

**ANTICIPATED  
ACQUISITION BY  
BOPARAN (VIA  
2AGRICULTURE LIMITED)  
OF FORFARMERS UK  
LIMITED'S BURSTON AND  
RADSTOCK FEED MILL**

**Interim Report**

ME/7106/24  
18 February 2025

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The Competition and Markets Authority has excluded from this published version of the interim report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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### GLOSSARY

# SUMMARY

## OVERVIEW OF OUR INTERIM REPORT

1. The Competition and Markets Authority (**CMA**) has provisionally found that the anticipated acquisition (the **Merger**) by Boparan Private Office Limited (via 2Agriculture Limited (**2Agriculture**)) (together referred to as **Boparan**) of ForFarmers UK Limited's Burston and Radstock feed mills (**ForFarmers**) to create the **Merged Entity**, amounts to a relevant merger situation that may not be expected to result in a substantial lessening of competition (**SLC**) in the supply of meat poultry feed locally, or any other market within the United Kingdom (**UK**).
2. This is not our final decision, and we invite any interested parties to make representations to us on these provisional findings by no later than **5pm on Tuesday 11 March 2025**. Please make any responses to these provisional findings by email to [2agriculture.forfarmers@cma.gov.uk](mailto:2agriculture.forfarmers@cma.gov.uk). We will take all submissions received by this date into account in reaching our final decision.

## WHO ARE THE BUSINESSES AND WHAT PRODUCTS DO THEY SUPPLY?

3. Boparan is a group of companies active in food production under the common ownership of Mr Ranjit Singh Boparan and Mrs Baljinder Kaur Boparan, which includes:
  - (a) 2Agriculture, a poultry feed milling business with five feed mills in the UK. In this report, where we refer to Boparan, this also includes 2Agriculture, unless otherwise stated.
  - (b) 2 Sisters Food Group Limited (**2SFG**), a supplier and processor of poultry in the UK and Europe.
  - (c) Hook 2 Sisters Limited (**H2S**), a joint venture between 2SFG and PD Hook (Group) Limited (UK), active in rearing chickens for meat.
4. ForFarmers UK Limited is a subsidiary of ForFarmers N.V. (**ForFarmers**), a European animal feed production business. It has ten feed mills and five blend plants at 13 sites across the UK, and also operates one toll-milling blend site.
5. Boparan and ForFarmers are together referred to as the **Parties**. The Parties are both active in the production and supply of animal feed, in particular, meat poultry feed in the UK.

6. On 5 April 2024, Boparan and ForFarmers entered into two asset purchase agreements (**APAs**), whereby ForFarmers agreed to the sale of two of its feed mills located at Burston (Norfolk, East Anglia) and Radstock (Somerset, South West) along with certain related assets. Assets to be transferred include the property and equipment located at each site, production employees and operational supply contracts, but do not include any customer contracts or volumes.

## **OUR ASSESSMENT**

### **Why are we examining this Merger?**

7. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so.
8. In this case, the CMA has jurisdiction over the Merger because 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 have we looked at?**

9. In assessing the competitive effects of the Merger, we looked at a wide range of evidence.
10. This includes submissions from the Parties, including their response to the CMA's Phase 1 Decision. We also held meetings with the Parties, including a site visit and the Initial Substantive Meeting. We examined the Parties' internal documents, which provide information on their business strategies, their rationale for the Merger, and the markets in which they operate.
11. We spoke to and gathered information from third parties to better understand the competitive landscape and to obtain views on the impact of the Merger. In particular, we received evidence from customers and competitors, as well as the British Poultry Council and the Department for Environment, Food & Rural Affairs.

## **WHAT DID THE EVIDENCE TELL US...**

### **...about what would likely happen if the Merger does not take place?**

12. To determine what (if any) impact the Merger may be expected to have on competition, we have considered what would likely happen if the Merger does not take place. This is known as the counterfactual.

13. Our provisional conclusion is that it is most likely absent the Merger that:
  - (a) the Burston mill would be sold to [X], and it would prioritise the capacity of the Burston mill to meet its internal feed demands; and
  - (b) the Stoke Ferry mill would continue to operate at full, or close to full, capacity.

### **...about the customers that would be affected by the Merger?**

14. The supply of meat poultry feed is local in nature, as the proximity of a mill and the cost of transporting feed are important factors for customers. No plausible competition concerns arise in respect of Boparan's purchase of the Radstock mill, as there is no local geographic overlap between the Parties in the supply of meat poultry feed.<sup>1</sup> Our assessment has therefore focused on competition in the local area around the Burston mill, which we assessed by calculating a catchment area based on data of the Parties' customers for their mills in East Anglia.
15. We have examined whether the Merger would lead to an SLC in the supply of meat poultry feed locally because of reduced capacity for third-party feed supply. A reduction in capacity could limit or remove customers' ability to switch, allowing Boparan to profitably increase its prices (or worsen non-price aspects of its offering).

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

16. We considered the likely reduction in total and spare capacity for third-party supply of meat poultry feed locally. In order to do so, we made a number of assumptions about the level of capacity in the counterfactual (outlined above) and in the post-Merger scenario. Two key assumptions had a material impact on our analysis:
17. How Boparan would operate the Stoke Ferry mill post-Merger. We consider that, on balance, the evidence supports a scenario where Boparan would close its Stoke Ferry mill and use the Burston mill as a replacement. We also modelled a scenario where the Stoke Ferry mill continued to operate post-Merger at reduced capacity (which would be a scenario less likely to result in an SLC as any reduction in capacity as a result of the Merger would be less significant).
18. To what extent any mills outside of the customer catchment would impose a constraint on the Merged Entity. We consider that evidence, in particular from customers, supports including one additional mill in our capacity analysis. The evidence we gathered did not indicate that any other mill outside of our catchment area provides a material constraint.

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<sup>1</sup> On 13 December 2024, the CMA consented to the Parties' request for a derogation from the initial enforcement order dated 1 August 2024 for the sale of the Radstock mill to complete.



19. Our analysis shows that the Merger would lead to a significant reduction in the level of spare capacity for the supply of meat poultry feed to third parties locally. Nevertheless, we consider the remaining level of spare capacity is sufficient to allow customers to switch, based on (i) the level of spare capacity remaining exceeding Boparan's current level of supply to third-party customers, (ii) customer purchasing patterns, which indicate spare capacity is several multiples larger than average customer orders and that customers tend to multi-source, and (iii) mill utilisation rates remaining below the level that mill operators told us were optimal, indicating an ability and incentive to compete for additional customer volumes. We therefore provisionally consider that the Merger would not result in an SLC in the supply of meat poultry feed in the local area around the Burston mill.
20. We also looked at whether the Merger could result in Boparan harming the competitiveness of meat poultry feed customers who compete with it downstream in the national supply of poultry meat, such as growers and processors of poultry. As we did not find that the Merger would result in substantial loss of competition upstream in the local supply of meat poultry feed to third-party customers, we provisionally consider there would not be an SLC in the downstream supply of poultry meat nationally.

## PROVISIONAL CONCLUSION

21. For the reasons explained in this report, we provisionally conclude that the Merger, if implemented, will result in the creation of a relevant merger situation, but that relevant merger situation may not be expected to result in an SLC in the supply of meat poultry feed in the local area around the Burston mill. The Merger may not therefore be expected to result in an SLC within any market in the UK.

## WHAT HAPPENS NEXT?

22. We invite any interested parties to make representations to us on these provisional findings by no later than **5pm on Tuesday 11 March 2025**.

# FINDINGS

## 1. INTRODUCTION

- 1.1 This is the Interim Report of the Inquiry Group appointed to consider the anticipated acquisition (the **Merger**) by Boparan Private Office Limited (via 2Agriculture Limited (**2Agriculture**)) (together referred to as **Boparan**) of ForFarmers UK Limited's Burston and Radstock feed mills (**ForFarmers**).<sup>2,3</sup>
- 1.2 The purpose of this Interim Report is to provide interested parties with an understanding of the evidence the Inquiry Group has received and considered in the investigation to date and the findings which we propose to draw from it. This includes evidence received in the phase 1 investigation and additional evidence received in our phase 2 inquiry to date. When considering evidence referred to in the Phase 1 Decision,<sup>4</sup> the Inquiry Group has applied the evidential thresholds that are applicable in phase 2.
- 1.3 The provisional findings presented in this Interim Report are not our final decision. This will be made at the conclusion of the investigation and may vary from that presented in this Interim Report. Interested parties are invited to make written representations on any aspect of this Interim Report by **5pm on Tuesday 11 March 2025**.

## Evidence in our investigation

- 1.4 In conducting our investigation in phase 2, we have had access to and considered evidence gathered during the phase 1 investigation.
- 1.5 In addition, during the course of our investigation we have received additional evidence and carried out further analysis as follows which has informed our assessment:
- (a) The Parties' submissions summarised in Appendix A;

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<sup>2</sup> On 20 November 2024, the Competition and Markets Authority (**CMA**) made a reference to its Chair under [section 33](#) of the Enterprise Act 2002 (the **Act**), for the constitution of a Group of CMA Panel Members (the **Inquiry Group**) to investigate and report on the anticipated acquisition by Boparan Private Office Limited (via 2Agriculture Limited (**2Agriculture**)) (together referred to as **Boparan**) of ForFarmers UK Limited's Burston and Radstock feed mills (**ForFarmers**) (the **Merger**). Boparan and ForFarmers are each a **Party** to the Merger; together they are referred to as the **Parties** and, for statements relating to the future where Boparan acquires the Radstock and Burston feed mills (if the Merger was to proceed), as the **Merged Entity**. Unless otherwise specified, we use the term 'Parties' in the Interim Report to refer to Boparan (including 2Agriculture), ForFarmers, or both reflecting joint evidence and submissions from the Parties and note that where we refer to evidence and submissions from the Parties, such statements are not necessarily attributable to both Boparan (including 2Agriculture) and ForFarmers. The relevant terms of reference can be found on the [CMA website](#).

<sup>3</sup> Published and notified to the Parties in line with [CMA rules of procedure for merger, market and special reference groups \(CMA17\)](#), Rule 11.

<sup>4</sup> CMA, [Decision on relevant merger situation and substantial lessening of competition \(Phase 1 Decision\)](#), 6 November 2024.

- (b) Our review of internal documents from the Parties, summarised in Appendix B;
- (c) Responses from customers and competitors to our questionnaires and information requests, summarised in Appendices C and E;
- (d) Our analysis of the change in both total and spare capacity available to supply third parties in the relevant local markets post-Merger, summarised in Appendix D; and
- (e) Our consideration of the evidence relating to the share of supply test, summarised in Appendix F.

## 2. RELEVANT MERGER SITUATION

### Introduction

- 2.1 This chapter addresses the first of the two statutory questions which we are required to answer under [section 36\(1\)](#) of the Enterprise Act 2002 (the **Act**), namely, whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 2.2 The concept of a relevant merger situation has two principal elements: (a) two or more enterprises cease to be distinct enterprises within the statutory period for reference;<sup>5</sup> and (b) the turnover test and/or the share of supply test is met.<sup>6</sup> We address each of these elements in turn below.
- 2.3 For the reasons set out below, we provisionally consider that the Merger, if carried into effect, will result in the creation of a relevant merger situation, on the basis that Boparan and ForFarmers' Burston and Radstock mills will cease to be distinct, and the turnover test is met as the combined UK turnover of the Burston and Radstock mills together exceeded £70 million in 2023.

### Arrangements in progress or in contemplation

- 2.4 Boparan (via 2Agriculture) and ForFarmers agreed under the asset purchase agreements (**APAs**) that the following assets would be transferred:
- (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**)<sup>7</sup> (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).<sup>8</sup>

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<sup>5</sup> Sections [23](#) and [24](#) of the Act.

<sup>6</sup> [Section 23](#) of the Act.

<sup>7</sup> These regulations protect employees' rights when they transfer to a new employer.

<sup>8</sup> Final Merger Notice (**FMN**), 10 September 2024, paragraph 2.7, and 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.

- 2.5 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.<sup>9</sup>
- 2.6 The jurisdictional question for anticipated mergers is whether ‘arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation’.<sup>10</sup> The APAs provided for completion of the Merger to take place on 30 June 2024 following TUPE consultations, which the Parties amended to 31 August 2024.<sup>11</sup> On 1 August 2024, the CMA imposed an initial enforcement order (**IEO**) prohibiting completion of the Merger.<sup>12</sup> The CMA granted a derogation from the IEO on 13 December 2024 to allow completion on the sale of the Radstock mill, which took place on 18 December 2024.<sup>13</sup> The Burston mill transaction has not yet completed, and as such we provisionally find that the overall arrangements contemplated under the APAs are in progress or contemplation.
- 2.7 At phase 1, the Parties submitted that the Merger should be considered as two separate transactions on the basis that each of the Burston and Radstock mills were 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 are not inter-conditional.<sup>14</sup>
- 2.8 At phase 1, the CMA rejected the Parties’ submissions and concluded that the two transactions should be taken together as a single merger for the following reasons:
- (a) Both transactions are between the same parties, ie Boparan (via 2Agriculture) and ForFarmers;
  - (b) Both transactions were entered into on the same day (5 April 2024)<sup>15</sup> and following signing of the APAs, completion was aligned to take place on the same day, ie 30 June 2024 (and then amended to 31 August 2024 ie the same day again); and
  - (c) While the transactions are not inter-conditional and ForFarmers did receive offers from potential purchasers to acquire only one of the sites, ultimately

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<sup>9</sup> FMN, paragraph 2.8.

