMA considers mills outside of catchment areas to be weaker competitive alternatives given distance is an important parameter of competition.¹⁵⁸ Evidence received by the CMA suggests that distance continues to be an important parameter of competition.¹⁵⁹ The CMA therefore considers that the Flixborough mill, like other mills outside the relevant catchment areas, may provide a degree of out-of-market constraint but that this constraint is not so material that it should be given additional weight in the CMA's analysis of the loss of capacity.

Total capacity for supply to third parties

136. The CMA considered the total capacity available for supply to third parties that would be removed as a result of the Merger.

Stoke Ferry

137. As discussed in paragraphs 92 to 96, the CMA has concluded that the Stoke Ferry mill would remain open in the counterfactual and it is realistic to consider it would be closed by Boparan (through 2Agriculture) post-Merger, such that the Merger removes the third-party capacity at this mill.
138. The Parties submitted that Boparan (through 2Agriculture) has no incentive to close Stoke Ferry since it would still require volumes from other suppliers and would face higher prices to source those additional volumes (see paragraph 132(d)).
139. However, and as discussed in paragraphs 92 to 96, evidence shows that Boparan viewed the Merger as an opportunity to close the Stoke Ferry mill. The CMA also considers that Boparan could benefit from a reduction in capacity and the resulting loss of competition upstream in the supply of meat poultry feed to third-party customers, as this could harm the competitiveness of poultry feed customers who compete with Boparan downstream in the supply of poultry meat (see Theory of Harm 2 below).

¹⁵⁸ [ForFarmers/Boparan JV](#), paragraph 155.

¹⁵⁹ One third party noted that 'transport is a major cost in feed'. Note of call with a third party, June 2024. Another third party noted that the geographic location of a supplier located in Lincolnshire impacted the suppliers' ability to be competitive for customers in the East Anglia region. Response to the CMA questionnaire from a third party, September 2024. Further, in the context of barriers to entry and expansion, another third party noted it is relevant to consider whether it is economic to deliver to customers from your supply base. Response to the CMA questionnaire from a third party, September 2024.

140. The CMA considers the closure of Stoke Ferry will therefore result in [100-150]kT of capacity being removed for supply to third parties.¹⁶⁰

Burston

141. The relevant counterfactual for the assessment is the sale to an alternative purchaser (see paragraphs 77 to 79).

142. The CMA considers that in the counterfactual a small but material proportion of the Burston capacity would be used for supply to third parties.¹⁶¹ The CMA estimates that [50-100]kT out of [250-300]kT of capacity would be used for supply to third parties.¹⁶² The counterfactual also takes into account evidence received from the alternative purchaser on whether it would internalise any feed volumes it currently purchases from third-party suppliers in the relevant catchment areas. This would increase the capacity for supply to third parties at these mills. The total production and spare capacity of [X] in the counterfactual are adjusted to reflect submissions by the alternative purchaser on the volumes it would internalise.¹⁶³

143. The CMA considers that, post-Merger, Boparan (through 2Agriculture) would continue to supply at least some of its existing third-party customers from the Burston mill.¹⁶⁴ For this reason, the amount of capacity at Burston allocated to third-party volumes may vary post-Merger, for example, depending on whether Boparan (through 2Agriculture) chooses to in-source volumes which it currently purchases from third parties. The CMA notes its analysis takes into account the potential internalisation by Boparan of [X] volumes (currently produced by [X]), and [X] volumes (currently produced by [X]). Whilst this may impact the level of spare capacity at individual mills, it does not alter the overall level of spare capacity available in the relevant catchment areas post-Merger, or the change in spare capacity brought about by the Merger, as the post-Merger (i) total volume of feed produced and (ii) total capacity in the relevant catchment areas remain unchanged across the different scenarios.

144. The CMA estimates that the capacity allocated to supply to third parties by Boparan (through 2Agriculture) at Burston post-Merger would be [0-50]kT to [100-

¹⁶⁰ Based on the Parties' submission the Stoke Ferry mill is currently producing [100-150]kT of feed for third-party supply, which is assumed to be its capacity for third-party supply, see paragraph 134(c)(i).

¹⁶¹ [X] stated it would use Burston for third-party supply and it would allocate [X] of the mill's capacity for third-party supply (see third-party response to the CMA's request for information).

¹⁶² Based on the Parties' submission, the CMA assumes the Burston capacity to be 293kT, see FMN, Table 14.6A.

¹⁶³ See Tables 1-3. [X] stated it would internalise [X] of volumes purchased from [X], [X] of volumes purchased from [X] and [X] purchased from [X] if it purchased the Burston mill, see third-party response to the CMA's request for information.

¹⁶⁴ The CMA notes that the available capacity at Burston is [250-300]kT, which is less than 2023 current production at Stoke Ferry ([300-350]kT), such that it would not be possible for 2Agriculture to transfer all existing volumes post-Merger.

150]kT.¹⁶⁵ This may therefore be lower or higher than the [50-100]kT allocated to supply to third parties in the counterfactual.

