

ME/7106/24 – Anticipated acquisition by Boparan (via 2Agriculture limited) of ForFarmers UK Limited's Burston and Radstock feed mills

Response of the Parties to the Phase 2 Interim Report

5 March 2025

1. Introduction

- 1.1 On 18 February 2025, the CMA published its Interim Report (**IR**) in relation to the anticipated acquisition by Boparan (via 2Agriculture) of ForFarmers' Burston and Radstock feed mills (**the Merger**). The IR provisionally concluded that the Merger 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.
- 1.2 The Parties welcome the CMA's provisional conclusion that the Merger may not be expected to result in an SLC. This submission sets out the Parties' observations on certain aspects of the IR and demonstrates that when these factors are taken in to account, the provisional conclusion that the Merger may not be expected to result in an SLC is even more compelling.

2. The Burston mill in the counterfactual scenario

- 2.1 The IR concludes that "*the most likely counterfactual is one where the Burston mill is sold to [X], and it prioritises the capacity of the Burston mill to meet its internal feed demands*".¹ The Parties agree with this conclusion and note that it is consistent with information ForFarmers received from [X] during the Burston sale process.²
- 2.2 It is also clear that [X] putative strategy to win customers would have been unsuccessful. As explained at paragraph 3.15(c) of the IR [X] stated that "... *it was confident that there would be local demand for third party supply, as certain ForFarmers customers would likely wish to continue to be supplied from Burston rather than transferring to ForFarmers' mill in Bury*" and "[X] *told us that it was quite confident that it would have been able to convince some existing Burston customers to switch to [X] supply*".³ However, it is clear that there are insufficient customer volumes at Burston to accommodate [X] strategy which anticipated filling [X]% of the Burston mill with third party volumes. In particular, in 2024 the Burston mill supplied [100-150]kT of pig feed, of which [X] was supplied to [X]([0-50]kT), and to [X]([0-50]kT). As a result there would be only [0-50]kT of third party pig feed produced at the Burston mill which [X] could seek to retain.

3. The IR's approach to geographic market definition

- 3.1 The IR has adopted a [60-70] mile catchment area on the basis of an East Anglia specific 80th percentile catchment area, and has excluded competitors outside this area (with the

¹ Interim Report, paragraph 3.47.

² Parties' Response to the Phase 1 Decision, paragraphs 3.3.

³ Interim Report, paragraph C.15.

exception of [3<]). This approach is inconsistent with the Parties' submissions and the third party evidence set out in the IR, as well as the CMA's findings in similar cases.

The use of an East Anglia specific catchment area

- 3.2 Although the IR has adopted an East Anglia specific catchment area, no compelling evidence is presented to support this approach. In particular:
- (a) the IR refers to evidence from the *ForFarmers/Boparan JV* phase 1 decision as indicating that "*customers located in East Anglia have a lower willingness to source feed over greater distances, compared to customers located in other regions*".⁴ The evidence identified in the IR refers to the "*typical distance feed is transported*",⁵ but says nothing about the willingness of customers to source feed over greater distances;
 - (a) evidence from third parties shows that the reason feed travels across shorter distances in East Anglia is due to the geography of the region and has nothing to do with the willingness of customers to pay. In particular, [3<] noted that: "*East Anglia is more densely populated for intensive agriculture meaning average delivery distances are lower in East Anglia than in other parts of the UK*";⁶ and
 - (b) the IR notes that the current investigation is considering one local area, rather than multiple regions, and that it is therefore appropriate to use East Anglia specific catchment areas.⁷ However, this is inconsistent with the CMA's guidelines and precedent which point to using a national average catchment area (where data is available).⁸

The Interim Report does not consider the 'SSNIP test'

- 3.3 Low transport costs mean that customers would be able to source feed from much further away in response to a hypothetical SSNIP. In this connection, it is clear that the market for meat poultry feed is characterised by low transport costs:
- (a) as previously explained, the cost of transporting feed an additional ten miles is approximately £[0-10] per tonne, which accounts for just [0-5]% of the typical price of a tonne of feed;⁹ and
 - (b) the IR states that third parties estimate that in total "*transport costs account for 3-8% of the total cost of a typical poultry feed order*".¹⁰

⁴ Interim Report, paragraph D.5(b)

⁵ ForFarmers / Boparan JV Phase 1 Decision, footnote 82.