<sup>10</sup> Section 36 of the Act.

<sup>11</sup> FMN, paragraph 2.11.

<sup>12</sup> See: CMA, [Initial Enforcement Order](#), dated 1 August 2024.

<sup>13</sup> See: CMA, [Final Derogation Letter in respect of initial enforcement orders issued pursuant to section 72\(2\) Enterprise Act 2002](#), dated 13 December 2024.

<sup>14</sup> FMN, paragraph 5.1(b).

<sup>15</sup> 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.

ForFarmers accepted 2Agriculture's offer because, among other reasons, 2Agriculture had offered to buy both the Burston and Radstock feed mills.<sup>16</sup>

- 2.9 We provisionally agree with this finding, and note that it is consistent with the CMA's guidance, which explains '[t]he Act's definition of a 'relevant merger situation' covers several different kinds of transaction and arrangement',<sup>17</sup> and that 'in some circumstances, the CMA may need to consider a transaction which gives rise to more than one change of control..., or more than one commercial agreement. Provided that these changes in control or commercial agreements are interconnected and take place in the context of the same overall commercial transaction, the CMA will generally treat these changes of control or commercial agreements as part of a single relevant merger situation' and '[i]t may, in certain limited circumstances, be appropriate to treat a single commercial transaction as giving rise to more than one relevant merger situation'.<sup>18</sup>
- 2.10 We therefore provisionally consider that the Burston and Radstock mill transactions should be taken together and considered as a single merger.

## Enterprises ceasing to be distinct

### Enterprises

- 2.11 The first element of the jurisdictional test is whether two or more enterprises will cease to be distinct as a result of the merger.<sup>19</sup>
- 2.12 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.<sup>20</sup> A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.<sup>21</sup> CMA guidance explains that the enterprise in question need not be a separate legal entity.<sup>22</sup> An enterprise may comprise any number of components, 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.<sup>23</sup> In some cases, the transfer of assets or employees alone may be sufficient to constitute an enterprise: for example, where

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<sup>16</sup> FMN, paragraph 10.7(a).

<sup>17</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2\)](#), 25 April 2024, paragraph 4.2.

<sup>18</sup> [CMA2](#), footnote 20.

<sup>19</sup> [Section 23](#) of the Act.

<sup>20</sup> [Section 129\(1\)](#) of the Act.

<sup>21</sup> [Section 129\(1\)](#) of the Act. See also sections [129\(3\)](#) and [130](#) of the Act.

<sup>22</sup> [CMA2](#), paragraph 4.6. Nor is there a requirement that the transferred activities have generated, or are expected to generate, a profit or dividend for shareholders: indeed, the transferred activities may be loss-making or conducted on a not-for-profit basis.

<sup>23</sup> [CMA2](#), paragraph 4.8.

the facilities or site transferred, or a group of employees and their know-how, enables a particular business activity to be continued.<sup>24</sup>

- 2.13 Each of (i) Boparan (via 2Agriculture) and (ii) ForFarmers' Burston and Radstock mills are engaged in the production of meat poultry feed in the UK otherwise than free of charge. In 2023, 2Agriculture generated turnover of £492.8 million, and the Burston and Radstock mills respectively generated turnover of £[~~XX~~] and £[~~XX~~] in the UK.<sup>25</sup>
- 2.14 As a result of the Merger, ForFarmers will transfer the tangible and certain non-tangible assets, as well as the production employees, of the Radstock and Burston mills to Boparan (via 2Agriculture) as described above. We consider that these assets and employees will allow Boparan (via 2Agriculture) to continue the business activity at the Radstock and Burston mills (ie manufacturing meat poultry feed).
- 2.15 Our provisional view is therefore that each of (i) Boparan and (ii) ForFarmers' Burston and Radstock mills is a 'business' within the meaning of the Act and that, accordingly, the activities of each of these constitutes an 'enterprise' for the purposes of the Act.

### **Ceasing to be distinct**

- 2.16 The Act provides that any two enterprises 'cease to be distinct' if they are brought under common ownership or common control.<sup>26</sup>
- 2.17 As a result of the Merger, Boparan (via 2Agriculture) will acquire the Burston and Radstock mills. Accordingly, on completion of the Merger, Boparan will have a controlling interest in the Burston and Radstock mills within the meaning of [section 26](#) of the Act.
- 2.18 Our provisional conclusion is therefore that arrangements are in progress or in contemplation which, if carried into effect, will result in two or more enterprises (namely, Boparan and the Burston and Radstock mills), ceasing to be distinct.

### **Turnover test or share of supply test**

#### **Turnover test**

- 2.19 The second element of the jurisdictional test seeks to establish sufficient connection with the UK on a turnover or share of supply basis.

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<sup>24</sup> [CMA2](#), paragraph 4.9.

<sup>25</sup> Ashurst LLP's email to the CMA dated 28 October 2024, and FMN, paragraph 5.1(b).

<sup>26</sup> [Section 26](#) of the Act.

2.20 The turnover test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.<sup>27</sup>

2.21 In this case, the combined turnover in the UK of the Burston and Radstock mills was £[~~£~~] in 2023. Given that this figure exceeds £70 million, our provisional view is therefore that the turnover test is met.

### **Share of supply test**

2.22 As we consider that the turnover test is provisionally met, we are not required to consider whether the share of supply test is met. However, we note the Parties' submissions at phase 1 that the Merger should be considered as two separate transactions. We also note that the turnover in the UK of the Burston mill alone does not exceed £70 million. For completeness, we have therefore considered whether the share of supply test in section 23 of the Act would be met based on the Burston mill alone.<sup>28</sup>

2.23 As set out in Appendix F, Boparan (via 2Agriculture) and the Burston mill will have a combined share of supply of [30-40%], based on the capacity for supply of meat poultry feed to third parties in the catchment area centred on the Burston mill in 2024, with an increment of [20-30%] as a result of the Merger. Our provisional view is that the share of supply test in [section 23](#) of the Act is also met based on the Burston mill transaction alone.

### **Provisional conclusion on relevant merger situation**

2.24 In view of the above, we have provisionally found that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in respect of the acquisition of a controlling interest in the Burston and Radstock mills by Boparan (via 2Agriculture).

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<sup>27</sup> [Section 23\(1\)\(b\)](#) of the Act. The Digital Markets, Competition and Consumers Act 2024 was not in force when the CMA launched the phase 1 inquiry and therefore the relevant turnover threshold is £70 million.

<sup>28</sup> Assessed alone, the turnover of the Burston mill in the UK in 2023 was £[~~£~~].



## 3. COUNTERFACTUAL

### Introduction

- 3.1 This chapter sets out our assessment and provisional conclusion on the appropriate counterfactual for the Merger.
- 3.2 The counterfactual is an analytical tool used in answering the question of whether a merger gives rise to an SLC. It does this by providing the basis for a comparison of the prospects of competition with the merger against the competitive situation without the merger. The latter is called the counterfactual.<sup>29</sup>

### Framework for assessing the counterfactual

- 3.3 The framework for assessing the counterfactual is set out in our published guidance on the assessment of mergers (**CMA129**). As set out in CMA129, at phase 2, we have to make an overall judgement as to whether or not an SLC has occurred or is likely to occur. To help make this assessment, we will select the most likely conditions of competition as the counterfactual against which to assess the merger. In some instances, we may need to consider multiple possible scenarios before identifying the relevant counterfactual (eg a merger firm being purchased by alternative acquirers). In doing this, we will consider whether any of the possible scenarios make a significant difference to the conditions of competition and, if any do, we will find the most likely conditions of competition absent the merger as the counterfactual.<sup>30</sup>
- 3.4 The counterfactual is not intended to be a detailed description of the conditions of competition that would have prevailed absent the merger. Our assessment of those conditions is better considered in the competitive assessment.<sup>31</sup> We only focus on significant changes where there is reason to believe that those changes would make a material difference to the competitive assessment,<sup>32</sup> and seek to avoid predicting the precise details or circumstances that would have arisen absent the merger.<sup>33</sup>
- 3.5 Establishing the appropriate counterfactual is an inherently uncertain exercise and evidence relating to future developments absent the merger may be difficult to obtain. Uncertainty about the future will not in itself lead the CMA to assume the pre-merger situation to be the appropriate counterfactual. As part of its assessment, the CMA may consider the ability and incentive (including but not

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<sup>29</sup> CMA 'Merger Assessment Guidelines', 18 March 2021 ([CMA129](#)), paragraph 3.1.

<sup>30</sup> [CMA129](#), paragraph 3.13.

<sup>31</sup> [CMA129](#), paragraph 3.7.

<sup>32</sup> [CMA129](#), paragraph 3.9.

<sup>33</sup> [CMA129](#), paragraph 3.11.

limited to evidence of intention) of the merger firms to pursue alternatives to the merger, which may include reviewing evidence of specific plans where available.<sup>34</sup>

- 3.6 Further, the time horizon that the CMA considers when describing the counterfactual will depend on the context but will be consistent with the time horizon used in the CMA's competitive assessment.<sup>35</sup>

## Assessment of the counterfactual

- 3.7 In this section, we assess whether, absent the Merger:

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

- 3.8 The Parties' submissions on each of these issues is described in detail in Appendix A and summarised at a high level in the relevant sections below.

### Burston mill

#### Findings at phase 1

- 3.9 At phase 1, the Parties submitted that it is likely that, in the counterfactual, ForFarmers would have ceased to operate the Burston mill either because the Burston mill would have been purchased by another party as an 'empty asset',<sup>36</sup> 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.<sup>37</sup>
- 3.10 During phase 1, the CMA gathered evidence from potential alternative purchasers of the Burston mill on their interest in acquiring the Burston mill (see Appendix C for further details). Save for [X], which is discussed in detail in the remainder of this section, and Boparan, at phase 1, the CMA concluded that none of the other potential purchasers submitted formal offers to buy the Burston mill, and those that had expressed initial interest withdrew this early on. As a result, the CMA did not consider that these third parties were realistic alternative purchasers of the Burston mill.<sup>38</sup>
- 3.11 Having assessed the evidence gathered from [X], at phase 1, the CMA concluded that it would be an alternative, less anti-competitive purchaser than Boparan. Furthermore, the CMA concluded that it would use a small but material proportion

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<sup>34</sup> [CMA129](#), paragraph 3.14.

<sup>35</sup> [CMA129](#), paragraph 3.15.

<sup>36</sup> ie without any customer contracts or volumes being transferred.

<sup>37</sup> FMN, paragraph 10.5.

<sup>38</sup> CMA, [Phase 1 Decision](#), paragraph 74.

of the Burston capacity ([REDACTED]%) for third-party feed supply.<sup>39</sup> The CMA assessed the Merger against a sale of the Burston mill to this alternative purchaser in the counterfactual.<sup>40</sup>

## **Parties' submissions on the appropriate counterfactual at phase 2**

- 3.12 At phase 2, the Parties did not dispute that a sale to an alternative purchaser ([REDACTED]) was the correct counterfactual in relation to the Burston mill. The Parties submitted, however, that the Phase 1 Decision materially overestimated the amount of capacity available for third party supply as a result of this counterfactual (see Appendix A which describes the Parties' submissions in detail). The Parties also noted that [REDACTED] is a vertically integrated supplier of [REDACTED] in the UK and has made public statements about its intention to increase its vertical integration.<sup>41</sup>

## **Evidence gathered from [REDACTED]**

- 3.13 Based on the evidence gathered during the CMA's phase 1 investigation, including that [REDACTED] was at an advanced stage of negotiation with ForFarmers for the acquisition of the Burston mill, we consider that a sale to [REDACTED] is the appropriate starting point for our assessment of the counterfactual at phase 2 (ie, we do not propose to re-evaluate the evidence provided in phase 1 in relation to potential alternative purchasers for the Burston mill, or ForFarmers' submission that in the absence of a sale, it would have closed the Burston mill and transferred the feed volumes produced at Burston to its mill in Bury).<sup>42</sup>
- 3.14 During the phase 2 investigation, we have gathered further evidence from [REDACTED], including specifically on its plans to use a proportion of the Burston mill's capacity for third-party feed supply.<sup>43</sup>
- 3.15 The evidence obtained from [REDACTED] is set out in detail in Appendix C. In summary:
- (a) Its internal documents provided to its board set out that the strategic rationale for the investment in the Burston mill was to uplift its milling capacity to satisfy more of its own demand.<sup>44</sup> It submitted that while it initially anticipated that the full capacity of the Burston mill would be utilised to supply its integrated [REDACTED] businesses in East Anglia, as it carried out due diligence on the Burston mill, it became clear that its internal requirements for the supply

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<sup>39</sup> CMA, [Phase 1 Decision](#), paragraph 77.

<sup>40</sup> CMA, [Phase 1 Decision](#), paragraphs 77 and 79.

<sup>41</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, pages 2-3.

<sup>42</sup> See Appendix B which describes the internal documents reviewed by the CMA in relation to ForFarmers' plans to sell or close the Burston mill.

<sup>43</sup> Third party response to the CMA's follow-up questions, 16 August 2024, questions 1 and 2, [REDACTED]. [REDACTED] confirmed to the CMA that the reference to capacity for third-party feed is intended for independent growers, and not to its' contracted farms and that the latter would be considered as part of its own supply chain.