Overall reduction in total capacity for supply to third parties

145. Under the counterfactual, the CMA believes that a small but material portion of the Burston mill's capacity would be used to supply third parties, with the remaining capacity being used for in-house supply.
146. Post- Merger, the CMA believes that [100-150]kT of capacity will be removed for supply to third parties at Stoke Ferry, and the capacity allocated to supply for third parties at Burston is [0-50]kT to [100-150]kT.
147. The CMA therefore estimates that compared to the counterfactual, the Merger results in between [50-100]kT to [100-150]kT of capacity for supply to third parties being removed in the Burston, Stoke Ferry and Bawsey catchments.¹⁶⁶
148. The CMA considers that the Merger would remove a material amount of capacity for supply to third parties in each of the relevant catchment areas when compared to the counterfactual. Overall, the Merger removes [5-10]-[10-20]% of the pre-Merger capacity available for supply to third parties in the catchment of Bawsey, and [5-10]-[10-20]% in the catchments of Burston and Stoke Ferry.
149. The CMA considers that the reduction in capacity set out above is a conservative estimate, as it does not take into account the additional capacity that may have been available for third-party feed supply absent the Merger (ie the additional capacity available for third parties as a result of 2Agriculture replacing Stoke Ferry with a new mill once it reaches [x], eg if the new mill at Snetterton were to replace Stoke Ferry).¹⁶⁷

¹⁶⁵ [0-50]kT assumes that Boparan (through 2Agriculture) produces all its in-house Stoke Ferry volumes at Burston and internalises, at Burston, feed purchased from [x] and [x] – this leaves it with [0-50]kT of spare capacity which it allocates to supply some of the third-party customers currently served from Stoke Ferry. [100-150]kT assumes that Boparan (through 2Agriculture) supplies all its third-party Stoke Ferry volumes at Burston. Due to the capacity available at Burston, this would require Boparan (through 2Agriculture) to purchase a higher volume of the feed needed for internal use from third parties (ie [50-100]kT).

¹⁶⁶ The range is calculated as follows. The closure of Stoke Ferry results in [100-150]kT of capacity for third-party supply being removed by the Merger. This is added to the capacity at Burston allocated to third-party supply in the counterfactual (ie [50-100]kT). The capacity allocated by Boparan (through 2Agriculture) at Burston to third-party supply post-Merger is then subtracted from this total. The range is therefore [50-100]kT (([50-100] + [100-150] – [100-150]) to [100-150]kT ([50-100] + [100-150] – [0-50])).

¹⁶⁷ Internal documents show that the new mill at Snetterton was expected to produce [0-50]kT of feed per week, making it twice the size of Stoke Ferry which has capacity to produce [0-50]kT per week. See Boparan internal document, Annex 16.001 to the FMN, '2Agriculture Strategic Growth Plan', [x], page 11.

Spare capacity for supply to third parties post-Merger

150. In addition to total capacity for supply to third parties, the CMA has considered the level of spare capacity for supply to third parties that would be removed as a result of the Merger, and therefore how much spare capacity would remain post-Merger.
151. The CMA has collected data from the Parties and all its competitors in each of the catchments of Burston, Stoke Ferry and Bawsey.
152. To estimate the total spare capacity for supply to third parties which remains in each catchment post-Merger the CMA collected data on:
 - (a) estimated feed volumes to be supplied to third parties in 2024;¹⁶⁸ and
 - (b) estimates of total capacity at each of the mills supplying third parties in the catchments of Burston, Stoke Ferry and Bawsey.¹⁶⁹
153. The estimates of spare capacity in the counterfactual and post-Merger, for each catchment, is presented in Tables 1-3 below.

¹⁶⁸ Feed includes meat poultry, layer poultry, other poultry and pig.

¹⁶⁹ Capacity estimates received from the Parties and third parties are discussed in paragraph 134 above.

Table 1 Burston catchment: Estimated spare capacity for supply to third parties in the counterfactual and post-Merger,¹⁷⁰ kT

<i>Supplier</i>	<i>Counterfactual</i>	<i>Post-Merger</i>
ForFarmers Bury	[50-100]	[0-50]
2Agriculture Burston	n/a	[0-50]
2Agriculture Stoke Ferry	[0-50]	n/a
2Agriculture Bawsey	[0-50]	[0-50]
Alternative Purchaser-Burston	[50-100]	n/a
AB Agri Bury	[]	[]
AB Agri Walsingham	[]	[]
WL Duffield Norwich	[]	[]
Total	[300-350]	[100-150]
Adjustment Stoke Ferry volumes	n/a	[50-100]
Revised total	[300-350]	[50-100]

Source: CMA estimates using Parties' and third parties' data

Notes:

1. The CMA considers that the closure of Stoke Ferry will lead to some of its volumes having to be served by 2Agriculture's competitors. Customers from Stoke Ferry responding to the CMA's questionnaire listed AB Agri, WL Duffield or ForFarmers as good alternatives to 2Agriculture.¹⁷¹ Customers who identified Noble as an alternative rated them as poor or moderate alternative to 2Agriculture, with one customer specifically citing distance as a reason for giving the lower rating. As such the total spare capacity for supply to third parties post-Merger is adjusted to account for these volumes likely going to AB Agri, WL Duffield or ForFarmers.¹⁷²

