CMA
Competition & Markets Authority

Completed transaction relating to Pork Farms and Kerry Foods' chilled savoury pastry business

ME/6472/14

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 17 December 2014. Full text of the decision published on 6 February 2015.

Please note that [✂] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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SUMMARY

1. **Pork Farms Limited** (**Pork Farms**) operates a chilled savoury pastry (CSP) business supplying the food retail sector under brands and retailers' own label in the United Kingdom (UK).

2. **Kerry Foods Limited** (**KFL**) operates 13 manufacturing facilities throughout the Republic of Ireland and the UK. The CSP unit of KFL (the Target) has two sites in the UK and supplies CSP products into the food retail sector under brands and retailers' own label in the UK. The Target and Pork Farms are jointly referred to as 'the Parties' in this decision.

3. **Kerry Group plc** (with its group of companies referred to as Kerry) is an international food corporation comprising a wide range of businesses involved in ingredients, agriculture and consumer food products.

4. The transaction involves the acquisition by the owner of Pork Farms, Poppy Acquisitions Limited (Poppy) of the Target. Simultaneously Kerry acquired a stake in Poppy. This is jointly referred to as 'the Transaction' in this decision. The Transaction completed on 17 August 2014.

5. The Competition and Markets Authority (CMA) considers that, as a result of the Transaction, Pork Farms and the Target have ceased to be distinct. The UK turnover of the Target exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied.

6. The CMA also considered whether as a result of the Transaction Kerry acquired material influence in Poppy such that it ceased to be distinct from Poppy, including Pork Farms. However, since the CMA did not find significant competition concerns in relation to any overlap between Kerry and Poppy, it did not need to conclude on this point.

7. The Parties overlap in the manufacture and supply of CSP products in the UK within the following segments:

   (a) hot pies;

   (b) sausage rolls, pasties and slices;

   (c) cold pies; and

   (d) quiches.

8. Kerry and Pork Farms overlap in the supply of CSP products in the UK within the following segments:

   (a) In Northern Ireland, all CSPs but in particular sausage rolls.

   (b) Scotch and savoury eggs.

9. The CMA considered the impact of the Transaction in the UK in the segments listed above. Also, as the CMA could not exclude the possibility that the supply of sausage rolls should be considered as a separate frame of reference, it considered the impact of the Transaction in this segment separately from pasties and slices. In each segment the CMA distinguished between the supply of branded and own-label products, and between the supply to large grocery retailers and convenience retailers.

10. **Cold pies.** The CMA found that the merged entity will have significant shares of supply in the UK in the following segments:

(a) Own-label grocery: [35–45]%.

(b) Branded grocery: [45–55]%.

(c) Convenience: [35–45]% – [55–65]%.

The merged entity will be the largest producer in each segment and face competition from only two significant competitors (and only one in the convenience segment). The CMA found that, for the majority of recent contracts in the cold pie segment, no other competitor outside of these three or four manufacturers was considered. Third parties told the CMA that the Parties were close competitors to each other and to the two other competitors in the market and did not mention another manufacturer as a potential competitor.

11. **Sausage rolls, pasties and slices.** The CMA found that the merged entity will have significant shares of supply in the UK in the following segments:

(a) Own-label grocery: [45–55]%.

(b) Convenience: [15–25]% – [35–45]%.

12. In addition, if sausage rolls are considered separately, the CMA found that the merged entity will have significant shares of supply in the UK in the following segments:

(a) Own-label grocery: [65–75]%.

(b) Branded grocery: [45–55]%.

(c) Convenience: [35–45]%.[1]

13. Whether considering sausage rolls alone or together with pasties and slices, the merged entity will be the largest producer in the own-label segment and will likely be the largest producer in the convenience sector. In addition, it will be the largest producer in the branded segment for sausage rolls. Across these products, the merged entity will face competition from only two significant competitors. The CMA found that, for the majority of recent contracts in these segments, no other competitor outside of the four

[1] Pork Farms did not supply a separate breakdown of figures for van sales in the sausage rolls convenience segment. The CMA is unable to estimate the lower end of the range of the Parties' share of supply in this segment.

manufacturers was considered. Third parties told the CMA that the Parties were close competitors to each other and to the two other competitors in these segments and did not mention another manufacturer as a potential competitor.

14. **Hot pies.** The CMA found that the merged entity will have a [35–45]% share of supply in the own-label grocery segment and will face competition from only one other main competitor. The CMA found that, for the majority of contracts in this segment, only the Parties, the main competitor and one other smaller competitor were considered. Third parties told the CMA that the Parties were close competitors to each other and to the two other competitors in the market and did not mention another manufacturer as a potential competitor.

15. The CMA did not find significant competition concerns in the other CSP markets it examined.

16. On the evidence available to it, the CMA found that, subject to any countervailing factors, the Transaction gives rise to a realistic prospect of a substantial lessening of competition (SLC) in the following markets for CSP products:

    (a) Cold pies, in the following segments:

        (i) own-label products in the grocery segment;

        (ii) branded products in the grocery segment; and

        (iii) the convenience segment.

    (b) Sausage rolls, pasties and slices, in the following segments:

        (i) own-label products in the grocery segment; and

        (ii) the convenience segment.

    (c) Sausage rolls, in the following segments:

        (i) own-label products in the grocery segment;

        (ii) branded products in the grocery segment; and

        (iii) the convenience segment.

    (d) Hot pies, in own-label products in the grocery segment.

17. The CMA considered whether entry, or expansion of existing firms, can mitigate the initial effect of the Transaction on competition. The consistent

view from third parties was that entry into a different CSP market was difficult as the sector is characterised by long standing relationships between suppliers and retailers and barriers to entry or expansion are significant. Although Pork Farms submitted that entry into CSP markets was straightforward, it did not provide sufficient evidence in support of these arguments for us to place significant weight on this view. Moreover, some of the Parties' internal documents seem to contradict their arguments.[2] The CMA therefore reached the conclusion that it did not have sufficient evidence to conclude that entry into these markets, or expansion by existing firms, was sufficient to prevent a realistic prospect of an SLC.