<sup>44</sup> Third party internal documents, Annex 2 to s109 1, 12 December 2024, slide 2; and Annex 4 to s109 1, 12 December 2024, slide 2, 4.

of [X] feed in East Anglia alone would not utilise all the available capacity at Burston. It therefore became more confident that a level of supply to third parties would be possible, and that it would be advantageous to plan for this.<sup>45</sup>

- (b) Had it been successful in the acquisition of the Burston mill, it had been planning to produce: (i) approximately [X]kT per week of [X] feed for internal supply from Burston, and (ii) [X]. This would result in approximately [X]kT per week or approximately [X]% of the Burston mill's assumed total capacity of [X]kT per week available to supply third parties.<sup>46</sup> It told us that [X]. Where different formulations of [X] feed were required it would look for [X] customers who can offer larger volumes in fewer product lines, although it would always try to fill the mill.<sup>47</sup>
- (c) It was confident that there would be local demand for third party supply, as certain current customers of the Burston mill would likely wish to continue to be supplied from Burston rather than transferring to ForFarmers' mill in Bury.<sup>48</sup> We note that it currently supplies third parties with [X] feed from its [X] mill, although it has reduced its supply to third-party customers as its [X] processing business has grown.<sup>49</sup>
- (d) It does not have a feed sales and marketing team, but it stated that its mills are fairly well satisfied by internal demand and a healthy proportion of long-serving third party customers. In terms of growth strategy, and had it been successful in acquiring the Burston mill, it told us that it would have used local contacts in the industry to fill spare capacity.<sup>50</sup>
- (e) It has submitted a pre-planning application for the development of a [X] processing facility in [X] which would approximately double its processing capacity in East Anglia and would increase its demand for milling capacity in due course (if the project is successful in receiving approval and it progresses it).<sup>51</sup> It also has plans to expand its [X] production at [X]. The [X].<sup>52</sup>

## Our assessment

3.16 [X] internal documents explain that its strategic rationale for acquiring the Burston mill is to increase its milling capacity to satisfy more of its internal demand. While it

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<sup>45</sup> Third party response to the CMA's s109 1, 12 December 2024, question 3(a)

<sup>46</sup> Third party response to the CMA s109 1, 12 December 2024, question 3(a). Note that [X] did not prepare any formal business plans or board papers setting out the details of this volume split.

<sup>47</sup> Note of call with a third party, 17 January 2025, paragraph 4.

<sup>48</sup> Third party response to the CMA's s109 1, 12 December 2024, question 3(a).

<sup>49</sup> Third party call note, 17 January 2025, paragraph 8.

<sup>50</sup> Third party call note, 17 January 2025, paragraph 7.

<sup>51</sup> Third party response to the CMA's RFI 1, 12 December 2024, question 11.

<sup>52</sup> Third party call note, 17 January 2025, paragraph 12.

submitted that its intention would have been to supply third parties from the Burston mill (had it been successful with the acquisition), this intention is not documented in its internal documents, and it did not have any formal business plan or board papers setting out the detail of how volumes would be split between internal and third-party feed supply. Internal documents also do not address how it would prioritise between the supply of pig and meat poultry feed to third-party customers. [X] (see paragraph 3.15(b) above). Otherwise, it told us that it would look to prioritise customers in [X] who can offer larger tonnes in fewer product lines, whilst always trying to fill the mill's capacity.<sup>53</sup>

- 3.17 We note that [X] mill does currently supply third parties with feed, although the majority of the mill's capacity is dedicated to internal supply. The fact that it is already supplying third parties with feed from one of its existing mills suggests that third-party supply would not be a new commercial strategy for [X], and one that aligns with its existing practice.<sup>54</sup> If it had been successful in acquiring the Burston mill and its internal demand for feed did not utilise the full capacity, it is reasonable to assume that it would look to use the spare capacity to supply feed to third parties (although this could be pig feed rather than meat poultry feed).<sup>55</sup>
- 3.18 While it is currently pursuing a commercial strategy to supply third parties at its [X] mill, we consider this strategy is dependent on it having excess capacity not needed for internal use. We note that it has had to reduce the complexity of its customer base at its [X] mill to increase mill efficiency to allow for increasing internal demand.<sup>56</sup> It is expanding its [X] processing activities in East Anglia and this will, in turn, increase its internal demand for feed in the medium term.
- 3.19 Accordingly, while we consider that it is possible that [X] would have used a small but material ([X]%) proportion of the Burston mill's capacity to supply third parties with meat poultry feed, and that doing so could make sense from a commercial and operational perspective (and would be aligned with its approach at its [X] mill), on balance, we do not consider it likely that [X] would do so. This is because it was unable to provide us with any evidence supporting a strategy of third-party [X] supply, and its strategic rationale for acquiring Burston (as set out in its internal documents) was to meet more of its own internal demand.
- 3.20 We therefore provisionally consider the most likely counterfactual is one where [X] acquires the Burston mill and prioritises the capacity of the Burston mill to meet its internal feed demands.

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<sup>53</sup> Third party call note, 17 January 2025, paragraph 4.

<sup>54</sup> See Appendix C which sets out [X] commercial rationale for supplying third parties.

<sup>55</sup> Third party call note, 17 January 2025, paragraph 4.

<sup>56</sup> Third party call note, 17 January 2025, paragraph 8.

## Stoke Ferry mill

### Findings at phase 1

- 3.21 At phase 1, the CMA considered what would have happened to Boparan's Stoke Ferry mill absent the Merger, ie whether it would have remained independent and operational.
- 3.22 The Parties submitted that in the absence of the Merger, 2Agriculture would have sought to keep the Stoke Ferry mill operational for as long as possible, whilst managing the health and safety and environmental issues.<sup>57</sup>
- 3.23 At phase 1, the CMA concluded that, absent the Merger, and in the absence of an alternative mill or option to meet Boparan's feed requirements, it was realistic that 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.<sup>58</sup>

### Parties' submissions on the appropriate counterfactual at phase 2

- 3.24 At phase 2, the Parties submitted that the Stoke Ferry counterfactual in the Phase 1 Decision is incorrect (as described in more detail in Appendix A).<sup>59</sup> In particular, the Parties submitted that:
- (a) Boparan would need to reduce volumes at the Stoke Ferry mill in order to address the health and safety, environmental, local community and ageing plant concerns;<sup>60</sup>
  - (b) A reduction in volumes at Stoke Ferry would lead to Boparan prioritising in-house requirements (for both security of supply and financial reasons) [redacted];<sup>61</sup>
  - (c) If Stoke Ferry continued to operate at full capacity, it would have a remaining life of less than [redacted], and potentially as low as [redacted].<sup>62</sup> Boparan submitted that the sustainable level of operation at the Stoke Ferry mill is around [200-250]kT per annum<sup>63</sup> (noting Stoke Ferry's technical capacity is [350-400]kT per annum).<sup>64</sup> Boparan submitted that moving to a properly structured and planned preventative maintenance regime (as described in Appendix A) would facilitate more reliable utilisation, and would extend the period during which the Stoke Ferry mill will remain [redacted], by up to [redacted].<sup>65</sup> Boparan submitted

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<sup>57</sup> FMN, paragraph 14.29.

<sup>58</sup> CMA, [Phase 1 Decision](#), paragraph 96.

<sup>59</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, page 16.

<sup>60</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, page 16.

<sup>61</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, pages 16-17.

<sup>62</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, page 18.

<sup>63</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, page 19.

<sup>64</sup> Boparan response to the CMA's s109 notice 1, Annex 1, 13 December 2024, question 3; Witness statement of 2Agriculture's MD, 10 October 2024, paragraph 59.

<sup>65</sup> Boparan response to the CMA's RFI 2, 15 January 2025, question 1.

evidence raising concerns regarding [redacted] of the Stoke Ferry mill running at its current capacity, (ii) made references to [redacted] closure of Stoke Ferry by the Health and Safety Executive (**HSE**) and (iii) commented that there was [redacted] need to reduce volumes at the Stoke Ferry mill (see Appendix A);<sup>66,67</sup> and

- (d) Boparan also submitted that in seeking to extend the life of Stoke Ferry, 2Agriculture would shut [redacted] to carry out a detailed engineering review. 2Agriculture would then seek to [redacted] meat poultry feed production lines [redacted], allowing for downtime to complete routine maintenance and repairs, and [redacted].<sup>68</sup>

## Evidence gathered from the Parties

### *Operational improvements*

- 3.25 The Parties submitted that, since the appointment of a new Managing Director,<sup>69</sup> the Stoke Ferry mill's financial performance has improved significantly.<sup>70</sup> In 2021, Stoke Ferry was loss-making ([redacted]) and year-on-year since, its EBITDA has increased from £[redacted] in 2022 to £[redacted] in 2023 and £[redacted] in 2024.<sup>71</sup>
- 3.26 As set out more fully in Appendix A, the Parties provided us with a summary of the primary factors driving the EBITDA improvements. This included improvements to the operation and management of the Stoke Ferry mill, which resulted in an increase in efficiency, and thereby throughput, which led to a [redacted] improvement in EBITDA between 2022 and 2023.<sup>72</sup>
- 3.27 We note that Stoke Ferry's EBITDA has remained positive in 2024 and has increased by approximately [redacted] compared with 2023. While the volumes at Stoke Ferry have also increased between 2023 and 2024 (and this may also be responsible for driving a proportion of the EBITDA improvements), it appears that the operational improvements implemented at Stoke Ferry are continuing to have a positive effect on Stoke Ferry's EBITDA and were not 'one-off' in nature.
- 3.28 We consider that the Stoke Ferry mill is a more financially attractive site today than it was in 2021, and it is operating more efficiently. The significant improvement in

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<sup>66</sup> Witness statement of 2Agriculture's MD, 10 October 2024. Excerpts from the witness statement are included in Appendix A.

<sup>67</sup> Witness statement of 2Agriculture's MD, 10 October 2024. Excerpts from the witness statement are included in Appendix A.

<sup>68</sup> Boparan response to the CMA's RFI 2, 15 January 2025, question 1.

<sup>69</sup> [redacted] is 2Agriculture's Managing Director and he has been employed by 2Agriculture since February 2021. In this Interim Report, [redacted] is hereinafter referred to as **2Agriculture's MD**.

<sup>70</sup> Parties' initial substantive meeting slides, 19 December 2024, slide 32.

<sup>71</sup> 2Agriculture internal document, DOCID AFS-000000006, sheet 1; Annex Q9(b), provided 6 January 2025.

<sup>72</sup> Parties' response to the CMA's RFI 1, 10 December 2024, question 8.

financial performance at the Stoke Ferry mill would have been visible between 2022 and 2023.

### *Production volumes at Stoke Ferry*

- 3.29 Although Boparan submitted that in the counterfactual, a reduction in volumes would be needed at the Stoke Ferry mill, Boparan does not have any internal documentary evidence to support its submissions on the counterfactual that it would need to operate at reduced volumes. Boparan was also unable to provide us with any documentary evidence that supports its submissions on the preferred maintenance approach for the mill of operating [X] (see Appendix A on the Parties' submissions).<sup>73</sup>

### **Historic production**

- 3.30 As described in detail in Appendix B, Boparan's internal documents show that:
- (a) Despite 2Agriculture's concerns on the aging nature of the Stoke Ferry mill and health and safety, environmental and local concerns, volumes have consistently increased year-on-year at the Stoke Ferry mill from [300-350]kT in 2022, to [350-400]kT in 2024.<sup>74</sup>
  - (b) Throughout 2023, 2Agriculture had a plan to deliver [0-10]kT of feed per week consistently from the Stoke Ferry mill, with 2024 volumes being increased to over [0-10]kT per week (approximately [350-400]kT per annum).<sup>75</sup> These documents do not refer to any concerns about the potential impact that increasing production may have on the [X] of the Stoke Ferry mill.
  - (c) Despite concerns on the ageing nature of some of 2Agriculture's assets (as flagged in board documents between January 2024 and April 2024),<sup>76</sup> no steps are suggested by 2Agriculture in its internal documents to reduce volumes being produced at Stoke Ferry on a more long-term basis eg permanent outsourcing of volumes.<sup>77</sup> While the internal documents show that

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<sup>73</sup> Boparan response to the CMA's RFI 2, 15 January 2025, question 1.

<sup>74</sup> 2Agriculture internal document, DOCID AFS-000000006, sheet 1; Annex Q9(b), provided 6 January 2025.

<sup>75</sup> 2Agriculture internal documents, DOCID AFS-000000250, page 23, January 2023; Annex Q9(d).62, provided 6 January 2025; DOCID AFS-000000315, page 23, June 2023; Annex Q9(d).67, provided 6 January 2025; and DOCID AFS-000001004, page 24, December 2023; Annex Q9(d).73, provided 6 January 2025.

<sup>76</sup> 2Agriculture internal documents, DOCID AFS-000000248, January 2024, slide 2; Annex Q9(d).74, provided 6 January 2025; DOCID AFS-00000040, February 2024, slide 2; Annex Q9(d).74, provided 6 January 2025; DOCID AFS-000000072, slide 2, March 2024; Annex Q9(d).76, provided 6 January 2025; DOCID AFS-000000039, slide 2, April 2024; Annex Q9(d).77, provided 6 January 2025; and DOCID AFS-000000072, March 2024, slide 2; Annex Q9(d).76, provided 6 January 2025.

<sup>77</sup> 2Agriculture internal documents, DOCID AFS-000000345, June 2022, slide 8; Annex Q9(d).55, provided 6 January 2025; DOCID AFS-000000284, July 2022, slide 8; Annex Q9(d).56, provided 6 January 2025; DOCID AFS-000000552, September 2022, slide 8; Annex Q9(d).58, provided 6 January 2025; DOCID AFS-000000521, October 2022, slide 8; Annex Q9(d).59, provided 6 January 2025; and DOCID AFS-000000492, November 2022, slide 8; Annex Q9(d).60, provided 6 January 2025.