¹⁷⁰ For illustrative purposes, the figures shown in this table are based on the assumption that Boparan (through 2Agriculture) utilises the Burston capacity to produce all its in-house volumes from Stoke Ferry ([200-250]kT) and some ([0-50]kT) of its third-party customer volumes from Stoke Ferry. The remaining third-party volumes from Stoke Ferry ([50-100]kT) would be served by other third-party suppliers in the catchment area reducing the level of spare capacity available. As noted above in paragraph 143, this assumption does not impact the overall total level of post-Merger spare capacity shown in the table.

¹⁷¹ Response to the CMA questionnaire from third parties, September 2024. This indicates that the Stoke Ferry closure would likely impact the spare capacity of AB Agri, ForFarmers and WL Duffield.

¹⁷² Response to the CMA questionnaire from third parties, September 2024.

Table 2 Stoke Ferry catchment: Estimated spare capacity for supply to third parties in the counterfactual and post-Merger,¹⁷³ kT

<i>Supplier</i>	<i>Counterfactual</i>	<i>Post-Merger</i>
ForFarmers Bury	[50-100]	[0-50]
2Agriculture Burston	n/a	[0-50]
2Agriculture Stoke Ferry	[0-50]	n/a
2Agriculture Bawsey	[0-50]	[0-50]
2Agriculture Billingham	[0-50]	[0-50]
Alternative Purchaser-Burston	[50-100]	n/a
AB Agri Bury	[]	[]
AB Agri Walsingham	[]	[]
WL Duffield Norwich	[]	[]
Total	[300-350]	[100-150]
Adjustment Stoke Ferry volumes	n/a	[50-100]
Revised total	[300-350]	[50-100]

Source: CMA estimates using Parties' and third parties' data

Notes: See notes on Table 1

Table 3 Bawsey catchment: Estimated spare capacity for supply to third parties in the counterfactual and post-Merger,¹⁷⁴ kT

<i>Supplier</i>	<i>Counterfactual</i>	<i>Post-Merger</i>
ForFarmers Bury	[50-100]	[0-50]
2Agriculture Burston	n/a	[0-50]
2Agriculture Stoke Ferry	[0-50]	n/a
2Agriculture Bawsey	[0-50]	[0-50]
2Agriculture Billingham	[0-50]	[0-50]
Alternative Purchaser-Burston	[50-100]	n/a
AB Agri Bury	[]	[]
AB Agri Walsingham	[]	[]
WL Duffield Norwich	[]	[]
Noble Bilsthorpe	[]	[]
Total	[350-400]	[150-200]
Adjustment Stoke Ferry volumes	n/a	[50-100]
Revised total	[350-400]	[100-150]

Source: CMA estimates using Parties' and third parties' data

Notes: See notes on Table 1

154. As set out in Tables 1-3 above, the Merger results in a reduction in spare capacity for supply to third parties. The percentage reduction in the spare capacity for supply to third parties against the counterfactual is [70-80]% in the Bawsey catchment area, and [80-90]% in the Burston and Stoke Ferry catchment areas. The spare capacity for supply to third parties remaining in the catchments of Burston and Stoke Ferry is estimated to be [50-100]kT post-Merger, and in the Bawsey catchment area it is estimated to be [100-150]kT. Each catchment would

¹⁷³ See footnote 170.

¹⁷⁴ See footnote 170.

have a high rate of capacity utilisation¹⁷⁵ post-Merger – approximately [80-90]% in the catchment of Burston, and [80-90]% in the catchments of Stoke Ferry and Bawsey. The CMA therefore believes that the level of spare capacity available for supply to third parties post-Merger is limited.

155. The estimates of spare capacity set out above are also corroborated by additional qualitative evidence collected from the Parties' competitors on their spare capacity.¹⁷⁶ The CMA notes competitors' responses would not take into account the expected post-Merger impact of the closure of Stoke Ferry, which can be expected to further reduce the level of spare capacity for supply to third parties.
156. As noted at paragraph 131(a) above, the Parties submitted that ForFarmers will remain as a competitor in East Anglia. The CMA considers that although ForFarmers remains as a competitor (from its Bury mill), post-Merger, ForFarmers and the other competitors in the catchments of Burston, Stoke Ferry and Bawsey would have a high rate of capacity utilisation and limited spare capacity for supply to third parties.
157. The CMA is also concerned that additional factors may further impact the limited spare capacity for supply to third parties and high rate of expected capacity utilisation post-Merger:
- (a) First, seasonality in demand means that some of the spare capacity may not be available for meat poultry feed production. For example, one competitor submitted that a portion of its spare capacity is not available all year round because of seasonal demand for game feed.¹⁷⁷
 - (b) Second, any spare capacity may be further reduced if suppliers suffer operational breakdowns. In general, the animal feed industry has aging and inefficient feed milling infrastructure.¹⁷⁸ For example, one third party submitted that the age of its estate and subsequent mill reliability means its spare capacity is less than stated.¹⁷⁹
 - (c) Third, the CMA has collected views from customers and competitors on how they expect demand for poultry and other types of feed to change in the next five years. Most third parties responding indicate they expect demand for

¹⁷⁵ CMA estimates of post-Merger capacity utilisation are based on the Parties and third parties' submissions. Capacity utilisation = aggregate total production (2024 estimate) / aggregate total capacity (in-house and third-party supply) of mills in the catchments of Burston, Stoke Ferry and Bawsey post-Merger. Mills included for each catchment are those listed in Tables 1-3.