18. The CMA also considered whether there was sufficient buyer power within these markets to mitigate concerns arising from the Transaction. Pork Farms explained that CSP manufacturers are heavily dependent on a small number of customers, in particular the large grocery retailers, which are strong, sophisticated purchasers whose purchasing decisions are driven primarily by competition in their own downstream market. Pork Farms also submitted that retailers can, and do, switch to alternative CSP manufacturers and/or encourage or sponsor entry or expansion, where it is in their interests. Pork Farms provided evidence of recent switching away from the Parties. However, retailers told the CMA that switching suppliers can be difficult. Some raised concerns about the number of suppliers available to them after the Transaction, in particular in relation to some product segments, saying that this would have the effect of reducing any buyer power they hold. While the CMA recognises that grocery retailers may have a degree of buyer power, it did not receive sufficient evidence to conclude that buyer power would be sufficient to mitigate the realistic prospect of an SLC.

19. Overall, the CMA believes that it is or may be the case that the merger between the Parties has resulted or may be expected to result in an SLC within a market or markets in the UK, and the CMA therefore intends to refer this merger for a phase 2 investigation. Pork Farms has until 24 December 2014 to offer an undertaking to the CMA which might be accepted by the CMA in lieu of making that reference. If no such undertaking is offered, then the CMA will refer the merger pursuant to sections 22(1) and 34ZA(2) of the Act.

[2] For example, annex 14c of the Merger Notice, page 85: 'CSP is a competitively defensible category due to the high entrance costs, expertise and the benefits of scale for existing manufacturers', and 'Recent new entrants remain small in scale'.

ASSESSMENT

Parties

20. **Pork Farms** is a private limited company incorporated in England and Wales. Pork Farms operates a CSP business, which involves the manufacture and supply of CSP products into the food retail sector under brands and retailers' own label. The UK turnover of Pork Farms in the year ending 30 March 2013 was approximately £152 million.

21. **Poppy** is a private limited company incorporated in England and Wales. Poppy is the parent company of Pork Farms. Prior to the Transaction (see paragraph 24) Poppy was ultimately controlled by the private equity firms Vision Capital Partners VI L.P. and Vision Capital Partners VI E L.P. (jointly, Vision). Vision is a private equity firm with offices in London and New York.

22. **KFL** is a private limited company incorporated in England and Wales. KFL operates 13 manufacturing facilities throughout the Republic of Ireland and the UK. The Target has two sites in the UK, in Poole and Spalding, and supplies CSP products into the food retail sector under brands and retailers' own label. Pork Farms estimated that the UK turnover of the Target for the year ending 31 December 2013 was approximately £[✂].

23. **Kerry** is an international food corporation listed on the Dublin and London stock exchanges. KFL is ultimately owned by Kerry and is part of the consumer foods division of Kerry. Kerry comprises a wide range of businesses involved in ingredients, agriculture and consumer food products.

Transaction

24. The Transaction involves, to the extent relevant for merger control purposes, the acquisition by Poppy, through a wholly-owned and newly incorporated vehicle, Pork Farms Caspian Limited (Caspian), of the Target. Simultaneously KFL acquired ordinary and preference shares in Poppy. The Transaction completed on 17 August 2014.

25. As a result of the Transaction:

    (a) Poppy is the holding company of both Pork Farms and the Target (through Caspian);

    (b) KFL holds [<25]% of the ordinary shares and around [✂]% of the preference shares in Poppy, Vision (through group companies) holds [>50]% of the ordinary shares in Poppy, and members of the

management team of Pork Farms hold [✂]% of the ordinary shares and around [✂]% of the preference shares in Poppy between them;

(c) KFL's holding of ordinary shares gives it [<25]% of the voting rights in Poppy's shareholder meetings as well as the right to appoint up to two (out of a total of eight) directors to Poppy's board of directors.[3] Vision's holding of ordinary shares gives it [>50]% of the voting rights and the right to appoint up to three directors to Poppy's board as well as its chairman; and

(d) there are a number of reserved matters in relation to the Poppy business for which KFL consent is required. This includes substantial changes to the general nature of the business, acquisitions of and joint ventures with another business, and long-term or unusual contracts that are outside the ordinary course of business.[4]

Jurisdiction

26. The Transaction completed on 17 August 2014. Therefore, the statutory four-month period within which the CMA may make a reference following completion of the merger expires on 17 December 2014. The initial period for consideration of the Transaction under section 34ZA(3) of the Act (through a merger notice regarding the acquisition of control by Pork Farms over Poppy) started on 22 October 2014. Therefore, the statutory deadline for the CMA to announce its decision is also 17 December 2014.

27. The CMA considers that, as a result of the Transaction, Poppy has acquired full control over the Target and hence Poppy, with its wholly-owned subsidiary Pork Farms, and the Target have ceased to be distinct. The UK turnover of the Target exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.

28. The CMA also considered whether Kerry, through KFL, has gained material influence over Pork Farms (through Poppy) such that Kerry and Pork Farms have ceased to be distinct. As set out above (paragraph 25), Kerry has a veto over certain strategic commercial decisions, including regarding the general nature and expansion of Poppy's business, and Kerry has the right to appoint two out of eight directors of Poppy's board. However, the current Kerry appointees are non-executive directors and are not on the executive

[3] KFL's preference shares do not confer any board representation or voting rights.
[4] Schedule 3 Part 1 of the Shareholders' Agreement relating to Poppy of 17 August 2014 (Annex 2 to the Merger Notice), under 1, 11-13 and 15.

committee of the board.[5] Also, Kerry has a smaller proportion ([<25]%) of the voting rights in Poppy than the proportion (25%) of the voting rights that generally enables a shareholder to block special resolutions.[6] The CMA noted though, that Kerry's experience and expertise in consumer food products beyond the CSP business of Pork Farms and the Target may allow Kerry to influence the formulation of Poppy's commercial policy through board meetings and shareholder meetings.[7]

29. For these reasons, the CMA considers that, as a result of the Transaction, Kerry may be able to materially influence the policies of Poppy, and hence those of its wholly-owned subsidiary Pork Farms, which are relevant to its behaviour in the marketplace.[8] The CMA therefore considers that, as a result of the Transaction, in addition to Poppy acquiring full control of the Target (see paragraph 27), Kerry and Poppy, including Pork Farms, may have ceased to be distinct. The UK turnover of Pork Farms exceeds £70 million, so the turnover test in section 23(1)(b) of the Act would be satisfied.