2Agriculture sometimes outsourced volumes in 2022 to improve reliability at the Stoke Ferry mill, this was not a medium or long-term solution, and volumes were brought back in-house quickly (within a month or two).<sup>78</sup>

- (d) 2Agriculture expected 'higher volumes' going forward.<sup>79</sup> In its internal documents, 2Agriculture does not refer to a reduction of volumes as a suggested strategy to manage operational, health and safety or environmental-related concerns at the Stoke Ferry mill. While a March 2024 board document does highlight a concern on ageing assets generally (not specifically in relation to the Stoke Ferry mill), there is no suggestion in this document that reducing volumes is the appropriate way to mitigate or address these concerns.<sup>80</sup>

3.31 The internal documents we have reviewed therefore consistently suggest that, in the absence of alternative capacity locally, the Stoke Ferry mill would continue to operate at full, or close to full, capacity.

3.32 At the Initial Substantive Meeting (ISM) with the Parties held on 19 December 2024, we asked Boparan to explain the increased volumes for 2024 in light of the HSE concerns and in terms of the concerns on [REDACTED] of the mill and the equipment. Boparan responded that this increase was 'demand driven'.<sup>81</sup> We raised this question again with Boparan following the ISM querying why the Stoke Ferry mill's production volumes have not been reduced to a sustainable level of [200-250]kT per annum (which 2Agriculture's MD had said was the appropriate level)<sup>82</sup> in any of the years following 2Agriculture's MD appointment to his role in 2021, and have in fact increased year-on-year since 2022. In response, Boparan submitted that 'the [REDACTED] increase in production volumes at Stoke Ferry have been driven by an increase in in-house demand by Boparan' and that this is intended to be a 'short-term measure' as it plans to transfer [REDACTED] volumes currently produced at the Stoke Ferry mill to Burston post-Merger.<sup>83</sup>

### Forecasts for 2025 and 2026

3.33 As set out in Appendix B, 2Agriculture's feed projections for Stoke Ferry and Burston (prepared in September 2024) show [REDACTED] demand for feed in 2025 of

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<sup>78</sup> 2Agriculture internal document, DOCID AFS-000000345, June 2022, slide 8; Annex Q9(d).55, provided 6 January 2025.

<sup>79</sup> 2Agriculture internal document, DOCID AFS-000000284, July 2022, slide 8; Annex Q9(d).56, provided 6 January 2025.

<sup>80</sup> 2Agriculture internal document, DOCID AFS-000000072, slide 2, March 2024; Annex Q9(d).76, provided 6 January 2025.

<sup>81</sup> 2Agriculture, ISM transcript, 19 December 2024, page 13, line 6.

<sup>82</sup> Witness statement of [REDACTED], 10 October 2024, paragraph 59.

<sup>83</sup> Boparan stated that outsourcing volumes to third party suppliers would have been subject to a [REDACTED], which would [REDACTED] if [REDACTED]. See Boparan response to CMA RFI 2, 15 January 2025, question 3.

approximately [350-400]kT per annum, in addition to [✂] demand of [100-150]kT per annum. This [✂] in 2026.<sup>84</sup>

**Table 3.1: 2Agriculture’s projections for internal and external feed demand in 2025 and 2026**

	2025 (projected)		2026 (projected)	
	Stoke Ferry	Burston	Stoke Ferry	Burston
Sales tonnes (kT)	[150-200]	[250-300]	[150-200]	[250-300]
[✂] broiler (kT)	[50-100]	[250-300]	[50-100]	[250-300]
Third party (kT)	[100-150]	[0-50]	[100-150]	[0-50]
Total combined volumes of Burston and Stoke Ferry (kT)	[400-500]		[400-500]	

Source: CMA analysis of 2Agriculture’s forecast profit and loss account for 2025 and 2026. (2Agriculture internal document, DOCID 2AG\_Annex\_002516, sheets 2 and 3. The Parties submitted that the third-party volumes presented in Table 3.1 include [✂] (which make up approximately [20-30]kT in each year shown in the table). However, the Parties considered that volumes supplied to [✂] should be treated as in-house volumes and not third-party volumes. We have not amended the figures presented in the table or in the analysis that follows to reflect this submission from the Parties given that the third-party figures quoted in Table 3.1 are taken directly from 2Agriculture’s internal document. See Parties’ response email, 12 February 2025; and Parties’ response to the CMA follow-up questions, 12 February 2025.)

3.34 As shown in Table 3.1, 2Agriculture is projecting that it will produce a total of [400-500]kT of feed in 2025 and [400-500]kT of feed in 2026 at Stoke Ferry and Burston.<sup>85</sup> It is unclear how, in the counterfactual, 2Agriculture would meet Boparan’s internal demand alone in 2025 ([350-400]kT) and 2026 ([350-400]kT), if it did not acquire the Burston mill, and if it reduces volumes at the Stoke Ferry mill to the submitted sustainable level of [200-250]kT.

3.35 Based on the projections set out in Table 3.1 above,<sup>86</sup> we note that Boparan could, in the counterfactual: (i) in-source approximately [100-150]kT of feed from external suppliers to meet the additional internal demand in 2025 that Stoke Ferry would be unable to produce at the submitted sustainable level; and (ii) stop supplying third parties to avoid having to in-source an additional [100-150]kT of feed. However, this strategy (ie to reduce volumes at Stoke Ferry, [✂], and in-source volumes to meet internal demand) has been open to Boparan in recent years. Between 2022 and 2024, Boparan chose not to pursue this strategy and has instead increased feed volumes produced at the Stoke Ferry mill, continued to supply third-party customers, and continued to in-source volumes to help manage demand. Boparan has also submitted that there are no viable [✂] available to 2Agriculture in East Anglia.<sup>87</sup> Therefore, it is not clear that in-sourcing from third party suppliers at the volumes required to meet increased internal demand for 2025 (and beyond) in the counterfactual would be considered commercially viable by Boparan.

<sup>84</sup> 2Agriculture internal document, DOCID 2AG\_Annex\_002516, sheets 1, 2 and 3. The projections prepared in this document assume the Radstock and Burston mill acquisition is successful and provides a split of volumes between each of the Stoke Ferry, Radstock and Burston mills.

<sup>85</sup> Note that 2Agriculture operates 2 other feed mills in East Anglia and therefore these figures do not represent Boparan’s total feed demand in East Anglia for 2025 and 2026.

<sup>86</sup> 2Agriculture internal document, DOCID 2AG\_Annex\_002516, sheets 2 and 3.

<sup>87</sup> Boparan’s response to CMA RFI 2, 15 January 2025, questions 3 and 7.

3.36 In addition, and as set out in Appendix A, evidence gathered from the Parties indicates that they expect demand for meat poultry feed to increase in the coming years.<sup>88</sup> This is consistent with evidence from competitors, as set out in Appendix E (see paragraph E.26), almost all of which submitted that they expect demand for meat poultry feed in East Anglia to either increase, or stay the same, in the future. Given that Boparan's other feed mills in or around East Anglia (Bawsey and Billingham) are already operating at [REDACTED],<sup>89</sup> Boparan would not be able to service any increasing (internal or external) demand in 2025 and 2026 from any of its other mills in the local area in the counterfactual.

*Mill reliability concerns*

3.37 As set out in Appendix B, we note that some of 2Agriculture's board documents reference 2Agriculture's ageing assets that [REDACTED].<sup>90</sup> While reliability concerns also appear to be relevant to 2Agriculture's other mills in or around East Anglia (Bawsey and Billingham), 2Agriculture continues to operate all of its mills at [REDACTED].<sup>91</sup> Therefore, the suggestion that 2Agriculture would reduce its volumes to the submitted sustainable level at the Stoke Ferry mill in the counterfactual does not align with how it operates its other nearby mills.

*Health, safety and environmental complaints and concerns*

3.38 As set out in detail in Appendix B, between November 2023 and March 2024, the HSE and the Environment Agency raised concerns with 2Agriculture about the operation of the Stoke Ferry mill. The Environment Agency's concerns related to the impact of dust emissions on local air quality, and the HSE's concerns related to build up of dust within the mill itself, which created a risk of fire and explosion.<sup>92</sup>

3.39 Various contravention letters and improvement notices were issued by the HSE in November 2023 and February 2024, requiring remedial action from 2Agriculture (see Appendix B). In February 2024, 2Agriculture initially considered the standard requested by the HSE to be [REDACTED], however, by April 2024, 2Agriculture's internal documents state that significant improvements had been made, and the Parties

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<sup>88</sup> Parties' response to CMA RFI 1, 10 December 2024, question 6. Note that Boparan did not provide a view on expectations for future demand in relation to pig feed given that it does not have any activities in the pig meat supply chain.

<sup>89</sup> Witness statement of 2Agriculture's MD, 10 October 2024, paragraph 53(b)(ii).

<sup>90</sup> 2Agriculture internal documents, DOCID AFS-000000248, January 2024, slide 2; Annex Q9(d).74, provided 6 January 2025; DOCID AFS-00000040, February 2024, slide 2; Annex Q9(d).74, provided 6 January 2025; DOCID AFS-00000072, slide 2, March 2024; Annex Q9(d).76, provided 6 January 2025; and DOCID AFS-00000039, slide 2, April 2024; Annex Q9(d).77, provided 6 January 2025. Monthly board documents dated between January 2023 and January 2024, also refer to 2Agriculture's Bawsey and Billingham mills as having sustained [REDACTED] each month (see Appendix B). Note that some of these monthly board documents also regularly refer to issues with [REDACTED] at Stoke Ferry. We were also told by a competitor that mill reliability in East Anglia is generally poor (see third party response to the CMA's RFI 1, 16 December 2024, question 13.)

<sup>91</sup> Witness statement of 2Agriculture's MD, 10 October 2024, paragraph 53(b)(ii).

<sup>92</sup> 2Agriculture internal documents, DOCID AFS-000001118, 27 September 2023, page 3; Annex Q10.1, provided 6 January 2025; and DOCID AFS-000000002, 16 November 2023, page 1; Annex Q10.3, provided 6 January 2025.

submitted that by mid-April 2024, 2Agriculture had become more confident that it would be able to address the HSE's concerns.<sup>93</sup>

- 3.40 The evidence above demonstrates that 2Agriculture was able to address the HSE's concerns within a period of a few months, while continuing to operate the Stoke Ferry mill at full capacity, ultimately producing a total of [350-400]kT of feed in 2024 (more than the volume produced in 2023).<sup>94</sup> Given that 2Agriculture did not need to reduce volumes at the Stoke Ferry mill in order to address HSE and environmental concerns, it is not clear why 2Agriculture would need to take a different approach to these concerns in the counterfactual. Similarly, we consider that in the counterfactual, 2Agriculture would have been incentivised to act in response to the HSE concerns given the importance of the Stoke Ferry mill to Boparan's supply chain.

### **Our assessment**

- 3.41 Internal documents support the Parties' submissions that the Stoke Ferry mill is an ageing asset with a number of environmental and safety problems, issues which could be mitigated by adopting the approach suggested by Boparan on: (i) the sustainable level of operation at the Stoke Ferry mill, and (ii) best practice long-term maintenance measures. However, these views have not translated into operational reality at Stoke Ferry. Stoke Ferry's production volumes have increased year-on-year since 2022 to a total of [350-400]kT per annum in 2024, while [X]. This is [X] above [X] suggested sustainable level of operation of [200-250]kT per annum. For this reason, and those set out below, we take an alternative (and contrary) position to the Parties on the counterfactual for the Stoke Ferry mill.
- 3.42 Furthermore, 2Agriculture's volume projections (which assume the Merger takes place) for 2025 and 2026 for the Stoke Ferry and Burston mills show an increasing level of internal demand. Absent the Merger, 2Agriculture would not [X] if it were to reduce Stoke Ferry's output to [200-250]kT. To date, 2Agriculture has sought to increase volumes produced at Stoke Ferry in order to meet Boparan's increasing demand, and we have not seen any evidence which suggests that 2Agriculture would take a different approach in future (noting that Boparan's internal demand is set to increase).
- 3.43 We infer from the evidence (particularly that set out at paragraphs 3.30, 3.32 and 3.33 above) that, given that 2Agriculture is part of the Boparan group, which is reliant on 2Agriculture's feed milling business as an input into its wider activities,

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<sup>93</sup> 2Agriculture internal documents, DOCID AFS-000000040, February 2024, page 3; Annex Q9(d).75, provided 6 January 2025; DOCID AFS-000000039, April 2024, page 2; Annex Q9(d).77, provided 6 January 2025; and Parties' response to the Phase 1 Decision, 10 December 2024, page 25.

<sup>94</sup> 2Agriculture internal document, DOCID AFS-000000006, 3 January 2025, sheet 1; Annex Q9(b), provided 6 January 2025.

2Agriculture is required to respond to the wider needs of the Boparan business, particularly for internal feed demand. Our view is that the wider needs of the Boparan business are likely to be a key driver of the commercial decision-making within 2Agriculture, and in turn, have directed, and will continue to direct, the operations of the Stoke Ferry mill. We therefore consider that this approach by Boparan to its vertically integrated operations is a relevant indicator of how Boparan and 2Agriculture would operate in the counterfactual.