¹⁷⁶ [redacted] See Response to the CMA questionnaire from third parties, September 2024.

¹⁷⁷ Response to the CMA questionnaire from third parties, September 2024. This is also consistent with the Parties' submission that 2Agriculture's Bawsey mill has no [redacted] during [redacted].

¹⁷⁸ See [ForFarmers/Boparan JV](#), paragraph 119.

¹⁷⁹ Response to the CMA questionnaire from a third party, September 2024.

poultry feed to increase.¹⁸⁰ For example, one third party told the CMA it expects poultry feed demand to increase by 3-5% per year.¹⁸¹ This finding is also consistent with internal documents from Boparan and Boparan's submissions.¹⁸² The CMA considers that a potential increase in demand could further exacerbate the impact of the reduction in capacity caused by the Merger. A relatively modest increase in demand for poultry feed (and other feed) may result in little or no capacity being available to serve demand in the future, given that spare capacity post-Merger is estimated to represent only a small proportion of the current demand for feed in the Burston, Stoke Ferry and Bawsey catchments.¹⁸³

Conclusion on total capacity and spare capacity for supply to third parties

158. The analysis of total capacity and spare capacity shows that the Merger removes a material amount of total capacity, leaving only a limited amount of spare capacity for supply to third parties.

Entry and expansion

159. The CMA asked suppliers in the East Anglia catchments whether they had any plans to increase capacity, close mills or reduce capacity within the next two years.

160. One supplier stated it had no plans to change its capacity or close any mills.¹⁸⁴ Two suppliers indicated that they were considering increasing capacity either through the expansion of existing capacity or the building of a new mill.¹⁸⁵ However, the CMA notes that:

- (a) The potential capacity expansion of one of the two suppliers was minimal and has not received formal internal sign-off; and
- (b) There was a high level of uncertainty in the capacity plans of the other supplier in terms of timing and likelihood.

¹⁸⁰ Response to the CMA questionnaire from third parties, September 2024. One customer and two competitors indicated they expected demand for poultry feed to decrease. Response to the CMA questionnaire from a third parties, September 2024.

¹⁸¹ Response to the CMA questionnaire from a third party, September 2024. Additionally, pig feed customers that responded indicated they expected demand for pig feed to increase. Response to the CMA questionnaire from third parties, September 2024.

¹⁸² See for example Boparan internal document, Annex 16.001 to the FMN, '2Agriculture Strategic Growth Plan', [redacted], page 6 and Parties' response to the Issues Letter, dated 9 October 2024, slide 13 'Boparan expects that demand for broiler feed will [redacted]. Boparan Group expects, and is planning for, a [redacted] in the demand for chicken meat volumes over the next [redacted]'.
¹⁸³ This is [5-10]% in the Burston and Stoke Ferry catchments, and [10-15]% in Bawsey catchment - based on the CMA's estimates.

¹⁸⁴ Response to the CMA questionnaire from a third party, September 2024.

¹⁸⁵ Response to the CMA questionnaire from third parties, September 2024.

161. The CMA also sought views from suppliers on barriers to entry in the supply of poultry feed in East Anglia. Most respondents indicated barriers to entry were high.¹⁸⁶ Of these, three highlighted the high capital investment required to enter poultry feed supply in East Anglia.¹⁸⁷

Views on the Merger

162. The CMA asked third parties in the East Anglia region for their views on the Merger.

- (a) Most customers responding expressed negative views of the Merger. These customers suggested the loss of the Burston mill represented a reduction in choice.¹⁸⁸
- (b) One customer expressed positive views of the Merger, suggesting the Merger will lead to efficiencies for Boparan, although they also noted that some compound feed producers may potentially lose out.¹⁸⁹
- (c) Two customers expressed a neutral view of the Merger, with one of them suggesting there had been overcapacity in the feed industry, and as such the Merger should not affect competition.¹⁹⁰
- (d) Other third parties expressed mixed views on the impact of the Merger on competition. One suggested the Merger was positive given the excess capacity existing in the region, but the CMA notes that the same third party also stated they were considering expanding capacity.¹⁹¹ Two others suggested the Merger would negatively impact competition,¹⁹² with one of these stating it provides Boparan with a high level of influence over the entire sector.¹⁹³ Two other third parties expressed a neutral view of the Merger, and suggested the Merger would not have a direct impact on their business.¹⁹⁴

Conclusion on loss of competition in the supply of meat poultry feed to third-party customers locally

163. Overall, the CMA's analysis focused on the local areas around Burston, Stoke Ferry and Bawsey indicates that:

¹⁸⁶ Response to the CMA questionnaire from third parties, September 2024.