30. However, as set out below, the CMA did not find significant competition concerns in relation to any overlap between Kerry and Poppy. Therefore, it has not been necessary for the CMA to conclude whether Kerry has gained material influence over Poppy.[9] It has also not been necessary for the CMA to conclude whether, if Kerry had gained such material influence, this would have qualified, as a separate relevant merger situation from the merger between Pork Farms and the Target.[10]

Product frame of reference

Introduction

31. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. 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

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[5] Shareholders' Agreement relating to Poppy of 17 August 2014 (Annex 2 to the Merger Notice), clauses 3.3 and 3.8. However, the Shareholders' Agreement does not appear to restrict persons appointed by Kerry to non-executive directorships.
[6] See *Mergers: Guidance on the CMA's Jurisdiction and Procedure* (CMA2, January 2014), paragraphs 4.18-19.
[7] See *Mergers: Guidance on the CMA's Jurisdiction and Procedure* (CMA2, January 2014), paragraph 4.22.
[8] See *Mergers: Guidance on the CMA's Jurisdiction and Procedure* (CMA2, January 2014), paragraph 4.14.
[9] The CMA also notes that no fee would have been payable for such an acquisition of material influence, since Kerry did not submit a merger notice in relation to that acquisition (see Enterprise Act 2002 (Merger Fees and Determination of Turnover) Order (SI 2003/1370), as amended).
[10] The CMA notes that the former relevant merger situation (Kerry / Poppy) might be considered as also capturing the latter (Poppy / the Target) in the sense that the former results in the entire Kerry business and the entire Poppy business ceasing to be distinct, including Pork Farms and the Target. However, the CMA also notes that the levels of control acquired are different (see also *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, footnote 17 to paragraph 4.3).

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.[11]

32. The CMA has considered the overlaps that exist between the Parties as well as between Pork Farms and Kerry.

Product scope

33. Pork Farms submitted that the Parties overlap in the manufacture and wholesale supply of CSP products in the UK. On the basis of this view, and the views the CMA received from third parties, the starting point for consideration of the appropriate candidate product markets in which their activities could overlap was each CSP product category, namely:

    (a) cold pies;

    (b) sausage rolls;

    (c) slices and pasties;

    (d) hot pies;

    (e) quiches; and

    (f) scotch and savoury eggs.[12]

34. The CMA considered whether the above candidate product markets were appropriate as the narrowest potential markets and, specifically, whether they should be further segmented by:

    (a) labelling, between:

        (i) own-label; and

        (ii) branded products;

    (b) customer channel, between:

        (i) supply to large grocery retailers; and

        (ii) supply to convenience stores.

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[11] Merger Assessment Guidelines (OFT1254/CC2, September 2010), paragraph 5.2.2. The Merger Assessment Guidelines have been adopted by the CMA (see *Mergers: Guidance on the CMA's Jurisdiction and Procedure*).
[12] Whilst there is no overlap between the Parties in the manufacture and distribution of scotch and savoury eggs, the CMA considered the overlap between Kerry and Pork Farms in the UK distribution of this product.

CMA's consideration as to whether the product frame of reference should include all CSP products

Demand-side substitution

35. Pork Farms submitted that it is appropriate to consider a wider market covering all CSP products as all types of CSP products are similar.[13] Pork Farms submitted that, intuitively, and from the perspective of consumers, there is a high degree of substitutability between the different CSP product categories, as all types of CSP products provide the same utility to consumers (ie a fast and convenient pastry-based meal). In particular, Pork Farms highlighted that:

    (a) according to market data available from Kantar, the majority of Asda's ([55–65]%) and Tesco's ([65–75]%) customers purchased from more than one CSP category; and

    (b) customers who purchased from more than one CSP category accounted for approximately [85–95]% of the total spend on CSP products in Tesco and approximately [85–95]% in Asda.

36. However, the CMA notes that the evidence provided by Pork Farms does not demonstrate customers' switching behaviour between CSP products and in particular whether they would switch between products in response to a small price rise in one of them.[14]

37. The CMA asked third party competitors and customers (ie retailers) to indicate, for each CSP product, if they thought consumers would switch to another CSP product following a small price increase (5–10%), and to which product consumers would switch. The views expressed by respondents focussed on the different consumption occasions for different CSP products and the physical characteristics of the products, rather than the effect of a small but significant price increase. In particular, a number of those respondents which indicated that consumers would switch products then went on to say that they had based their answers on whether each product fulfilled a similar need and not on consumers' reactions to small price rises.

38. Third parties explained that products were not seen as substitutable where:

    (a) one was typically consumed hot and the other cold;

[13] In that they use a similar range of ingredients, for example flour, water and protein.
[14] See Merger Assessment Guidelines, paragraph 5.2.12.

(b) they were subject to different seasonal patterns of demand (for example, consumed more in summer or winter); and/or

(c) one was typically eaten as a snack and the other as part of a main meal.

39. Third parties explained that products were more likely to be seen as substitutable where they were bought for the same purpose, eg as a treat or a snack. Figure 1 illustrates the responses, showing the percentage of third parties which considered each combination of two CSP products to be substitutes.

40. Figure 1 shows that there is a wide range of views on the demand-side substitutability of CSP products across the whole CSP range. Third parties considered that some products are good substitutes to one another. In particular, the majority of third parties believed sausage rolls and pasties and slices are substitutable, and more than half considered that the following products are substitutable from a customer perspective:

(a) hot pies/pasties and slices;