- 3.44 We have seen little evidence suggesting Boparan would adopt a different strategy in the counterfactual compared to how it currently operates its business, which includes operating all three of its mills in and around East Anglia at [REDACTED]. 2Agriculture would likely need to operate this way for the short-to-medium term (three to five years) to meet Boparan’s current demand and, in the meantime, Boparan may need to look for alternative ways to expand its feed milling capacity. In their response to the Phase 1 Decision, the Parties stated that ‘2Agriculture had significant concerns about operating the mill at existing capacity beyond [REDACTED]’, suggesting that Stoke Ferry could continue to operate at full, or close to full, capacity up until this point.<sup>95</sup>
- 3.45 We also note that the Stoke Ferry mill has benefitted from operational improvements since 2021 and as a result, is a more efficient mill. In the absence of alternative capacity to produce the volumes which Boparan requires locally, Boparan would have an incentive to continue investing in the Stoke Ferry mill and the operational improvements implemented by 2Agriculture’s MD would likely continue to have a positive effect on the site’s financial performance.
- 3.46 While we consider that it is possible that 2Agriculture would change the approach which it has followed since 2022, and reduce volumes at the Stoke Ferry mill in the counterfactual to address various HSE and environmental concerns, on balance, we consider that the evidence supports a counterfactual where the most likely outcome is that the Stoke Ferry mill continues to operate at full, or close to full capacity for the short to medium term (three to five years).

### **Provisional conclusion on the counterfactual**

- 3.47 We provisionally consider that the most likely counterfactual is one where: (i) the Burston mill is sold to [REDACTED], and it prioritises the capacity of the Burston mill to meet its internal feed demands; and (ii) the Stoke Ferry mill continues to operate at full, or close to full, capacity.

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<sup>95</sup> [Parties’ response to the Phase 1 Decision](#), 10 December 2024, page 18.

## 4. NATURE OF COMPETITION

### Background

4.1 The UK poultry sector is an important industry for consumers.<sup>96</sup> The volume of chicken produced for meat in the UK has increased year on year<sup>97</sup> and evidence suggests that the demand for poultry feed is expected to either rise or stay the same over the next few years (see discussion at paragraph 6.36). Poultry feed is a crucial input for poultry farmers, and the largest production cost for a poultry farmer, with the cost of feed as a proportion of input costs estimated by customer respondents during our phase 1 investigation as approximately 60-70%.<sup>98</sup>

### Vertical integration in the production of poultry feed

- 4.2 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).<sup>99</sup> Therefore, it is vertically integrated. Evidence suggests that the poultry industry has been moving towards greater vertical integration in recent years.<sup>100</sup>
- 4.3 The overall market for the supply of chicken<sup>101</sup> is concentrated, with three firms – Boparan, Moy Park and Avara – accounting for nearly 80% of the supply.<sup>102</sup> These large firms are vertically integrated across the supply chain, including in the production of feed which can be supplied to their own contracted growers or processors.<sup>103</sup> Similarly, the UK feed industry has also seen consolidation in recent years.<sup>104</sup>
- 4.4 Feed mills operated by vertically integrated firms often supply feed to non-vertically integrated customers alongside producing feed for their own purposes,<sup>105</sup> and such mills compete with non-vertically integrated mills that use all of their production to supply third parties (eg ForFarmers' Burston mill).

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<sup>96</sup> [Chicken consumption rockets ahead when compared with other proteins - Poultry Network](#), 13 March 2024, accessed by the CMA 14 February 2025; [All you need to know about the British poultry meat sector \(countrysideonline.co.uk\)](#), accessed by the CMA 14 February 2025.

<sup>97</sup> [United Kingdom Poultry and Poultry Meat Statistics – January 2024 - GOV.UK \(www.gov.uk\)](#), Table 4.4.

<sup>98</sup> Most customers (5/8) confirmed that the figure is approximately 70%, while the remainder (3/8) suggested it represented 60-65%. Third party responses to the CMA's customer questionnaire, 11 September 2024, question 5. This is consistent with the findings in the ForFarmers/Boparan JV decision ([ForFarmers/Boparan JV](#), paragraph 167).

<sup>99</sup> FMN, paragraph 11.2.

<sup>100</sup> Notes of calls with third parties, June and July 2024. [§<] ]

<sup>101</sup> In terms of volume of chickens slaughtered.

<sup>102</sup> CMA, [Phase 1 Decision](#), paragraph 191.

<sup>103</sup> Contracted processors are those owned by the firm which are part of the integrated supply chain.

<sup>104</sup> CMA, Reference Decision, [ForFarmers/Boparan JV merger inquiry – GOV.UK](#), 15 February 2023, paragraph 35.

<sup>105</sup> For example, Boparan describes supplying third parties as being a part of its 'core strategy'. 2Agriculture, ISM transcript, 19 December 2024, page 16 lines 12-25 and page 17 lines 1-7.

## The undifferentiated nature of poultry feed

- 4.5 Animal feeds typically contain a combination of agricultural products (such as wheat and soy) and pre-mix (ie additives) and can be formed as a single, blended or compound product.<sup>106</sup> Some species, such as pigs and ruminants (cattle and sheep) can be fed all forms of feed. 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.<sup>107</sup>
- 4.6 There are two main types of poultry feed:
- (a) meat poultry feed includes feed for (i) chickens, and (ii) other poultry, including turkey and ducks, reared for meat. 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.<sup>108</sup>
- 4.7 Poultry feed types, including meat poultry feed, are largely undifferentiated products. One key factor for customers when choosing a mill is the location of the mill (see the 'Geographic market' section below).<sup>109</sup> As set out in Appendix E, customer responses to our questionnaires indicate that the price and quality of the feed and factors related to distance (which directly impacts the price paid by customers) are important for customers' choice of feed mill.
- 4.8 As set out further in the Market Definition chapter, the raw materials, equipment and production processes used to produce animal feed are similar but differ depending on the type of feed being produced. Some mills produce feed for multiple species (eg poultry and pig), whereas others only produce feed for a single species.

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<sup>106</sup> FMN, paragraphs 12.1-12.2.

<sup>107</sup> FMN, paragraph 12.3.

<sup>108</sup> CMA, Reference Decision, [ForFarmers/Boparan JV merger inquiry – GOV.UK](#), 15 February 2023, paragraphs 30-31.

<sup>109</sup> As is set out in Appendix E, evidence from customers indicates that there is a perception that quality can differ between mills.

## 5. MARKET DEFINITION

### Framework

- 5.1 Where the CMA makes an SLC finding, this must be ‘within any market or markets in the United Kingdom for goods or services’.<sup>110</sup> An SLC can affect the whole or part of a market or markets.
- 5.2 Market definition provides a framework for assessing the competitive effects of a merger. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.<sup>111</sup> The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. We will take these factors into account in the competitive assessment.
- 5.3 Product market definition starts with the relevant products of the merger firms. In identifying what other significant competitive alternatives should be included in the relevant market, we will pay particular regard to demand-side factors. We may also consider supply-side factors.<sup>112</sup> Similarly, defining the geographic market involves identifying the most important competitive alternatives to the merger firms.<sup>113</sup>

### Product market

- 5.4 Boparan and ForFarmers’ Burston mill overlap in the supply of meat poultry feed in East Anglia.<sup>114</sup>
- 5.5 We considered the extent to which meat poultry feed and layer poultry feed are separate product markets, or segments within a wider market for the supply of poultry feed. We have also considered the extent to which the product frame of reference should be widened to include all types of monogastric feed (ie to include pig feed).
- 5.6 As set out in Appendix A, the Parties submitted that the product market definition used in the CMA’s decision in *ForFarmers/Boparan JV* (which was also used during phase 1) was unduly narrow, in part because it ignores supply-side

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<sup>110</sup> [Section 36\(1\)\(b\)](#) of the Act. See also CMA129 paragraph 9.1.

<sup>111</sup> [CMA129](#), paragraph 9.1.

<sup>112</sup> [CMA129](#), paragraph 9.6.

<sup>113</sup> [CMA129](#), paragraph 9.13.

<sup>114</sup> FMN, paragraph 12.4. ForFarmers produces a range of other animal feed, with its Burston mill also producing pig feed. Meat poultry feed primarily comprises of feed for chickens, however it also includes other types of poultry feed, such as duck and turkey, which require similar production processes.



substitution between different forms of animal feed. They submitted that as these feed types share production processes, capacity in the market can increase without the construction of new lines or mills, and switching between meat poultry and layer feeds is relatively easy, involving only slight plant modifications and expenditure).

### **Demand-side substitutability**

5.7 The relevant product market is generally identified primarily by reference to demand-side substitution.<sup>115</sup> There is limited demand-side substitution between meat poultry, layer poultry and pig feed as farmers would not feed meat poultry with pig feed or layer poultry feed. The Parties did not make any submissions on demand-side substitution during this investigation.<sup>116</sup> Our provisional view is that demand-side substitutability supports a separate product market for meat poultry feed.

### **Supply-side substitutability**

5.8 Where there is limited demand-side substitution, the CMA may aggregate markets based on supply-side substitution when (i) firms routinely use their existing production assets to supply a range of different products that are not demand-side substitutes, and there is evidence that firms in practice shift their existing capacity between these different products depending on demand for each, and (ii) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.<sup>117</sup>

5.9 We found mixed evidence on supply-side substitutability between meat poultry feed and both (i) layer poultry feed; and (ii) pig feed. As set out in more detail in Appendix E, evidence from respondents indicated that while it is technically possible to switch between feed types, this depends in practice on the specific mill and its capabilities. Further, responses indicated that it would (i) be easier to switch from producing pig feed to meat poultry feed than *vice versa* and (ii) be easier to switch from producing pig feed to meat poultry feed than to switch from producing layer feed to meat poultry feed (which two respondents estimated would cost in excess of £1 million as additional manufacturing equipment is required).

5.10 As set out in Appendix E, there was some evidence of shifting capacities across feed types within mills that already have the necessary equipment. However, there were only two examples of mills investing in new equipment to enable them to begin producing a new feed type in the past three years. Further, we received

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<sup>115</sup> [CMA129](#), paragraph 9.7.

<sup>116</sup> In *ForFarmers/Boparan JV*, the Parties recognised in their submissions that there is limited demand-side substitutability across different animal feed types as these require different feed mixes. CMA, Reference Decision, [ForFarmers/Boparan JV merger inquiry – GOV.UK](#), 15 February 2023, paragraph 57.

<sup>117</sup> [CMA129](#), paragraph 9.8.

evidence that some competitors focus on longer ‘runs’ (less switching between feed types) to produce higher volumes, which indicates there are efficiency losses associated with switching between feed types. Competitors generally indicated that production is demand, not price, led.<sup>118</sup> We consider that this suggests that the demand for pig meat would also be an important consideration as to whether a competitor switched from pig to poultry feed if the price for poultry feed increased.

- 5.11 We also note that several mills in and around East Anglia do not produce pig feed, including all 2Agriculture mills, or only produce a minimal amount ([REDACTED]). For those mills that do produce both feed types, the majority dedicate more than 70% of their production capacity to one type of feed. We therefore consider that the competitor set for pig feed differs from that for meat poultry feed.

### Provisional conclusion on product market

- 5.12 On the basis of the evidence described above, we provisionally consider that the relevant product market is the supply of meat poultry feed. This is because (i) there is no demand-side substitution between meat poultry feed, layer poultry feed and pig feed, and (ii) there is some evidence of supply-side substitution, but this can involve costs and substitution may not be easy nor immediate. Overall, we do not currently consider the conditions set out in paragraph 5.8 are met ie there is not sufficient evidence to support a single market across feed types.<sup>119,120</sup>

### Geographic market

- 5.13 In the Phase 1 Decision and the previous *ForFarmers/Boparan JV* case, the CMA assessed the markets locally and adopted a geographic market of a [70-80]-mile catchment area around the Parties’ mills.<sup>121</sup>
- 5.14 As set out further in Appendix A, the Parties submitted that they agreed with the approach of adopting an average catchment area as this would likely be more reliable than calculating site or region-specific catchment areas,<sup>122</sup> but noted that (i) the actual geographic market is likely to be significantly wider than [70-80] miles, including because the cost of transporting feed is not significant, and (ii) the competitive constraints imposed by [REDACTED], [REDACTED] and [REDACTED] mills (which are located

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<sup>118</sup> Third party response to the CMA’s RFI 1, 16 December 2024, question 6. Third party response to the CMA’s RFI 1, 17 December 2024, question 5.

<sup>119</sup> Notwithstanding this, as set out in Appendix D, we have included other types of feed in our capacity analysis to reflect the evidence that there is some evidence of supply-side substitution.

<sup>120</sup> This is consistent with the approach taken in the [Phase 1 Decision](#), *ForFarmers/Boparan JV*, and previous decisions. [Completed acquisition by Boparan Private Office, via Amber REI Holdings Limited of Banham Poultry](#), [ME/6975/21] ([Boparan Private Office/Banham](#)), paragraphs 55-57.

<sup>121</sup> CMA, Reference Decision, [ForFarmers/Boparan JV merger inquiry – GOV.UK](#), 15 February 2023, paragraphs 113-114. CMA, Phase 1 Decision, [Boparan / ForFarmers \(Burston and Radstock mills\) merger inquiry - GOV.UK](#), 11 December 2024, paragraphs 116-118. In *ForFarmers/Boparan JV*, regional 80% catchments were calculated based on volume sales and each mill was assigned the catchment corresponding to their region.