¹⁸⁷ Response to the CMA questionnaire from third parties, September 2024.

¹⁸⁸ Response to the CMA questionnaire from third parties, September 2024.

¹⁸⁹ Response to the CMA questionnaire from a third party, September 2024.

¹⁹⁰ Response to the CMA questionnaire from third parties, September 2024.

¹⁹¹ Response to the CMA questionnaire from a third party, September 2024.

¹⁹² Response to the CMA questionnaire from third parties, September 2024.

¹⁹³ Response to the CMA questionnaire from a third party, September 2024.

¹⁹⁴ Response to the CMA questionnaire from third parties, September 2024.

- (a) The Merger removes a material amount of capacity for supply to third parties. The CMA estimates this to be between [50-100]kT to [100-150]kT depending on how Boparan (through 2Agriculture) utilises the Burston capacity. The CMA believes this to be a conservative estimate as it does not take into account the additional capacity that may have been available for third-party feed supply absent the Merger (ie the additional capacity available for third parties as a result of 2Agriculture replacing Stoke Ferry with a larger mill at the end of its lifespan, eg if the new mill at Snetterton were to replace Stoke Ferry).
- (b) Post-Merger spare capacity is reduced against the counterfactual by [70-80]% in the Bawsey catchment area, and [80-90]% in the Burston and Stoke Ferry catchment areas. Limited spare capacity for supply to third parties would remain, and the catchments of Burston, Stoke Ferry and Bawsey would have high rates of capacity utilisation.
- (c) The level of post-Merger spare capacity estimated by the CMA may be overstated for a number of reasons including seasonal demand for game and turkey feed, operational breakdowns, and increased demand for poultry (and therefore poultry feed).
- (d) Most customers expressed negative views of the Merger, with some suggesting the loss of the Burston mill for supply to third parties represents a reduction in the number of mills (and suppliers) they have available in East Anglia. The CMA believes this could be further exacerbated by the closure of Stoke Ferry post-Merger.
- (e) Furthermore, whilst the CMA received evidence on possible expansion by competitors in the East Anglia region, the CMA does not believe that such expansion would be timely, likely or sufficient to mitigate the effect of the Merger in terms of the reduction of capacity available for supply to third parties.
- (f) Barriers to entry are high in the supply of poultry feed, with high capital investments cited as being one of the reasons for having high barriers.

164. For the reasons set out above, the CMA believes the Merger gives rise to a realistic prospect of an SLC as a result of a loss of competition in the supply of meat poultry feed to third-party customers at a local level, within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills.

Theory of Harm 2: Foreclosure of poultry meat producers (including growers)

165. The concern considered under this theory of harm is whether the loss of competition upstream in the supply of meat poultry feed to third-party customers

(discussed in paragraphs 124 to 164), results in 2Agriculture (and other suppliers), harming the competitiveness of customers who compete with Boparan downstream in the supply of poultry meat.

166. The CMA's approach to assessing foreclosure theories of harm is to analyse:
- (a) the ability of the Merged Entity to foreclose rivals;
 - (b) its incentive to do so; and
 - (c) the overall effect of the strategy on competition.¹⁹⁵

Ability

167. The CMA has considered whether Boparan would have the ability to harm the competitiveness of downstream poultry meat processors by reducing capacity for third-party feed supply, weakening competition upstream in the supply of meat poultry feed. In particular, the CMA has considered:¹⁹⁶
- (a) the Parties' submissions;
 - (b) market power upstream; and
 - (c) the importance of the input (meat poultry feed) to competing suppliers downstream.¹⁹⁷

Parties' submissions

168. The Parties submitted Boparan (through 2Agriculture) does not have market power in relation to the supply of meat poultry feed. The Parties stated that: (i) their share of supply is below any threshold that would raise market power concerns; (ii) there is no increment in market shares as a result of the Merger; (iii) ForFarmers will remain an independent competitor; and (iv) customers will continue to have a range of other feed producers in the area to choose from.¹⁹⁸
169. The Parties also submitted that the Issues Letter fundamentally misrepresents Boparan's internal document and that Boparan (through 2Agriculture) does not control the supply of poultry feed. The Parties stated that this document refers to the controlling of feed supplied to Boparan.^{199 200}

¹⁹⁵ [CMA129](#), paragraph 7.10.

¹⁹⁶ [CMA129](#), paragraph 7.14.

¹⁹⁷ The CMA considers the main mechanisms through which Boparan (through 2Agriculture) could harm rivals to be a reduction in, or refusal to, supply meat poultry feed.

¹⁹⁸ FMN, paragraph 18.5 and Parties' response to the Issues Letter, dated 9 October 2024, slide 47.