⁶ Interim Report, paragraph E.18(d)

⁷ Interim Report, paragraph D.5(c)

⁸ CMA Retail Mergers Commentary, CMA62, paragraph 2.21 – 2.22

⁹ Parties' Phase 2 Submission in relation to the Geographic Market, Tables 5.1-5.2

¹⁰ Interim Report, paragraph E.4

- 3.4 The IR does not apply a SSNIP test, nor does it consider the impact of a hypothetical 5-10% price increase in the context of such low transport costs. As the Parties have previously submitted, catchment areas should be used as a starting point on the basis of which to apply a SSNIP test.¹¹

Competitor 2 ([X]) should be included in the capacity analysis

- 3.5 The IR concludes that [X] "would likely exert a weak constraint on the Merged Entity" and excludes capacity at the site from the capacity analysis that is undertaken.¹² However, this approach understates the competitive constraint imposed by [X].
- 3.6 First, customers' responses confirm that [X] provides a competitive constraint. For example, 25% of respondents said that they either already purchase feed from [X], would strongly consider it, or would likely consider it (this is a higher proportion than Duffield Norwich which is within the catchment area and is included in the IR's capacity analysis).¹³ Moreover, a further 33% of respondents said that they would potentially consider buying feed from [X] (which is the relevant response in considering the SSNIP test).
- 3.7 Second, [X] own response that it does not compete with Stoke Ferry or Bawsey is based on the incorrect assumption that "it views them as exclusively integrated". [X] expressly stated that "if these mills became less integrated in future they may become a competitor for its [X] mill in the [X] area".¹⁴ As the Stoke Ferry mill is not exclusively integrated and currently supplies customers in the [X] area,¹⁵ it clearly competes with the [X] mill.
- 3.8 Third, the conclusions in relation to [X] set out in the IR fail to address the submissions made by the Parties.¹⁶ For example, the IR does not consider the fact that [X]% of Stoke Ferry's customers are located closer to [X] than they are to the Stoke Ferry mill, and that all of Stoke Ferry's third party customers would have the incentive to switch to [X] in response to a hypothetical SSNIP of 5% at Stoke Ferry.

Additional out of market constraints have not been considered

- 3.9 Whilst the IR recognises the 'out of market constraint' from [X], it fails to recognise additional 'out of market constraints' that should be taken into account:
- (a) [X] stated that it transports feed up to 100 miles (i.e. much further than the [X] miles to Stoke Ferry). In addition, as previously submitted, [X]% of Stoke Ferry's customers are closer to [X] than to Stoke Ferry, and all of Stoke Ferry's customers could profitably switch to [X] following a SSNIP at Stoke Ferry.¹⁷

¹¹ Parties' Phase 2 Submission in relation to the Geographic Market, paragraph 3.4.

¹² Interim Report, paragraph D.9

¹³ Interim Report, figure 6.1

¹⁴ Interim Report, paragraph E.19(c)

¹⁵ Parties' Phase 2 Submission in relation to the Geographic Market, page 24.

¹⁶ Parties' Phase 2 Submission in relation to the Geographic Market, paragraph 6.15(a)-6.15(c)

¹⁷ Parties' Phase 2 Submission in relation to the Geographic Market, paragraphs 6.15(a)-6.15(c)

- (b) The IR's analysis excludes [X] mill. However, [X] stated that "*customers for its [X] mill are largely in East Anglia, and customers for its [X] mill are in the South East and East Anglia. It said the catchment for the [X] mill is wider and noted there is insufficient demand in [X] to fill the capacity of the [X] mill so the feed needs to travel further to service customers to fill the mill*".¹⁸ As [X] is already supplying customers in East Anglia, it must place a competitive constraint on 2Agriculture in East Anglia.