<sup>122</sup> FMN, paragraph 12.16; and Parties’ Phase 2 submission in relation to the geographic market, 29 January 2025, paragraph 2.6.

outside of the [70-80]-mile catchment) had been ignored and should be included.<sup>123,124</sup>

- 5.15 As set out in more detail in Appendix E, evidence from competitors indicates that customers are typically located between 30 and 50 miles away from mills in and around East Anglia, although some noted that feed can travel further than this.<sup>125</sup> Two of the competitors located outside of the [70-80]-mile catchment area used in the Phase 1 Decision consider that their mills may compete with some of the Parties' East Anglian mills: one said it may compete with those mills 'at the fringes of their distribution ranges', and another said it competed 'rarely due to distance between the two mills'.
- 5.16 Evidence from customers indicates that proximity of a supplier's mill and cost of transporting feed are important factors in choosing a supplier of poultry feed, and that customers ultimately pay the transport costs associated with transporting feed, with respondents estimating that transport costs account for 3-8% of the total cost of a typical poultry feed order (see Appendix E). One customer indicated that a mill 100 miles away would be far to purchase feed from, but not necessarily prohibitive.<sup>126</sup>
- 5.17 Based on the competitor and customer evidence that the supply of meat poultry feed is local in nature, we calculated customer catchment areas in order to assess the Merger. We consider competitor mills falling within [60-70] miles (the 80% catchment area of the Parties' mills located in East Anglia) of each of ForFarmers' Burston mill, 2Agriculture's Bawsey mill, and 2Agriculture's Stoke Ferry mill. We also considered out-of-market constraints from mills falling outside the catchments in our Competitive Assessment chapter.

### **Provisional conclusion on geographic market**

- 5.18 On the basis of the evidence above, we provisionally consider that the relevant geographic market is local, and assessed the Merger using [60-70]-mile customer catchment areas around the Parties' relevant mills. We discuss our calculation of the relevant local area in more detail in Chapter 6.

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<sup>123</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, page 33-35; and Parties' phase 2 submission in relation to the geographic market, 29 January 2025.

<sup>124</sup> We note that the Parties submitted that the use of catchments creates a binary approach that disregards competitors located outside of it and should be used as a starting point from which to apply a SSNIP test as it is possible that customers located inside the catchment area would respond to a price rise by purchasing goods from suppliers outside the catchment area. As set out in paragraph 6.14, we have considered out-of-market constraints (ie competitors located outside of our calculated catchment area) in our competitive assessment.

<sup>125</sup> This evidence is largely consistent with that found in *ForFarmers/Boparan JV* in which customers indicated that they typically receive feed delivers from 60 miles or less (with nearly half of customer respondents saying that the maximum distance they would be willing to purchase feed from was 75 miles or less) and customers based in East Anglia gave shorter typical distances than customer in other regions. [Anticipated joint venture between ForFarmers N.V. and Boparan Private Office Limited](#), [ME/7007/22] (**ForFarmers/Boparan JV**), footnote 82.

<sup>126</sup> Third party response to the CMA's customer questionnaire, 17 December 2024, question 2. [REDACTED].

## **Provisional conclusion on market definition**

- 5.19 We provisionally conclude that the relevant market is the supply of meat poultry feed locally.

## 6. COMPETITIVE ASSESSMENT

### Introduction

- 6.1 We have investigated two theories of harm, both of which were assessed by the CMA in phase 1:<sup>127</sup>
- (a) First, a theory of harm considering whether the Merger would reduce competition in the supply of meat poultry feed to third-party customers locally because of reduced total and spare capacity, which would allow Boparan to profitably increase its prices, or worsen non-price aspects of its offering (eg quality or service); and
  - (b) Second, a vertical foreclosure theory of harm considering whether the Merger, by reducing competition upstream in the local supply of meat poultry feed to third-party customers locally, would result in Boparan harming the competitiveness of customers who compete with it downstream in the national supply of poultry meat.
- 6.2 We set out our provisional assessment in this section as follows:
- (a) **Theory of Harm 1:** loss of competition in the supply of meat poultry feed to third-party customers locally:
    - (i) A high-level summary of the Parties' main submissions.
    - (ii) Our framework and evidence used to assess Theory of Harm 1, including:
      - (1) Our capacity analysis.
      - (2) Contextual analysis of our capacity figures (including mill utilisation rates, customer purchasing patterns, expectations for future demand for feed and relevant entry and expansion).
    - (iii) Provisional findings on Theory of Harm 1.
  - (b) **Theory of Harm 2:** foreclosure of poultry meat producers in the national supply of poultry meat:
    - (i) A high-level summary of the Parties' main submissions.
    - (ii) Our analysis.

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<sup>127</sup> For the avoidance of doubt, in our investigation we are assessing the phase 1 evidence afresh, together with the evidence gathered in phase 2, and by reference to the phase 2 standard.

- (iii) Provisional findings on Theory of Harm 2.
- (c) Provisional findings of our competitive assessment.

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

### **Parties' submissions**

6.3 As set out in more detail in Appendix A, the Parties submitted that:

- (a) Theory of Harm 1 is an unconventional theory of harm,<sup>128</sup> that is not sufficiently linked to customer outcomes;<sup>129</sup>
- (b) the capacity analysis set out in the Phase 1 Decision underestimates capacity available because it (i) excludes relevant constraints located just outside of the catchment, namely, [X] mill, [X] mill and [X] mill,<sup>130</sup> and (ii) assumes that 2Agriculture would produce [250-300]kT at Burston post-Merger and not the [300-350]kT set out in the March Investment Paper;<sup>131</sup> and
- (c) the capacity analysis set out in the phase 1 decision is a static analysis that does not account for suppliers' ability to increase production.<sup>132</sup>

6.4 Further, Boparan submitted that it is incorrect to assume that Stoke Ferry would be closed post-Merger. Rather, Boparan's intention, based on compelling business reasons, is to continue operating the Stoke Ferry mill (at reduced capacity) and to continue to supply third-party customers post-Merger.<sup>133</sup>

### **Framework and evidence for assessing Theory of Harm 1**

6.5 We consider that the structure of the Merger (ie the transfer of production assets without customer volumes) and the undifferentiated nature of the product is such that it is appropriate to focus our assessment on the impact of the Merger on production capacity.<sup>134</sup> We have therefore assessed whether the Merger may result in a significant reduction in capacity available for the supply of meat poultry feed to third parties, which could limit or remove customers' ability to (credibly

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<sup>128</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, paragraph 5.7.

<sup>129</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, paragraph 1.14.

<sup>130</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, paragraphs 5.28-5.29.

<sup>131</sup> Parties' phase 2 submission in relation to the March 2024 Investment paper, 30 January 2025, paragraph 4.6.

<sup>132</sup> [Parties' response to the Phase 1 Decision](#), 10 December 2024, paragraphs 5.14-5.16.

<sup>133</sup> Parties' response to the Issues Letter, dated 9 October 2024, slide 20.

<sup>134</sup> The CMA has assessed mergers by reference to volumes and capacity before, such as in *Tronox/TTI*. In addition, as set out in [CMA129](#), paragraphs 4.4 and 4.38 capacity might be a relevant factor to consider depending on the specific circumstances of a case.

threaten to) switch and allow the Merged Entity to profitably increase prices (or otherwise worsen its offering).

- 6.6 We have conducted a forward-looking assessment of the change in total capacity for supply of meat poultry feed 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), and (ii) Stoke Ferry and Bawsey (mills within the Burston catchment area which are operated by Boparan). To carry out this assessment, we have taken into account a range of evidence, including capacity data from both Parties and competitors, qualitative evidence from local customers and competitors, as well as the Parties' internal documents, to enable us to model the likely change in capacity post-Merger.
- 6.7 We have used our capacity analysis to estimate the change in both total and spare capacity available to supply third parties in the relevant local markets post-Merger (as set out in Appendix D). We consider that spare capacity is the key metric to assess the impact of the Merger. In largely undifferentiated product markets (see Chapter 4), spare capacity of rivals is important for competition because if rivals have spare capacity, they may be expected to respond to a reduction in volumes by expanding their own production which may prevent an increase in price levels as customers would have alternatives to switch to.<sup>135</sup> Conversely, firms facing capacity constraints may not be able to serve customers switching away from rivals and may provide a less effective constraint.
- 6.8 We have supplemented our capacity analysis with further qualitative evidence from customers, competitors and other third parties on the competitive constraints of mills which have not been included in our capacity analysis, mill utilisation rates, expectations for future demand for feed, expansion plans, and quantitative evidence from 2Agriculture and customers on customer purchasing decisions. We have used this evidence to inform our assessment as to whether the spare capacity remaining post-Merger would be sufficient to facilitate (a credible threat of) customer switching (and so reduce any impact of the Merger on competition).

### **Capacity analysis**

- 6.9 We undertook a capacity analysis to inform our understanding of the total and spare capacity available for the supply of meat poultry feed to third-party customers locally in the counterfactual and post-Merger.
- 6.10 We set out below:
- (a) the mills considered in the analysis;

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<sup>135</sup> [CMA129](#), paragraph 4.38(c).

- (b) our Stoke Ferry post-Merger capacity assumption;
- (c) key results from this analysis; and
- (d) contextual analysis of our capacity analysis.

6.11 Further detail on our capacity analysis is set out in Appendix D.

*Competitor mills considered in the analysis*

- 6.12 As set out in more detail in paragraphs D.4 to D.6 of Appendix D, the starting point for our capacity analysis is to include all competitor mills that produce any amount of meat poultry feed for third parties falling within [60-70]-miles (the 80% catchment area of the Parties' mills located in East Anglia) of each of ForFarmers' Burston mill, 2Agriculture's Bawsey mill, and 2Agriculture's Stoke Ferry mill.<sup>136</sup>
- 6.13 We then considered whether any additional mills should be included in our analysis, in particular having regard to the Parties' submission summarised in paragraph 6.3(b) that there are strong out-of-market constraints. In doing so, we considered customer views on how likely they were to purchase from various mills as set out in Figure 6.1.<sup>137</sup>

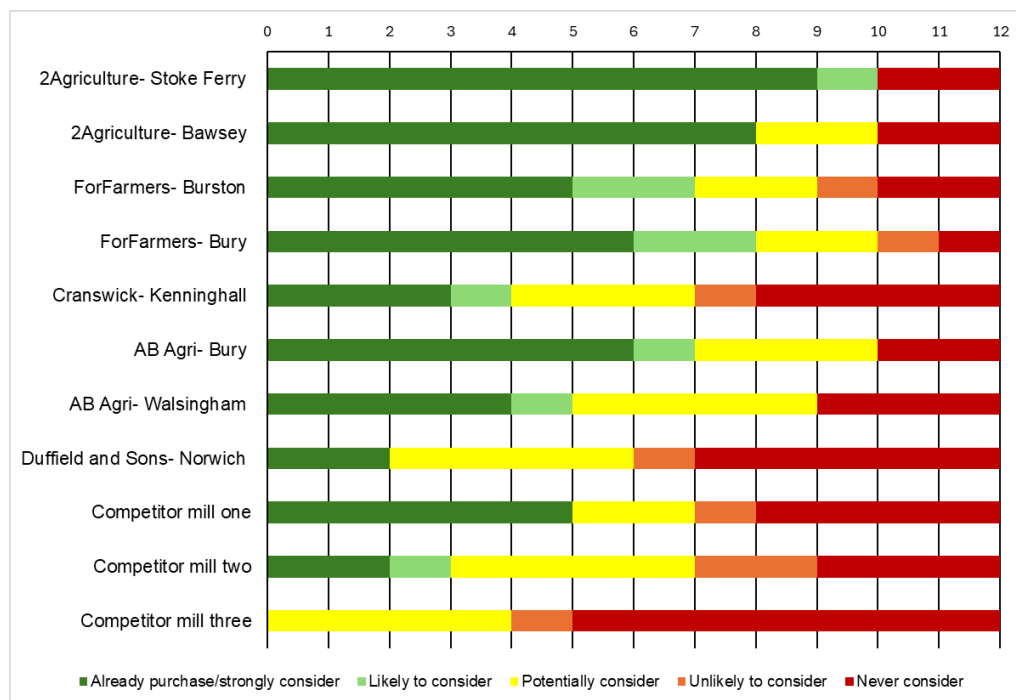
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<sup>136</sup> The use of a regional 80% catchment (as opposed to a national one) is a change in methodology compared to the phase 1 investigation. The evidence and rationale behind this change are explained in Appendix D. In practice, the change has a minimal impact on the competitor set included in our analysis.

<sup>137</sup> As set out in Appendix E, we provided a list of mills based on the mills included in the phase 1 catchment area, plus two mills which the Parties submitted should also be included in the CMA's competitive assessment in response to the [Phase 1 Decision](#). Respondents were also able to add additional mills to the list. Respondents were asked to give each mill a score of between 1 and 5, where 1 indicated they already purchase feed or would strongly consider purchasing feed from this mill, 2 indicated they would likely consider purchasing feed, 3 indicated they would potentially consider, 4 indicated they were unlikely to consider and 5 indicated they would never consider purchasing feed from this mill.



**Figure 6.1 Customer willingness to purchase from alternative mills**



Source: CMA analysis of third party responses to the CMA's customer questionnaire.

#### 6.14 Considering each potential additional mill in turn:

- (a) Competitor mill one – we consider it is appropriate to include this mill in our capacity analysis based on the evidence we have gathered. Around half of customers who responded to us said they currently purchase, or would strongly consider purchasing feed, from [redacted] mill (see Figure 6.1). Further, [redacted] submitted that its [redacted] mill may compete with the Parties' mills 'at the fringes of their distribution ranges' and confirmed that [redacted], driven by the economies of scale associated with the size of the mill. Further, [redacted] is a [redacted].<sup>138</sup> We consider these factors may allow [redacted] to be cost competitive at a further distance. However, we consider including the mill's capacity in full is likely to overstate the constraint that this mill exerts on the Merged Entity given (i) around half of customer respondents said they were unlikely to consider or would never consider purchasing from the [redacted] mill (see Figure 6.1), and (ii) [redacted] considers that its mill only competes with the Parties' mills in East Anglia 'at the fringes of their distribution ranges';
- (b) Competitor mill two – two customers who responded to us said they currently purchase, or would strongly consider purchasing, from [redacted] mill (see Figure 6.1).<sup>139</sup> Around half of customer respondents said they were unlikely to consider purchasing, or would never purchase, from it. We therefore consider that it would exert a weak constraint on the Merged Entity and have

<sup>138</sup> Third Party response to the CMA's competitor questionnaire, 16 December 2024.