¹⁹⁹ Parties' response to the Issues Letter, dated 9 October 2024, slide 47.

²⁰⁰ The CMA notes the Parties' argument regarding the context of the document, and therefore does not consider this document in its assessment of ability.

Market power upstream

170. When assessing whether the merged entity has the ability to use its control of inputs to harm the competitiveness of its downstream rivals, the CMA will consider market power upstream, including whether downstream rivals can easily switch away from the upstream party to a range of effective alternative suppliers. The starting point for this assessment will be the structure of the upstream market.²⁰¹
171. The CMA considers that the Merger would result in: (i) a material reduction in capacity for supply to third parties in the local areas around Burston, Stoke Ferry and Bawsey; and (ii) limited spare capacity for supply to third parties post-Merger (see paragraphs 163 to 164).
172. The CMA considers that, as a result, feed customers would have less choice, would be less able to switch, and that competition upstream would be weakened. Third-party feedback shows that customers and competitors are concerned. As set out at paragraph 162(a) above, most customers expressed negative views of the Merger. Two poultry feed customers submitted that the Merger could limit their choices and raise prices,²⁰² with one of these customers stating this could make its independent farming business unviable.²⁰³ In addition, a competitor raised concerns that the Merger negatively impacts competition as it provides Boparan with a high level of influence over the entire sector.²⁰⁴
173. The CMA considers that, as a result of weakened competition upstream, Boparan (through 2Agriculture), which would continue supplying some third-party customers from its Burston, Bawsey and Billingham mills (and its rival suppliers of meat poultry feed) would have the ability to compete less aggressively, increase prices and/or reduce quality or service. This would in turn harm the competitiveness of poultry meat producers (including growers) that rely on these poultry feed suppliers.

Importance of input

174. As stated in the *ForFarmers/Boparan JV* decision, poultry feed is a necessary input for growers downstream and security of supply is crucial; feed is by far the largest cost, typically representing approximately 70% of the total production cost for a poultry farmer.²⁰⁵
175. All customers that responded to the CMA's investigation in this case confirmed that poultry feed accounts for the majority of production costs for a poultry farmer.

²⁰¹ [CMA129](#), paragraph 7.14.

²⁰² Response to the CMA questionnaire from third parties, September 2024.

²⁰³ Response to the CMA questionnaire from third parties, September 2024.

²⁰⁴ Response to the CMA questionnaire from a third party, September 2024.

²⁰⁵ [ForFarmers/Boparan JV](#), paragraph 167.

Most customers confirmed that the figure is still approximately 70%,²⁰⁶ while others suggested it represented 60-65%.²⁰⁷

Conclusion on ability

176. For the reasons set out above, the CMA considers that, by reducing capacity for supply to third parties and weakening competition upstream in the supply of meat poultry feed, Boparan (through 2Agriculture) would have the ability to foreclose meat poultry feed customers within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills.

Incentive

177. Where the merger firms' internal documents show that it would be strategically beneficial to stop supplying rivals, it may not be necessary to try to infer their behaviour from their financial incentives.²⁰⁸

178. Therefore, in assessing Boparan's incentive to foreclose rivals the CMA has considered evidence on Boparan's business strategy, as well as the evidence and conclusions set out above in relation to the loss of competition in the supply of meat poultry feed to third-party customers.

Parties' submissions

179. The Parties submitted that Boparan does not have the incentive to engage in input foreclosure because Boparan (through 2Agriculture) has a strong incentive to supply third-party customers,²⁰⁹ and its plans are to continue serving third-party customers from Stoke Ferry and to compete to win additional third-party volumes.²¹⁰

180. The Parties also submitted that if Boparan (through 2Agriculture) closed Stoke Ferry it has no incentive to stop supplying third parties. The Parties submitted that Boparan (through 2Agriculture) currently supplies third parties in East Anglia despite also in-sourcing volumes to meet its own demand, underlining the fact that it will continue to supply third-party customers even if it has insufficient capacity in East Anglia.²¹¹

181. The Parties further submitted that there is no incentive for Boparan to engage in input foreclosure, as H2S is a 50:50 joint venture with PD Hook, such that Boparan

²⁰⁶ Response to the CMA questionnaire from third parties, September 2024.

²⁰⁷ Response to the CMA questionnaire from third parties, September 2024.

²⁰⁸ [CMA129](#), paragraph 7.19.

²⁰⁹ Parties' response to the Issues Letter, dated 9 October 2024, slide 48.

²¹⁰ FMN, paragraph 18.7 and Parties' response to the Issues Letter, dated 9 October 2024, slide 48.

²¹¹ Parties' response to the Issues Letter, dated 9 October 2024, slide 48.