4. Capacity analysis

The IR's capacity analysis is conservative

- 4.1 The Parties agree with IR's conclusion that sufficient capacity (including spare capacity) would remain in East Anglia post-Merger such that an SLC would not be expected to arise. However, the capacity analysis in the IR is conservative in a number of respects:
- (a) as explained previously,¹⁹ 2Agriculture intends to keep Stoke Ferry open post-Merger. Accordingly, scenario 1 is an unduly conservative assessment and Scenario 2 is the most appropriate assessment of the likely available spare capacity;
 - (b) third party capacity in the counterfactual is overestimated. As explained previously,²⁰ in order to protect the wider Boparan group's commercial interests, and reduce the risk of serious breakdowns, 2Agriculture would be forced to reduce production at the Stoke Ferry mill by [X] (i.e. in [X] time). The relevant counterfactual is therefore one in which 2Agriculture (i) is forced to reduce volumes at Stoke Ferry; and (ii) prioritises in-house demand as it would have insufficient capacity to continue to supply third parties in addition to its in-house requirements;
 - (c) in the post-Merger scenario, the IR underestimates the amount of capacity that would be available to third parties by assuming total capacity at Burston to be [X]kT (rather than [300-350]kT, which is clearly set out in the March Investment Paper and underlying spreadsheet models²¹). This results in an underestimate of third party capacity by [X]kT in both scenarios 1 and 2;
 - (d) as explained above, the capacity analysis does not include [X], despite the evidence indicating that it provides an effective competitive constraint;
 - (e) the capacity analysis excludes other out-of-market constraints, in particular from [X] and [X];

¹⁸ Interim Report, paragraph E.18(b)

¹⁹ Parties' Response to the Phase 1 Decision, section 4.

²⁰ Parties' Response to the Phase 1 Decision, paragraph 3.15

²¹ Parties' Response to the Phase 1 Decision, paragraph 4.7.

- (f) the capacity analysis excludes additions to capacity that are already underway including (i) the [X]kT of capacity that ForFarmers is adding at Bury during 2025; and (ii) an additional [X];²²
- (g) the capacity analysis also excludes a number of planned capacity expansions. These expansion plans are important in the context of any future increases in demand – it is clear that if demand does increase in East Anglia, suppliers are ready and able to respond by increasing supply.
 - (i) [X] has plans to expand its [X] mill by [X]kT; ²³
 - (ii) [X] has plans to increase its capacity at [X] by [X]kT by [X];²⁴
 - (iii) [X] has submitted a pre-planning application for a new processing facility within the catchment area that would include a [X]kT feed mill;²⁵
 - (iv) [X] is considering constructing a [X];²⁶ and
 - (v) one customer ([X]) is looking to in-source (layer feed), which would free up capacity in the area.²⁷

The IR's capacity analysis needs to be considered in the context of 2Agriculture's plans

- 4.2 Notwithstanding the IR's cautious approach, the results of the spare capacity analysis also need to be considered in the context of the third party volumes that 2Agriculture intends to supply post-Merger compared to the third party volumes that it currently supplies.
- 4.3 As explained previously to the CMA,²⁸ the March Investment Paper shows that closing Stoke Ferry (i.e. scenario 1) would result in 2Agriculture being unable to serve only [0-50]kT of the volumes that it currently supplies to its third party customers (with all third party customers being supplied in the April Investment Paper – i.e. scenario 2). The amount of spare capacity available post-Merger (even on the CMA's overly-cautious approach adopted in scenario 1) is therefore several multiples greater than the reduction in third party supply assumed in the March Investment Paper.

²² Interim Report, paragraph E.23(a)

²³ Interim Report, paragraph E.23(d)

²⁴ Interim Report, paragraph E.23(e)

²⁵ Interim Report, paragraph E.23(c)

²⁶ Interim Report, paragraph E.23(b)

²⁷ Interim Report, paragraph E.7

²⁸ Parties' Phase 2 Submission in relation to the March 2024 Investment Paper, section 2.