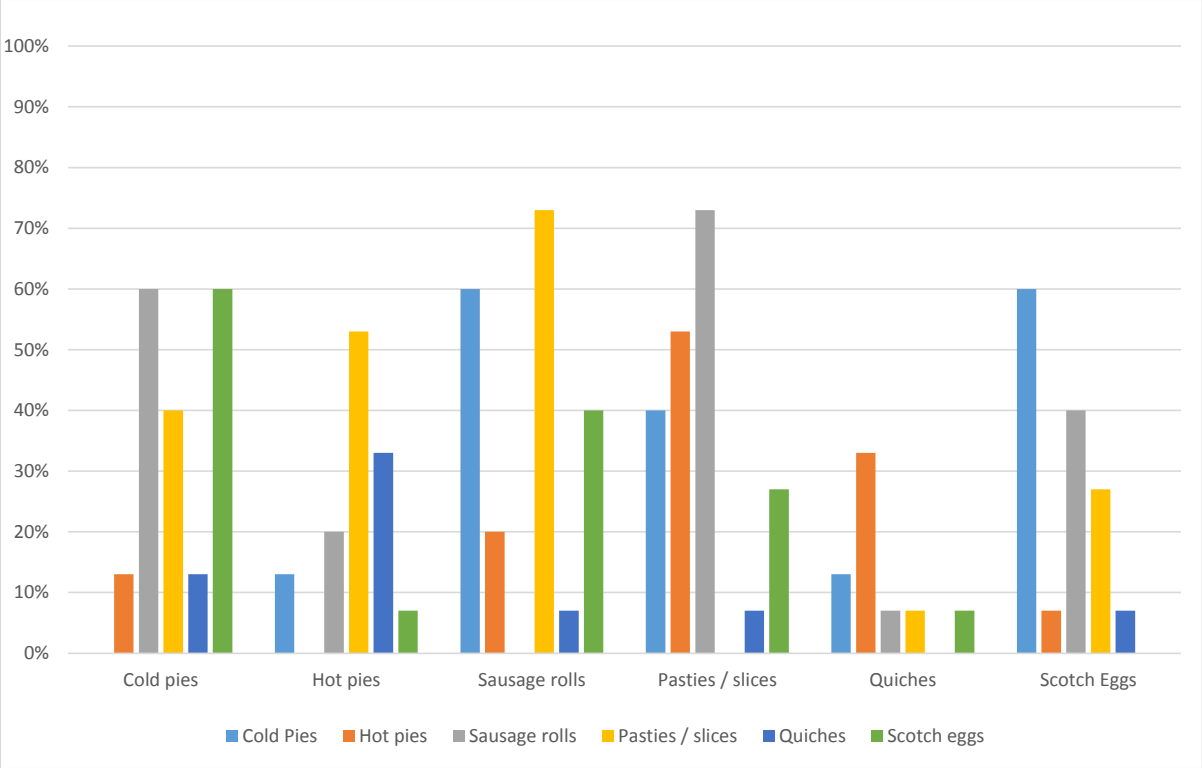
(b) cold pies/scotch eggs; and

(c) cold pies/sausage rolls.

41. Figure 1 also shows that third party respondents considered that other products are not good substitutes to one another, such as quiches with most other CSP products.

FIGURE 1

Demand-side substitution between products: percentage of respondents who indicated that some CSP customers would switch between one product and another



Source: Responses from third parties to the CMA questionnaire.

42. Some retailers said that they would not automatically change their range in response to a small price increase and stocking was more likely to respond to consumer purchases, which were harder to predict.

43. However, neither the Parties nor third parties provided evidence in support of their views to indicate the extent of switching between CSP products by consumers. In the absence of any consumer testing, the CMA considers that, despite the comments received based on product characteristics, there was not strong enough evidence of the degree of switching between CSP products by consumers.

44. Overall, the CMA does not have sufficient evidence to aggregate different CSP products on the basis of demand-side considerations. In particular, the CMA does not have evidence or specific examples of customers or consumers switching to different CSP products in response to small price increases or promotions. Moreover, the CMA notes that, even where third parties considered some CSP products to be substitutes from the demand-side perspective, concerns were still expressed in terms of some individual

products, and demand-side switching to other CSP products was not considered to be a suitable option.

Supply-side substitution

45. The CMA may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in prices. The CMA may do so when:

    (a) production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products depending on demand for each; and

    (b) the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.[15]

46. Pork Farms submitted that all CSP categories should be considered to be in the same product market based on supply-side substitution as all CSP manufacturers supply across most, or all, of the different categories of CSP products and are capable of switching production between the different CSP categories. In particular:

    (a) the ingredients used for all types of CSP are broadly similar: flour, protein (mainly pork), water, vegetable oil and seasoning; and

    (b) the costs of switching production between different types of CSP can be relatively low (in some cases as little as around £20,000).

47. The tender data supplied by Pork Farms demonstrates that retailers typically ask suppliers to bid for individual CSP products, though sometimes they ask for bids across a group of CSP products, or even across the full range of CSP products. However, the evidence from third party competitors indicates that different suppliers bid for contracts for different CSP products, as shown in TABLE 1.

[15] *Merger Assessment Guidelines*, paragraph 5.2.17.

TABLE 1 **CSP markets where suppliers have submitted bids**

	CSP Product					
Supplier	***Cold pies***	***Sausage rolls***	***Pasties/ slices***	***Hot pies***	***Quiche***	***Scotch eggs***
Pork Farms	X	X	X	X	X	X
Target	X	X	X	X		
Samworths	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Peters	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Vale of Mowbray	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Tulip	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Greencore	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Pukka	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Higgidy	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Cranswick	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Farmers Boy	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Stobarts	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Welsh Pantry	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Dearne Valley	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
Edgmond	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: Merger Notice and responses from third parties to the CMA questionnaire.

48. Third party competitors also informed the CMA that switching production requires certain specialised equipment. In general, these competitors said that they did not have the equipment necessary to produce CSP products from outside of the range of products they currently produced, and that it would require significant investment to purchase this equipment. In particular, third parties told the CMA that switching to cold pies would be difficult and would require significant investment due to the different production process involved in manufacturing this product (compared with sausage rolls, pasties, and slices and hot pies). Competitors said that they could not adapt their equipment and processes used to produce other CSP products to produce cold pies.

49. One third party competitor told the CMA that switching between producing sausage rolls and pasties/slices is relatively easy and could be achieved at low cost. However, the competitor said that switching from hot pies to sausage rolls, pasties and slices, or vice versa, would require additional investment in the 'front end' of the line, which would [✂]. This competitor also said that its equipment for producing hot pies, sausage rolls, pasties and slices could not be adapted to produce cold pies. It said that the production of cold pies would require bespoke equipment, the cost of which would be prohibitive in relation to the expected revenues.

50. Another competitor also cited the differences between cold pie production and other CSP production, stating that its manufacturing lines [✂].