(through 2Agriculture) would lose 100% of the upstream profits but receive only 50% of any downstream gains.²¹²

Boparan's business strategy

182. As discussed in the Merger rationale section (paragraph 33(a)) the Parties submitted that the strategic rationale for entering into the Burston transaction is that it allows Boparan to reduce production at its Stoke Ferry site by transferring volumes to Burston.²¹³ Further, evidence from Boparan's internal documents shows that it is realistic that it would close the Stoke Ferry mill post-Merger (see paragraph 87).²¹⁴

CMA's assessment

183. In response to the Parties' submission that Boparan (through 2Agriculture) would have no incentive to foreclose, the CMA considers that:

- (a) First, as discussed in paragraphs 92 to 96 it is realistic that Boparan (through 2Agriculture) would close the Stoke Ferry mill post-Merger;
- (b) Second, although Boparan (through 2Agriculture) may continue to supply some third parties post-Merger, the Merger materially reduces the capacity available for supply to third parties, and spare capacity would be limited (see paragraphs 163(a) and 163(b));
- (c) Third, while the CMA accepts that, as a result of the 50:50 JV with PD Hook, Boparan may only receive 50% of the downstream gains in relation to H2S volumes of live poultry sales to processors, the CMA notes that this does not take into account the benefits to Boparan (through 2SFG/Banham) in the supply of processed poultry to end customers (such as retailers), as a result of smaller processors being foreclosed.

184. Therefore, the CMA considers that Boparan would have the incentive to reduce capacity for third-party feed supply and harm the competitiveness of downstream rivals.

²¹² Parties' response to the Issues Letter, dated 9 October 2024, slide 48.

²¹³ Boparan internal documents, 2AG_Annex_003456 and 2AG_Annex_003491.

²¹⁴ Boparan internal documents, 2AG_Annex_000959, page 2; 2AG_Annex_003293, page 2; 2AG_Annex_003433; Annex 8.006 to the FMN, [redacted], pages 3 and 21 and Annex 8.004 to the FMN, [redacted], page 2.

Conclusion on incentive

185. For the reasons set out above, the CMA considers that Boparan would have the incentive to foreclose independent meat poultry feed customers within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills.

Effect

Parties' submission

186. The Parties submitted that even if Boparan had the ability and incentive to engage in foreclosure there would be no harm to competition downstream because of the strong competitive constraint exerted by vertically integrated players in the poultry supply chain.²¹⁵
187. The Parties also submitted that non-integrated suppliers in East Anglia represent a very small part of the market.²¹⁶ In particular, non-integrated suppliers represent approximately 13% of the national market, with only 20% of this figure accounted for by non-integrated suppliers located in East Anglia. Accordingly, the Parties estimated that less than 3% of non-integrated suppliers are located in East Anglia.
188. The Parties submitted there is a trend towards vertical integration as a result of significant pricing pressure from customers, which are predominantly large supermarkets, food wholesalers and food service businesses.

CMA's assessment

189. The CMA considered whether harm to Boparan's competitors would result in substantial harm to overall competition in the relevant downstream market, including through raising barriers to entry for potential entrants where the negative impact on customers may take some time to materialise.²¹⁷ Competition concerns may be particularly likely to arise if one of the merger firms has a degree of pre-existing market power in the downstream market, and already faced limited competitive constraints pre-merger.²¹⁸
190. The Parties submitted estimates for the supply of chicken in the UK in 2023, see Table 4.

²¹⁵ FMN, paragraph 18.8 and Parties' response to the Issues Letter, dated 9 October 2024, slide 49.

²¹⁶ Parties' response to the Issues Letter, dated 9 October 2024, slide 49.

²¹⁷ [CMA129](#), paragraph 7.20.

²¹⁸ [CMA129](#), paragraph 7.21.

Table 4: Shares of supply of chicken sold to customers (ie grocery retailers and restaurants)²¹⁹ in the UK in 2023

<i>Supplier</i>	<i>Volume (number of chickens)</i>	<i>Share of supply</i>
2SFG/Banham	[<]	[30-40]%
Moy Park	[<]	[20-30]%
Avara	[<]	[20-30]%
Cranswick	[<]	[0-10]%
Salisbury	[<]	[0-10]%
Other	[<]	[0-10]%
Total	[<]	100%

Source: Parties' estimates

191. Boparan (through 2SFG/Banham) is estimated to be the largest supplier of chicken in the UK and has few significant rivals. The shares of supply show the industry overall is concentrated with 2SFG/Banham, Moy Park and Avara, who are all vertically integrated, holding almost 80% of the share of supply. The CMA believes that a foreclosure strategy by Boparan would not substantially harm any vertically integrated suppliers' ability to compete in the downstream supply of poultry meat, and in particular chicken, as they do not rely on independent feed suppliers.²²⁰
192. Similar to its concerns in *ForFarmers/Boparan JV*, the CMA notes that there are a number of smaller, non-integrated processors which also compete in the downstream market. The CMA believes that these processors, and the growers which supply them, may be susceptible to a foreclosure strategy.²²¹
193. Further, the CMA believes that a foreclosure strategy by Boparan could increase barriers to entry and expansion downstream. ForFarmers, AB Agri, WL Duffield and Noble Foods²²² would be the remaining independent suppliers of meat poultry feed within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills, and post-Merger, the limited spare capacity (see paragraph 154) these suppliers would have represents a reduction in choice for non-integrated processors reliant on them as a source of supply.
194. In *ForFarmers/Boparan JV*,²²³ the CMA found that the upstream supply of meat poultry feed is local, whereas the downstream supply of poultry meat is national. Similar to its concerns at the time, the CMA considers that harming rival growers and processors within the catchments centred on the Parties' Burston, Stoke Ferry and Bawsey mills could reduce competition in the national downstream market. The catchments centred on these mills are some of the highest density poultry producing areas in the UK; for example Norfolk, the county in which the Burston

²¹⁹ The Parties submitted estimates based on total demand for poultry (including both grocery retailers and supplies to the food industry/restaurants). The Parties used market intelligence to allocate volumes to suppliers.