<sup>139</sup> One additional customer responded that it would be likely to consider purchasing from [redacted].

excluded it from our capacity analysis but have considered it in our overall assessment below; and

- (c) Competitor mill three – we have excluded this mill from our capacity analysis given that no customer respondent said that they currently purchase, or were likely to consider purchasing, from this mill (see Figure 6.1).

6.15 Our capacity analysis therefore includes (i) competitor mills falling within [60-70] miles of each of ForFarmers' Burston mill, 2Agriculture's Bawsey mill and 2Agriculture's Stoke Ferry mill and (ii) Competitor mill one's capacity. Our capacity analysis takes a binary approach in which the full capacity of a mill is either included or excluded, rather than attempting to weight it. Taken together, our out-of-market assumptions mean that our inclusion of Competitor mill one is likely to overstate the constraint that this mill exerts on the Merged Entity, while excluding competitor mill two is likely to understate the constraint that this mill exerts on the Merged Entity. We take account of these offsetting effects in the overall competitive assessment (paragraphs 6.45 and 6.46).

#### *Stoke Ferry mill post-Merger assumption*

- 6.16 We set out each of the assumptions underlying our capacity analysis in Appendix D. One of the key assumptions relates to the operation of the Stoke Ferry mill post-Merger, which we discuss below in more detail.
- 6.17 As set out in paragraph 1.4, Boparan submitted that its intention was to continue operating the Stoke Ferry mill at reduced capacity and that the majority of Stoke Ferry's feed production post-Merger would be used to supply third-party customers.<sup>140</sup>
- 6.18 As set out in paragraph B.10 of Appendix B, we have reviewed significant internal documentary evidence, predating April 2024 (when the Merger was agreed), which sets out that Boparan's rationale for the Merger was to shut the Stoke Ferry mill and move the volumes currently produced there to the Burston mill. Whilst we have reviewed some internal documentary evidence suggesting that Boparan may keep the Stoke Ferry mill open, most of this evidence (for example, the April Investment paper and evidence from 2Agriculture's MD, as described in paragraph A.24 of Appendix A and paragraph B.11 of Appendix B) was produced while the Merger was in contemplation or for the purpose of the CMA's investigation. Consistent with the CMA's guidance, we have attached more evidentiary weight to internal documents produced in the ordinary course of business, and prior to the time when the Merger was in contemplation.<sup>141</sup>

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<sup>140</sup> Parties' response to the Issues Letter, dated 9 October 2024, slide 20.

<sup>141</sup> [CMA129](#), paragraph 2.29(a)

- 6.19 In addition to this earlier documentary evidence, we note that a strategy of keeping Stoke Ferry open primarily to supply third parties would be inconsistent with data submitted by Boparan in this case which shows that less than [REDACTED]% of the volumes produced at any of its mills were sold to third parties in 2023, except for the Stoke Ferry mill where such volumes were less than [REDACTED]%.<sup>142</sup>
- 6.20 We examined evidence submitted by Boparan on the financial rationale for operating the Stoke Ferry mill at reduced capacity. This included information on the recent financial performance of the mill which Boparan suggested shows an increased incentive to keep the site open, and a forward-looking breakeven analysis which estimated the volumes required to cover the site's costs (described in Appendix A).
- 6.21 We did not consider this analysis to be conclusive on whether Stoke Ferry would remain operational, or at what capacity levels, post-Merger because:
- (a) There have been improvements in financial performance in recent years and the Stoke Ferry mill has been operating profitably ([REDACTED]) since 2022. We note that some of these financial improvements started occurring prior to the internal documents we gathered that state that Boparan plans to close Stoke Ferry if the Merger goes ahead.
  - (b) The improvement in financials reflects a combination of high volumes and some operational efficiency improvements. Boparan is not claiming post-Merger it would be running the Stoke Ferry mill [REDACTED] these volumes (a forecast level of [150-200]kT per annum vs 2024 output of [350-400]kT) so the past financial performance bears little resemblance to the future financial performance of the mill. In addition, one internal document from late 2023 still refers to Stoke Ferry as a [REDACTED] site to run, and that the [REDACTED] are difficult to maintain, which brings into question the sustainability of some of the financial improvements.<sup>143</sup>
  - (c) The breakeven analysis shows volumes of [150-200]kT per annum<sup>144</sup> are required to break even. This analysis is a forward-looking estimate, and due caution must be placed on such analysis especially when we cannot fully verify the inputs. Notwithstanding such caution, the method of calculating the breakeven point is in our view reasonable. However, the cost of repairs appears to be optimistic based on historic performance and in light of the submissions made by Boparan on its plans for a comprehensive maintenance review of the site. In addition, given Boparan claims that the site may have a [REDACTED], future repair costs would be depreciated over a shorter

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<sup>142</sup> CMA analysis of FMN, Table 14.2.

<sup>143</sup> 2Agriculture internal document, Annex 8.003 to the FMN, 7 November 2023, pages 1-4 and 6.

<sup>144</sup> Parties' response to RFI 1, 10 December 2024, Annex 1.

period of time, increasing the cost of running the site over time and thus increasing the volumes required to break even.

- (d) Taking Boparan's claim of [150-200]kT per annum to break even at face value, Boparan is only forecasting to operate the site at [150-200]kT per annum,<sup>145</sup> which is only [X] and would only generate a [X] and leave [X].

6.22 Overall, we consider that there is mixed evidence regarding the operation of Stoke Ferry post-Merger ie whether the mill would be closed or run at reduced capacity. Whilst it is possible that Boparan would continue to operate the mill post-Merger, on balance, we have modelled Stoke Ferry as being closed post-Merger as our most likely scenario (scenario 1). This is because:

- (a) There is extensive documentary evidence outlining 2Agriculture's plans to close Stoke Ferry post-Merger, and doing so was the rationale for the Merger in the original March Investment paper for the board.<sup>146</sup> In contrast to 2Agriculture's submissions that discussion of closure was driven by concerns related to the HSE enforcement notice alone, these documents highlight a range of factors underlying the desire to close Stoke Ferry. These factors include: the investment required at the Stoke Ferry site, the potential value of a sale of Stoke Ferry for housing, and more general environmental, operational and community concerns at the site.<sup>147</sup>
- (b) Whilst operating Stoke Ferry at reduced capacity instead of closing the mill, as suggested by Boparan (including in [X]), could mitigate issues with the site, we have not seen documentary evidence (such as plans or forecasts, or evidence regarding how it has operated the Stoke Ferry or other mills previously)<sup>148</sup> supporting Boparan's submissions regarding the 'sustainable operation' of the Stoke Ferry mill post-Merger.
- (c) Although the financial analysis submitted by Boparan shows improvements in Stoke Ferry's EBITDA, some of these improvements predate documents outlining plans to close the Stoke Ferry mill and the Parties are not proposing to operate the mill at [X] recent volumes, calling into question the usefulness of past financial performance. In addition, as described above, we do not consider the breakeven analysis conclusive in showing that Boparan would have a clear economic rationale to operate the site at reduced capacity (rather than close it).

6.23 In order to conduct a forward-looking assessment, our assumptions seek to capture not just what is likely to happen in the short term post-Merger, where we

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<sup>145</sup> Parties' initial substantive meeting slides, 19 December 2024, slide 33.

<sup>146</sup> 2Agriculture internal document, Annex 8.004 to the FMN 14 March 2024. This document states that volumes would be transferred from the Stoke Ferry mill to Burston [X], [X] the mill.

<sup>147</sup> See Appendix B, paragraph B.10.

<sup>148</sup> See discussion in the Counterfactual chapter, paragraph 3.29.

consider the Stoke Ferry mill could remain open for a period of time to facilitate the transfer of volumes from the Stoke Ferry mill to the Burston mill as set out in paragraph B.10(f), but also what is likely to happen following this transition period, where we provisionally consider, on balance, it would be closed. For the reasons explained above, we have modelled Stoke Ferry as being closed post-Merger in the most likely scenario of our capacity analysis.

### Capacity analysis results

6.24 As set out in paragraph D.32 of Appendix D, we have modelled two scenarios. The key difference between the scenarios is how Stoke Ferry is operated post-Merger. As set out above, we provisionally consider that **scenario 1** (in which Stoke Ferry is closed post-Merger) is the most likely scenario, but we have also considered the impact of the Stoke Ferry mill operating at reduced capacity post-Merger in **scenario 2** given some evidence suggesting reduced operation of Stoke Ferry post-Merger is possible. Table 6.1 sets out the results of our capacity analysis.

**Table 6.1: Capacity analysis results**

6.25	Counterfactual		Post-Merger		6.26	6.27
	Total capacity	Spare capacity	Total capacity	Spare capacity	Change in total capacity for supply to third-parties post-Merger	Change in spare capacity for supply to third-parties post-Merger
Scenario 1	[1,250-1,300]kT	[400-450]kT	[1,250-1,300]kT	[200-250]kT	-[0-50]kT (-[0-5]%)	-150-200]kT (-[40-50]%)
Scenario 2	[1,250-1,300]kT	[400-450]kT	[1,300-1,350]kT	[350-400]kT	[50-100]kT ([0-5]%)	-[0-50]kT (-[0-10]%)

Source: Our estimates using Parties' and third parties' data.

6.28 We note that our most likely scenario (scenario 1), results in less total and spare capacity being available for the supply of meat poultry feed to third-parties post-Merger compared to scenario 2 (in which the Stoke Ferry mill remains open at reduced volumes). Modelling the Stoke Ferry mill as closed post-Merger is therefore illustrative of the potential effects of the Merger under less favourable assumptions regarding its potential impact on competition.

### Contextual analysis of capacity figures

6.29 In the scenario we have modelled as most likely (in which the Stoke Ferry mill closes), spare capacity to supply third parties is reduced to [200-250]kT post-Merger, compared with [300-350]kT in the counterfactual. To understand the likely impact of this reduction in spare capacity on the strength of competition, below we have analysed the following factors to contextualise our capacity results detailed above:

- (a) mill utilisation rates.

- (b) customer purchasing patterns.
- (c) expectations for future demand of feed.
- (d) entry and expansion.

### **Mill utilisation rates**

- 6.30 As set out in detail in paragraphs E.21 and E.22 of Appendix E, we have gathered qualitative evidence from mill operators on their mill utilisation rates. We consider this evidence here in order to gauge the feasibility of the utilisation rates we have estimated post-Merger; if in practice mill operators found it difficult to maintain the utilisation rates we have estimated, we could expect available spare capacity to be lower than our estimates. In addition, if utilisation rates are at the maximum (or maximum optimal level), suppliers may not be incentivised to supply them.
- 6.31 We have calculated what the capacity changes in Table 6.1 mean for overall mill utilisation<sup>149</sup> across our competitor set. In both scenarios, mill utilisation in the counterfactual is 81% whilst in:
- (a) Scenario 1: mill utilisation is 86% post-Merger; and
  - (b) Scenario 2: mill utilisation is 79% post-Merger.
- 6.32 Mill operators,<sup>150</sup> including ForFarmers,<sup>151</sup> optimum mill utilisation rate is between 90-100%, which is higher than the mill utilisation we have estimated post-Merger, which indicates that our estimates of utilisation would be achievable.
- 6.33 The Parties and their competitors had mixed views on the impact of seasonality and breakdowns on the capacity of their mills:
- (a) Regarding seasonality, several competitors indicated that this has minimal impact on the capacity of their mills.<sup>152</sup> However, two operators indicated that they each retain some capacity at a mill included in our competitor set to serve seasonal demand:
    - (i) 2Agriculture submitted that its Bawsey mill has approximately [0-50]kT of unused capacity which is retained to supply its in-house demand for turkey feed (the feed type predominantly produced by 2Agriculture's Bawsey mill).<sup>153</sup>

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<sup>149</sup> Total volumes supplied divided by total capacity.

<sup>150</sup> See paragraph E.21 of Appendix E.

<sup>151</sup> ForFarmers, Phase 1 Issues Meeting, 9 October 2024, paragraph 13:40.

<sup>152</sup> Third party response to the CMA's RFI 1, 16 December 2024, question 8 and 10. Third party response to the CMA's RFI 1, 12 December 2024, question 7. Third party response to the CMA's RFI 1, 16 December 2024, question 8 and 10. Third party response to the CMA's RFI 1, 17 December 2024, question 10.

<sup>153</sup> 2Agriculture response to the CMA's s109 notice 1, 20 December 2024, question 4.

(ii) A competitor stated that to account for seasonality at its [X] mill, [0-50]kT per annum of capacity is left spare.<sup>154</sup>

(b) Regarding breakdowns, three mill operators indicated that breakdowns mean that they cannot operate their mills at full capacity.<sup>155</sup> One competitor told us that at [X] mills (mills within our catchment area), the potential impact of breakdowns reduces operational capacity by between [10-20]kT and [20-30]kT [X] over the course of a year.<sup>156</sup>

6.34 We therefore consider that the spare capacity results set out in Table 6.1 are likely to overestimate the level of remaining spare capacity for third-party supply as some spare capacity would be allocated to seasonal demand and lost or unavailable due to breakdowns.