51. One competitor said that starting to produce cold pies would represent a cost equivalent to entering the market as a complete new entrant.

52. Another competitor said that the equipment to produce quiche could produce other types of CSP products, although it would require modifications and additional equipment would be necessary (eg lidding machines). This company estimated that these modifications could cost [✂].

53. Pork Farms provided the CMA with details of its margins for the different CSP products, as set out in TABLE 2. This data shows that there is substantial variation in the levels of margins achieved. The CMA notes that, if these differences are common across suppliers, they would have the effect of limiting supply-side substitution as suppliers would be unlikely to have the incentive to switch capacity from producing a higher margin product to a lower margin product.

TABLE 2 **Post promotional margins by CSP product**

Product	*Post-promotional margin*
Cold pies	[✂]
Sausage rolls	[✂]
Hot pies	[✂]
Quiches	[✂]
Eggs	[✂]
Other (pasties, slices)	[✂]

Source: Annex 14c Merger Notice.

54. The CMA also notes that the set of competitors is not the same in each of the CSP markets. An analysis of the main suppliers of each CSP product is in Table 3. Table 3 illustrates that only Pork Farms and Samworths produce the full range of CSP products. The Target does not manufacture quiches or scotch and savoury eggs. There are some suppliers which specialise in only one type of CSP product, such as Vale of Mowbray in cold pies, and Tulip in scotch eggs.

TABLE 3 **CSP markets where suppliers are active**

	CSP product					
Supplier	***Cold pies***	***Sausage rolls***	***Pasties/ slices***	***Hot pies***	***Quiche***	***Scotch eggs***
Pork Farms	X	X	X	X	X	X
Target	X	X	X	X		
Samworths	X	X	X	X	X	X
Peters		X	X	X		
Vale of Mowbray	X					
Tulip						X
Greencore					X	
Pukka				X		
Higgidy				X	X	
Cranswick		X	X	X	X	
Farmers Boy		X	X	X	X	
Stobarts	X	X	X			

Source: Responses from third parties to the CMA questionnaire.

55. Overall, the CMA considers that there is some evidence that shifting production between sausage rolls and pasties and slices may be relatively easy even if the margins are quite different. However, more generally, the conditions of competition are different across the CSP products. In particular, the set of competitors is different in many segments, margins are different and, as will be seen in the substantive competitive assessment below, market shares differ too. Therefore, the CMA considers it does not have sufficient evidence to aggregate all CSP products based on supply-side considerations.

Conclusion on categories of CSP products

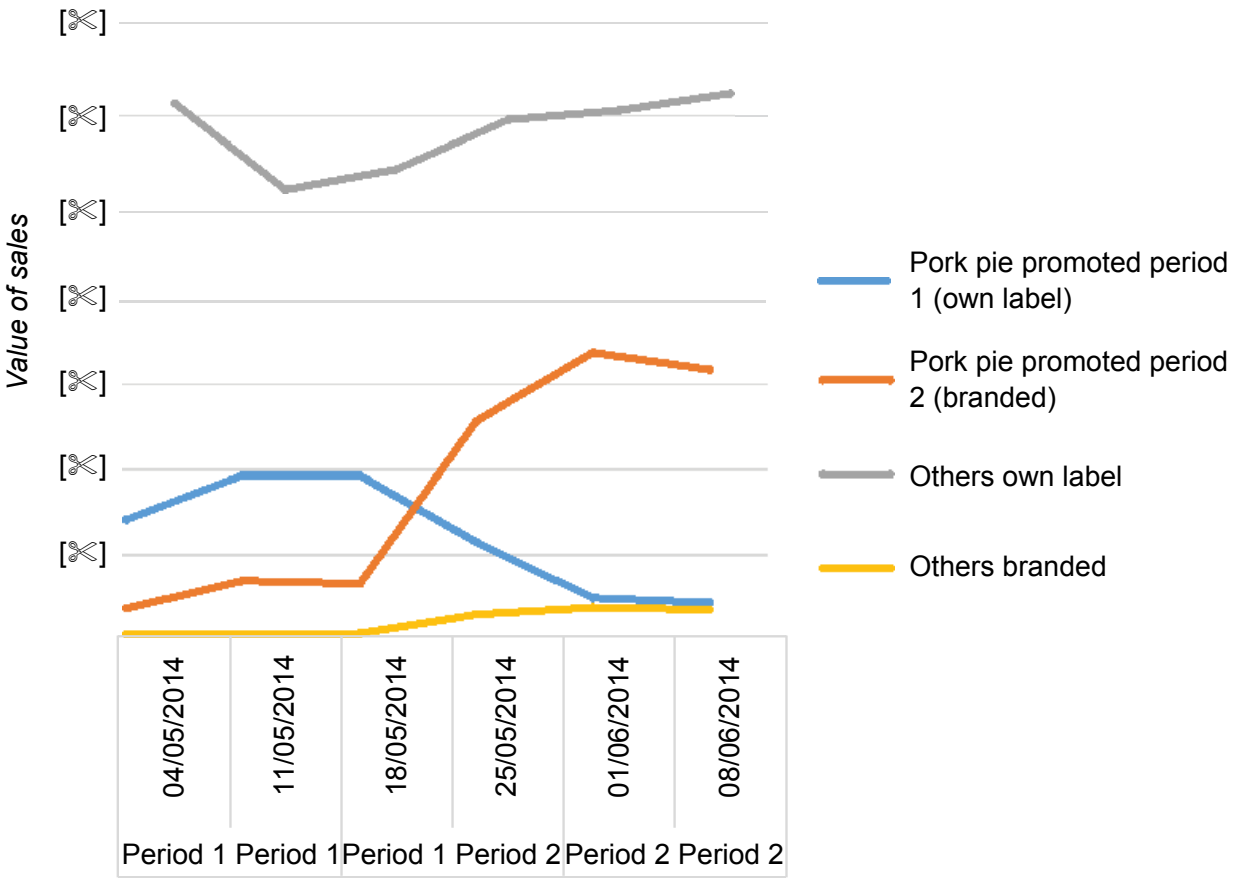
56. For the reasons set out above, the CMA has, on a cautious basis, considered the impact of the Transaction in the individual product segments set out at paragraph 33 above. Nevertheless, in view of the evidence of supply-side substitution between sausage rolls and pasties and slices, the CMA has also considered the impact of the Transaction for these products combined.