²²⁰ Includes Cranswick who is also vertically integrated.

²²¹ [ForFarmers/Boparan JV](#), paragraph 185.

²²² Noble Foods is a supplier in the Bawsey catchment, but not the Burston and Stoke Ferry catchments.

²²³ [ForFarmers/Boparan JV](#)

mill is situated, continues to be the single most important poultry growing county, with approximately 10% of the UK's total poultry stock.²²⁴ The CMA believes that if the Parties were to harm growers in these areas, processors could not easily source volumes from elsewhere in the UK, hence foreclosure in these local areas could reduce competition at a national level for poultry meat supply, and in particular chicken.

195. The CMA notes that the supply of poultry meat, and in particular chicken, in the UK is already a concentrated sector and the foreclosure of smaller, non-integrated chicken growers and processors (or increased barriers to entry) could lead to further concentration downstream in the supply of poultry meat in the UK. The CMA is of the view that smaller, non-integrated chicken growers and processors represent an important competitive constraint which might be lost as a result of a foreclosure strategy by Boparan. Moreover, the CMA notes that the downstream supply of poultry meat in the UK, and in particular chicken, is an important sector and this may further increase the CMA's concern about the significance of the harm.²²⁵
196. As discussed in paragraph 188, the Parties' submitted the existence of significant pricing pressure from large and sophisticated customers such as supermarkets, food wholesalers and food service businesses. The CMA generally considers that forms of buyer power that do not result in new entry – for example, buyer power based on a customer's size, sophistication, or ability to switch easily – are unlikely to prevent an SLC that would otherwise arise from the elimination of competition.²²⁶ The CMA has not received evidence that customers may respond to the post-Merger reduction in capacity for supply to third parties and limited spare capacity remaining by sponsoring new entry. The CMA further notes the evidence discussed at paragraph 161 above, which shows that barriers to entry and expansion are high. Accordingly, the CMA does not consider that pricing pressure from customers as a result of buyer power would prevent an SLC.

Conclusion on effect

197. For the reasons set out above, the CMA considers that a foreclosure strategy by Boparan would result in substantial harm to overall competition downstream in the supply of poultry meat in the UK (including both growers and processors).

²²⁴ See [Livestock Demographic Data Group: Poultry population report, Livestock population density maps in GB, using July 2023 data](#), last accessed on 03 October 2024.

²²⁵ [CMA129](#), paragraph 2.9.

²²⁶ [CMA129](#), paragraph 4.20

Conclusion on foreclosure of poultry meat producers (including growers)

198. As set out above, the CMA considers that as a result of the Merger, Boparan would have the ability and incentive to foreclose rival non-integrated poultry meat producers, and this would result in substantial harm to overall competition in the downstream supply of poultry meat in the UK (including both growers and processors). As such, the Merger gives rise to a realistic prospect of an SLC as a result of vertical effects in the supply of poultry meat in the UK.

ENTRY AND EXPANSION

199. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. The CMA will consider entry and/or expansion plans of rivals who do so in direct response to the merger as a countervailing measure that could prevent an SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²²⁷
200. The CMA found: (i) barriers to entry are high in the supply of poultry feed in East Anglia, and (ii) potential expansion plans by competitors are not sufficient, timely or likely (see paragraphs 159 to 161). For the reasons set out above the CMA believes that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

²²⁷ This is because a customer's buyer power depends on the availability of good alternatives they can switch to, which in the context of an SLC will have been reduced. In that sense, market power and buyer power are two sides of the same coin, and an SLC can be interpreted as a substantial lessening of customers' buyer power. See, [CMA129](#), paragraph 8.31.

DECISION

201. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
202. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.²²⁸ The Parties have until 13 November 2024²²⁹ to offer an undertaking to the CMA.²³⁰ The CMA will refer the Merger for a phase 2 investigation²³¹ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides²³² by 20 November 2024 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Joel Bamford
Executive Director
Competition and Markets Authority
6 November 2024

²²⁸ Section [33\(3\)\(b\)](#) of the Act.

²²⁹ Section [73A\(1\)](#) of the Act.

²³⁰ Section [73\(2\)](#) of the Act.

²³¹ Sections [33\(1\)](#) and [34ZA\(2\)](#) of the Act.

²³² Section [73A\(2\)](#) of the Act.