### Customer purchasing patterns

6.35 To help assess customers' ability to (credibly threaten to) switch between mills, following the reduction in spare capacity as a result of the Merger as set out in Table 6.1, we have considered the following factors relating to customer purchasing patterns:

(a) the size of customer purchases; and

(b) the extent to which customers purchase from multiple feed mills.

6.36 To understand customer purchasing patterns, we have analysed evidence from two data sources: (i) data from Boparan on the contracts it holds with third-party customers for each mill it operates in East Anglia (**Boparan contract data**);<sup>157</sup> and (ii) data provided by customers<sup>158</sup> on the total volume of different types of poultry feed they purchased from individual East Anglian mill(s) (**Customer data**).<sup>159</sup>

6.37 As set out in Table 6.2, the mean volume of feed purchased per customer at a given mill per year is [0-10]kT using the Boparan contract data and [0-10]kT using the Customer data.<sup>160</sup> Both datasets also indicate a significant range of volumes

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<sup>154</sup> Third party response to the CMA's RFI 1, 16 December 2024, question 12.

<sup>155</sup> Third party response to the CMA's RFI 1, 16 December 2024, question 8 and 10. Third party response to the CMA's RFI 1, 17 December 2024, question 10. Third party response to the CMA's RFI 1, 16 December 2024, question 12.

<sup>156</sup> Third party response to the CMA's RFI 1, 16 December 2024, question 12.

<sup>157</sup> We asked: 'please provide details of the third-party customer contracts you supplied in December 2023-November 2024, from each of your mills in East Anglia and your Billingham mill'. Boparan's response to S109 1, 20 December 2024, question 8.

<sup>158</sup> As is set out in Appendix E, the CMA contacted the largest customers (by volume of feed sold) located within the catchment area around the Burston mill for both Boparan and ForFarmers.

<sup>159</sup> The CMA asked customers to 'list your top five suppliers of poultry feed in East Anglia, in 2024 by volume including location of mill [...], indicate which type of poultry feed you purchased from each supplier [...], indicate the volume of poultry feed in kilo tonnes (kT) you purchased from each supplier and the total volume of poultry feed purchased from all suppliers [...] in 2024'. Third Parties responses to the CMA's customer questionnaire, December 2024, question 1. Third party responses to the CMA's customer questionnaire, January 2025, question 1.

<sup>160</sup> As set out in Appendix E, our customer respondents are typically larger customers, so we would expect this figure to be higher than the Boparan dataset.

being purchased at a given mill per year with the smallest volumes being below [X]kT, and the largest being around [X]kT.

**Table 6.2: Volume of poultry feed purchased per customer, 2024**

Poultry feed purchased per customer	(kT)	
	Boparan contract data	Customer data
Mean per mill	[0-10]	[5-10]
Mean total	-	[10-20]
Range per mill	[0-5]-[20-30]	[0-5]-[10-20]
Range total	-	[0-5]-[50-100]
Mean number of mills used	-	[0-5]

Source: CMA analysis of (i) Boparan contract data and (ii) Customer data

6.38 We have also analysed customer data on the number of mills that a customer purchases poultry feed from in East Anglia. The mean number of mills customers purchased from in 2024 was [0-5], with customers purchasing from between one and five different mills throughout the year. The mean total volumes of feed purchased per customer (ie across all mills that a customer purchased from) was around [0-50]kT in 2024. The largest customer in our sample purchased over [50-100]kT of feed across all mills in the same year.<sup>161</sup>

6.39 In comparison to the estimated amount of spare capacity remaining post-Merger as set out in Table 6.2, we consider that the average volumes purchased at a given mill is relatively small. Further, customers tend to purchase from multiple mills which indicates that the cost of switching (or purchasing slightly more volumes from a given mill) are likely to be relatively low.

### Expectations for future demand for meat poultry feed

6.40 The evidence we gathered relating to future demand for poultry and pig feed indicates that this is likely to increase or stay the same in future:

- (a) As set out in Appendix A, the Parties expect demand for meat poultry feed to increase in the coming years.<sup>162</sup>
- (b) As set out in Appendix E, almost all competitors submitted that they expect demand for meat poultry feed, layer poultry feed and pig feed in East Anglia to either increase, or stay the same, in future.
- (c) According to OECD estimates, poultry production in the UK is forecast to increase by 7% from 1,985kT to 2,124kT between 2021-23 and 2028.<sup>163</sup>

<sup>161</sup> CMA analysis of customer data: Third party responses to the CMA's customer questionnaire, December 2024, question 1. Third party responses to the CMA's customer questionnaire, January 2025, question 1.

<sup>162</sup> See also Boparan internal document, Annex 16.001 to the FMN, '2Agriculture Strategic Growth Plan', April 2023, page 6. which notes that 'a projected rise in per capita consumption of poultry meat is resulting in higher demand 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 [0-50%] increase in the demand for chicken meat volumes over the next 10 years'.

<sup>163</sup> OECD Agricultural outlook: United Kingdom, <https://www.agri-outlook.org/countries/GBR.pdf>, page 2.



Increased poultry production can be expected to be accompanied by a corresponding increase in demand for poultry feed.

- 6.41 Future demand for meat poultry feed is generally expected to stay the same or moderately increase year-on-year which indicates that the spare capacity estimates set out in Table 6.2 are likely to overestimate spare capacity going forward. As set out in paragraph 6.42 we consider that at least some of this will be offset by production expansion plans in the sector in the short-term.

### Entry and expansion

- 6.42 With regards to the Parties' submission in paragraph 6.3(c), we note that our capacity analysis is based on the technical capacity of mills (ie their effective maximum capacity rather than what they are currently producing), meaning we take into account operators' ability to increase production without the need to make any additional investment.
- 6.43 In addition, we have considered whether there will likely be any new entry or expansion in the supply of meat poultry feed to third-party customers locally (ie in East Anglia). Third-party evidence relevant to entry and expansion is discussed in detail in paragraphs E.7 and E.23 to E.25 of Appendix E.
- 6.44 We have not received any evidence suggesting that there will be new entry<sup>164</sup> in the supply of meat poultry feed locally in and around East Anglia in the short- to medium-term.
- 6.45 As set out in Appendix E, we consider that the expansion plans for two mills within our local areas are too far away and uncertain for us to include in our assessment. [REDACTED],<sup>165</sup> and the other does not yet have planning permission and expects it to be at least [REDACTED] years away from completion.<sup>166</sup> Further, we consider that the time horizon for Boparan to develop its Snetterton mill is too far in the future for us to include in our assessment.<sup>167</sup> However, [REDACTED] suppliers in our competitor set have plans to expand the technical capacity available at their mills by a combined total of [0-50]kT per year in the short-term.<sup>168</sup> As mentioned in paragraph 6.38, we consider this expansion in capacity will be offset by an increase in demand year-on-year in the future.

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<sup>164</sup> Including new entry by either (i) a new supplier or (ii) the construction of a new mill from an existing supplier.

<sup>165</sup> Appendix E, paragraph E.23(b).

<sup>166</sup> Appendix E, paragraph E.23(c).

<sup>167</sup> Appendix A, paragraph A.39.

<sup>168</sup> Third party response to the CMA's RFI 1, 16 December 2024, question 13. Third party response to the CMA's RFI 1, 9 January 2025, question 7. Third party response to the CMA's follow-up question, 16 January 2025. ForFarmers' response to the CMA's RFI 1, 10 December 2024, question 13.

## Provisional conclusion on Theory of Harm 1

- 6.46 Our provisional conclusion is that sufficient spare capacity for the supply of meat poultry feed to third parties will remain post-Merger in the local markets we have analysed to facilitate (a credible threat of) customer switching.
- 6.47 While our capacity analysis indicates that the Merger may lead to a significant ([40-50%]) reduction in the level of spare capacity available to supply third parties, we note that our analysis also suggests that sufficient spare capacity will remain post-Merger, with a mill utilisation rate of [50-100%].
- 6.48 We consider that there are several factors that could mean that actual spare capacity available post-Merger is higher or lower than our estimate of [200-250]kT. Considerations that could mean actual spare capacity post-Merger would be lower than our estimate include:
- (a) Competitor mill one was not identified as a viable alternative by all customers, with some responses indicating that they would not be able to source feed from this mill (see paragraph 6.14(a));
  - (b) seasonal demand and breakdowns mean that mill operators cannot operate their mills at 100% capacity over the course of a year. We consider it would therefore be incorrect to assume that the full estimate of spare capacity is available to serve third-party customers (see paragraphs 6.30(a) and 6.30(b)); and
  - (c) future demand for meat poultry feed in East Anglia is expected to grow, at a moderate rate, year-on-year.
- 6.49 However, we also note that there are several factors which could work in the other direction to push up the available spare capacity, relative to our estimate, in the relevant local markets post-Merger:
- (a) competitor mill two has been excluded in our capacity analysis but was identified as a viable alternative by a few customers (see paragraph 6.14(b)) and we therefore consider that it would provide some constraint on the Merged Entity;
  - (b) [redacted] suppliers have plans to expand the technical capacity available at their mills by [0-50]kT (in aggregate) per year in the short-term; and
  - (c) as set out in paragraph D.22 of Appendix D, there is a possibility that technical capacity at the Burston mill could be [0-50]kT higher in the post-Merger situation than what we have modelled, if 2Agriculture were able to raise production to [300-350]kT as it expects to.

- 6.50 Taking all of the above in the round, we provisionally consider that the spare capacity that is likely to remain post-Merger will be sufficient to facilitate (credible threats of) customer switching in the context of:
- (a) customer purchasing patterns (see paragraph 6.36), which show that the size of the average customer purchase (and even Boparan's largest customer purchase) is many multiples smaller than our estimate of the spare capacity post-Merger;
  - (b) mill utilisation rates (see paragraph 6.29), which indicate mill operators would have both the capacity and the incentive to supply increased volumes to optimise production at their mills; and
  - (c) the amount of spare capacity set out in Table 6.1 exceeds the current level of third-party supply ([100-150]kT) by Boparan in the local area in 2024.
- 6.51 We provisionally find that the Merger may not be expected to result in an SLC in supply of meat poultry feed to third-party customers locally.

## **Theory of Harm 2: Foreclosure of poultry meat producers nationally**

### **Parties' submissions**

- 6.52 As set out in paragraphs A.52 to A.59 of Appendix A, the Parties submitted that 2Agriculture would not have the ability or incentive to foreclose Boparan's rivals (including both growers and processors) in the supply of poultry meat in the UK. Further, even if Boparan did have the ability or incentive to foreclose rivals, only 3% of UK poultry suppliers could potentially be affected by a foreclosure strategy.<sup>169</sup>

### **Framework and evidence for assessing foreclosure**

- 6.53 In assessing a vertical input foreclosure theory of harm, our guidelines set out three cumulative conditions that need to be satisfied in order to establish an SLC:<sup>170</sup> whether the merged entity would have the ability to foreclose rivals; whether it would have the incentive to do so, and what effect the foreclosure would have, that is, whether foreclosure of rivals would substantially lessen competition.
- 6.54 In our assessment below, we examine whether Boparan would have the ability to foreclose its rivals (including both growers and processors) in the supply of poultry meat in the UK by reducing the competition upstream in the supply of meat poultry

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<sup>169</sup> Vertically integrated suppliers of poultry in the UK account for 87% of the market and would therefore be unaffected by a foreclosure strategy. Moreover, a foreclosure strategy would have no effect on non-integrated suppliers (estimated to be 80%) located outside of East Anglia meaning a further 10% (80% of 13%) of the UK poultry market is unaffected by a foreclosure strategy.

<sup>170</sup> [CMA129](#), paragraph 7.10.

feed to third parties locally (as a result of reduced spare capacity available as set out in Theory of Harm 1).

### **Ability**

- 6.55 As set out in our assessment of Theory of Harm 1, we provisionally conclude that the Merger would not result in an SLC through a significant reduction in total or spare capacity for supply of meat poultry feed to third parties locally (in the local areas around the Burston, Stoke Ferry and Bawsey mills). We provisionally conclude that adequate spare capacity for local supply to third parties will remain post-Merger (see paragraph 6.47).
- 6.56 We therefore provisionally conclude that Boparan would not have the ability to foreclose rival suppliers (including both growers and processors) of poultry meat in the UK as a result of the Merger.
- 6.57 Since we have provisionally concluded that the Merged Entity would not have the ability to foreclose, we do not proceed further with the analysis.

### **Provisional conclusion on Theory of Harm 2**

- 6.58 We provisionally find that the Merger may not be expected to result in an SLC in the supply of poultry meat in the UK as a result of input foreclosure.

## **7. PROVISIONAL CONCLUSIONS**

7.1 As a result of our assessment, and based on the evidence that is set out above and in the appendices to this Interim Report, we have provisionally concluded that:

- (a) arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation in respect of the acquisition of a controlling interest in the Burston and Radstock mills by Boparan (via 2Agriculture), and
- (b) the creation of that relevant merger situation may not be expected to result in an SLC in the supply of meat poultry feed to third-party customers locally, or in the supply of poultry meat in the UK.

## 8. NEXT STEPS IN THE PROCESS

- 8.1 This is not our final decision on the statutory questions, and we invite any interested parties to make representations to us on these provisional findings by no later than **5pm on Tuesday 11 March 2025**. We will consider submissions received in response to this Interim Report, along with any further evidence received following the Interim Report, and whether our provisional assessment should be altered in the light of these.<sup>171</sup>

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<sup>171</sup> [CMA2](#), paragraphs 11.61-11.63.