CMA's consideration of separate frames of reference for own-label and branded CSP products

57. Pork Farms submitted that own-label and branded CSP products are substitutable from a demand-side perspective, providing as an example a time series with the value of sales of branded and own-label pork pies in one retailer (the Co-operative) during six weeks from May to June 2014, see Figure 2. Pork Farms submitted that this data showed consumer switching from own-label to branded products depending on which was on promotion.

FIGURE 2

Effect of a promotion in pork pies [✂]



Source: Annex 16 Merger Notice.

58. **Error! Reference source not found.** shows that sales of the own-label product increase while it is on promotion (period 1), and fall when the product is no longer on promotion (period 2). Similarly, sales of the branded product increase when it is on promotion in period 2. Pork Farms submitted that this could indicate that consumers had switched between the own-label and branded products as a result of the promotion. The CMA notes that, while this is one possible explanation for the data, an alternative explanation is that sales increase when the product is on promotion as consumers who would not otherwise have purchased pork pies are attracted to the promoted product. The extent of the price promotion was also likely to be more than 5%, which is the amount typically used to ascertain substitutability. Even if some consumers did switch between the branded and own-label products as a result of the different promotions, this would not mean that they would make a similar switch in the event of a much smaller price change.

59. The views of third party competitors and customers (ie retailers) were mixed on whether it is appropriate to distinguish between own-label and branded CSP products. In general, the majority of third parties agreed that there is

some degree of substitution between own-label and branded products, at least for some of the products where the Parties overlap. A few retailers thought that own-label and branded CSP products were very close substitutes. However, some third parties stated that there is no substitution between own-label and branded CSP products.

60. One retailer told the CMA that it observed that 15% of customers switch from own-label to branded hot pies when the branded hot pies are on promotion, and that the introduction of an economy range resulted in 10% of customers switching to the new range, albeit that most of this customer switching came from its core own product label rather than its brands on promotion.

61. Another retailer provided an example of switching between branded and own-label as a result of a promotion. In this case consumers were observed switching from own-label sausage rolls to branded sausage rolls when the brand was on promotion and switching back when the promotion ended and the price of the branded product reverted back to its original price.

62. However, the CMA believes it is difficult to draw general conclusions regarding the substitution between own-label and branded products based on a few examples from promotions. In particular, the strength of different brands is likely to vary both across and within product categories.

63. The CMA has also noted that prices of branded CSP products are usually higher than prices of own-label products, but promotions are also frequent, with promotional prices for branded products often set at the level of own-label products or below.

64. Internal documents provided by Pork Farms note the limited role of brands for a number of CSP products. For example, one report indicates that consumers do not appear to place much value on CSP brands, finding in a consumer survey that only 24% of consumers consider brand to be an important purchasing criterion. In terms of each CSP product, this report presents the following results:

- Percentage of consumers who consider brands to be an important purchasing criterion:
  - Quiche: 21%.
  - Cold pies: 30%.
  - Sausage rolls: 25%.
  - Hot pies: 23%.

65. Several third parties supported this view, submitting that brands, in general, are not important in CSP product segments. Some respondents told the CMA that brands are generally used to attract customers to the overall CSP category rather than to increase shares within a product segment. A retailer said similarly that Pork Farms and Wall's are brands which attract volume to the CSP category generally rather than to any particular product.

66. Moreover, the CMA notes that some retailers purchase branded products through tenders or by approaching more than one supplier, which indicates that brands are not particularly strong. In fact, many of the tenders provided to the CMA both by the Parties and third parties were for branded products, or included branded products together with own-label products, which suggests that at least some CSP brands are 'optional' rather than 'must stock' brands for retailers.

67. On the supply-side, Pork Farms submitted that a distinction between own-label and branded CSP products is not relevant to the definition of the product market as the CSP products involved are essentially the same and are supplied by the same CSP manufacturers. Further, all major CSP manufacturers produce own-label CSP products on the same production lines as they produce branded CSP products, and can and do switch volumes between them. Pork Farms submitted that those CSP manufacturers which currently focus on branded CSP products could easily switch their production to own-label rapidly and at no significant cost. This process simply involves changing the recipe and packaging and cleaning the line, and can be done in approximately 20 minutes (assuming the relevant packaging and food ingredients are already sourced, which can be done within about six weeks).

68. Those third party competitors which are producing both branded and own-label products reported that they would not face any difficulties in switching production between branded and own-label products. However, some competitors which mainly supply either own-label or branded products told the CMA that they would face obstacles, for example lack of capacity or investment costs and time associated with building a brand.

69. The CMA considers that, whilst recognising that switching manufacturing across branded and own-label CSP products seems possible, own-label suppliers may find it difficult to launch a brand (as they would need to develop or licence one), and at least some branded suppliers may find it difficult to produce to the scale required by own-label customers. In addition, third party suppliers told the CMA that they do not have the incentive to switch from branded to own-label products given the higher margins available on branded products.

70. The CMA also observes that the set of competitors for branded and own-label products is different for most CSP products. For example:[16]

(a) in cold pies Pork Farms and Vale of Mowbray both have a much larger share of the branded sector than the own-label sector; while the Target and Samworths both have a much larger share of the own-label sector than the branded sector (see TABLE 4);

(b) in sausage rolls, pasties and slices Pork Farms has a much larger share of the own-label sector than the branded sector; while Samworths has a much larger share of the branded segment than the own-label segment. In addition, Farmers Boy (Morrisons in-house supplier) is active in the own-label sector, but not in the branded sector (see TABLE 5);

(c) in hot pies Pork Farms, the Target and Samworths all have significant shares of supply in the own-label segment, but very little in the branded segment; while Pukka, Higgidy, Hollands and Pieminster are all present in the branded segment, but are not active in the own-label segment (see TABLE 7); and

(d) in quiche Pork Farms and Greencore both have a much larger share of the own-label sector than the branded segment; while Higgidy has a significant share of the branded segment, but is not very active in the own-label segment.

Conclusion on branded and own-label products

71. The CMA considers that the evidence set out above is insufficient for it to conclude that branded and own-label products should be considered as being in the same frame of reference. Therefore, on a cautious basis, the CMA has considered the impact of the Transaction on branded and own-label products separately. However, the CMA has taken account of any competitive constraints from individual brands on own-label products, and vice versa, in its competitive assessment.

CMA's consideration of segmentation between CSP products sold through the grocery retail channel and the convenience channel

72. Pork Farms submitted that segmentation between the grocery retail and impulse/convenience channels[17] did not appear appropriate because CSP

[16] Detailed shares of supply are set out in the Competitive assessment section.
[17] The convenience stores operated by the large grocery multiples are, for our purposes here, part of the grocery rather than the convenience channel. This is because negotiations for supply of these stores is, in general, negotiated on a national level as part of a wider agreement to supply CSPs to the grocery channel.

manufacturers do not differentiate between them. Pork Farms submitted that all CSP manufacturers can, and typically do, supply the same CSP products to retailers in each of these channels, using the same manufacturing processes and equipment, and retailers in both the grocery retail and impulse/convenience channels can readily switch between CSP manufacturers.

73. In response to the CMA's issues letter, Pork Farms made a number of additional points in support of its assertion that CSP sales within the convenience channel should not be considered as a separate market from sales made to grocery retailers. In particular, Pork Farms submitted that:

(a) in the markets highlighted in the issues letter as causing the CMA concern, each of the main competitors in the grocery segment are also present in the convenience segment. For each product, suppliers are able to access over 50% of the convenience market and are faced with no difficulties beyond the need to deploy (or redeploy) capacity in order to supply the necessary product volumes; and

(b) a number of suppliers use van sales to supply the convenience channel, but:

(i) the use of van sales is not a condition for effective market access;

(ii) the cost of acquiring and operating a small fleet of vans would not appear to be particularly high;

(iii) the Parties' closest competitors all already have their own van sales operation; and

(iv) prior to the Transaction, Pork Farms did not have its own van sales operation.

74. However, as set out in the Competitive assessment section, the CMA notes that sales to the convenience channel are primarily of branded CSP products, whereas in the grocery channel own-label sales are larger, and volumes are much smaller in the convenience channel than in the grocery channel. Also, notwithstanding the evidence from Pork Farms, the set of suppliers is not always the same for grocery retailers and convenience retailers.[18] Moreover, there are significant differences in delivery mechanisms as van sales are

[18] In the convenience channel there are suppliers who do not supply grocery retailers (eg Wrights), while others supply grocery retailers but are not present, or have a much smaller share, in the convenience segment (eg Vale of Mowbray, Pukka).

heavily used in the convenience sector, but not in the grocery sector. The CMA notes:

(a) in cold pies, the Target has a much larger share of the convenience sector than it has in either of the retail grocery segments (own-label or branded); whilst Pork Farms and Samworths both have a much larger share of both the retail grocery segments than they have in the convenience segment. Vale of Mowbray has a significant share of the grocery retail segment, but has no significant presence in the convenience sector (see TABLE 4);

(b) in sausage rolls, pasties and slices, Pork Farms has a much larger share of the convenience sector than it has of the branded grocery segment; while Samworths has a much smaller share of the convenience segment than it has of the branded grocery segment. In addition, Farmers Boy (Morrisons in-house supplier) is active in the grocery own-label sector, but not in the convenience sector,[i] whilst Wrights is active in the convenience sector but not in the grocery sector at all (see TABLE 5);

(c) in hot pies, Pork Farms, the Target and Samworths all have significant shares of supply in the convenience segment, but very little in the branded grocery segment; while Pukka, Higgidy, Hollands and Pieminster are all present in the convenience sector, but are not active in the own-label grocery segment (see TABLE 7); and

(d) in quiche, Pork Farms and Greencore both have a much larger share of the own-label grocery segment than the convenience segment; while Higgidy has a significant share of the convenience sector, but is not very active in the own-label grocery sector.

75. Pork Farms also told us that, in the grocery sector, retailers purchase CSP products from suppliers through a combination of tenders and bi-lateral negotiations, while, in general, convenience retailers only negotiate directly with suppliers.

Conclusion on grocery retail and convenience segments

76. The CMA considers that the evidence set out above is insufficient for it to conclude that the grocery retail and convenience segments should be considered as being within the same frame of reference. Therefore, on a cautious basis, the CMA has considered the impact of the Transaction on grocery retail and convenience separately for each product.

Geographic scope

77. The CMA did not receive any evidence or representations that it should depart from previous CMA and Office of Fair Trading decisions concerning mergers of food suppliers to grocery retailers[19] and therefore considers the market as a national UK market.[20]

Kerry's acquisition of material influence over Pork Farms – Northern Ireland

78. The CMA considers that, as a result of the Transaction, Kerry may have gained material influence over Pork Farms (see paragraphs 28 and 29). The CMA notes that, as a result of the Transaction, Poppy has entered into a manufacturing agreement with a company within Kerry, Henry Denny & Sons (Ireland) Limited (Denny), with regard to the production and packaging of CSP products under the Denny brand, for sales on the island of Ireland, including Northern Ireland. The Denny brand has a strong presence in Northern Ireland, though its presence in the rest of the UK is negligible. Kerry will therefore be supplying CSP products to Northern Ireland through Denny.

79. At the same time, Pork Farms supplies CSP products to Northern Ireland through the grocery and convenience retailers with which it negotiates on a national basis, and that it supplies the Northern Ireland market only through UK retailers. However, the CMA considers that the Denny brand has a strong presence in Northern Ireland, whereas the evidence indicates that its presence in the rest of the UK is negligible. Therefore, as part of its competitive assessment, the CMA will consider the impact of the Transaction in Northern Ireland separately. This applies in particular to sausage rolls.

Conclusion on the frame of reference

80. The CMA considers that the appropriate frame of reference is the supply of the following products in the UK, separately for branded and own-label products, and separately for supply in the grocery retail and convenience channels:

    (a) hot pies;

    (b) sausage rolls, pasties and slices;

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[19] For example: CMA Decision: ME/6452/14 – Associated British Foods / Dorset Cereals, 6 October 2014; OFT Decisions: ME/5589/12 – Nakano / Premier, 26 September 2012; ME/4893/11 – Kerry Foods/Headland Foods, 12 July 2011; ME/4967/11 – Princes / Premier Foods, 22 June 2011.

[20] Relevant factors include: the majority of contracts are awarded at UK level; the Parties compete for UK wide contracts; although there are some regional suppliers, these are very small and, in most regions, are not stronger than national suppliers; and there are no imports.

(c) cold pies;

(d) quiches; and

(e) scotch and savoury eggs.

81. In addition, as part of the CMA's competitive analysis:

(a) the CMA will consider a frame of reference which considers sausage rolls separately from pasties and slices; and

(b) the CMA will consider if any specific concerns arise in Northern Ireland, through the supply of Pork Farms' CSP products through Denny.

Counterfactual

82. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts (for completed mergers) the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.[21] In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the pre-Transaction conditions of competition to be the relevant counterfactual.

Competitive assessment

Horizontal unilateral effects

83. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices on its own and without needing to coordinate with its rivals.[22]

84. The Parties submitted a range of evidence to the CMA including data on market shares, bidding data, data on ease of entry and many internal documents. In addition, the CMA contacted many third parties.

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[21] See Mergers Assessment Guidelines, paragraph 4.3.5 *et seq.*
[22] Merger Assessment Guidelines, paragraph 5.4.1.

85. Pork Farms submitted that retailers will frequently go out to tender for their own-label CSP requirements, which can be individual CSP products or bundles of these products. Pork Farms said that competition in respect of branded CSP products operates in substantially the same way, with retailers allocating shelf space between suppliers. Pork Farms said that tenders are typically informal and do not follow any uniform format in terms of the number of participants, the length of the process or the selection criteria. Third parties confirmed that such tendering procedures are common, though it is also common for contracts to be renewed with incumbent suppliers through informal negotiation. Third parties said that purchases are normally the result of a negotiation process, or a combination of a tender and negotiation.

86. Within each segment forming the CMA's frame of reference for analysing the Transaction, CSP products are relatively undifferentiated. Where products are undifferentiated unilateral effects are more likely when the market is concentrated and where the merger eliminates a significant competitive force in the market.[23] Accordingly, market shares are likely to be a strong indicator of market power.

87. Capacity is also a relevant factor as retailers might be able to choose different suppliers if the suppliers have enough capacity to satisfy retailers' volume requirements. Capacity is particularly relevant for own-label grocery contracts, since grocery retailers tend to require large volumes of own-label CSP products.

88. Given these characteristics of the CSP market, the CMA focussed its assessment on the following factors: number of competitors, shares of supply,[24] bidding data, internal documents, the ability of competitors to enter or expand or supply-side substitute, and the possible presence of buyer power.

Segments that do not raise a realistic prospect of an SLC

89. The CMA considers that there is no realistic prospect of an SLC arising in any of the following segments:

    (a) **Quiches.** In all segments.

[23] Merger Assessment Guidelines, paragraphs 5.4.4 and 5.4.5.
[24] The CMA is of the view, based on the evidence received, that Pork Farms' estimates of shares of supply are in line with evidence supplied by third parties on the value of sales of CSP products in the UK. The CMA has also taken into account revisions to the Parties' share of supply estimates provided in response to the CMA's issues letter.

(b) **Pasties and slices.** In own-label and branded products in the grocery segments.

(c) **Hot pies:** In branded products in the grocery segment and in the convenience segment.

90. This is because, on the evidence available to it, the CMA believes that:

(a) for quiches, there is no overlap between the Parties' products; and

(b) in the other segments, the Parties' combined shares of supply are not large and/or there are competitors which can effectively constrain the Parties after the Transaction.

None of these segments will be discussed further in this decision.

Competition for CSP products in Northern Ireland

91. The CMA has also considered the implications of the potential acquisition of material influence of Kerry over Pork Farms (see paragraph 28). In this respect, the CMA notes that:

(a) Kerry will keep the Denny brand for CSP products, sold in Northern Ireland; and

(b) Kerry will continue to supply scotch and savoury eggs manufactured by Tulip.

92. The CMA has considered these overlaps in its competitive assessment for each CSP segment where it considers whether there is a realistic prospect of an SLC.

Post-Transaction changes to share of supply

93. In response to the issues paper, Pork Farms submitted that the shares of supply it had provided in the Merger Notice should be revised downwards on the basis of the following factors:

(a) Following completion of the Transaction the Parties have lost [✂] contracts with a total sales value of approximately £[✂].[25] In addition, several retailers have informed the Parties that they will retender business

[25] Cold Pies: [✂] has lost business worth approximately £[✂] in the branded and own-label grocery markets from [✂]; [✂] has lost business worth approximately £[✂]in the own-label grocery market from [✂]; Sausage rolls: [✂] has lost business worth approximately £[✂] in the own-label grocery market from [✂]; and Hot Pies: [✂] has lost business worth approximately £[✂] in the own-label grocery market from [✂].

in the near future, putting at risk approximately £[✂] of business.[26] Over the same period the Parties have not won contracts for any new business. Pork Farms submitted that these losses, and potential losses, should be taken into account when considering the market shares.

(b) Pork Farms submits that the information provided to the CMA on convenience sales overstates the Parties' position in this sector as the information, based on Kantar data, does not capture all sales made in this segment. In particular, Kantar data does not capture direct-to-customer van sales made into the convenience segment (van sales). While Pork Farms does use this delivery channel, it estimated that business worth approximately £[✂] was delivered by others using this channel, which would result in its total share of supply in the convenience segment decreasing.

The CMA has taken into account Pork Farms' representations in the competitive assessment. However, with respect to the proposed share of supply adjustments for van sales, the CMA is concerned that the Parties' estimates on van sales contain a large number of assumptions. The CMA has been unable to verify those assumptions during the course of its phase 1 market testing.

Closeness of competition

94. To assess the extent to which the Parties compete closely against each other and the extent of remaining competition after the merger, the CMA has examined a number of pieces of evidence, including:

(a) share of supply information;

(b) bidding data provided by the Parties and third parties;

(c) evidence from internal documents;

(d) information on capacity within the CSP markets from the Parties and third parties; and

(e) third party responses, in particular their views on which are the main competitors in each segment.

[26] These include contracts for: Sausage rolls, contracts for own-label products with two retailers worth approximately £[✂]; Scotch eggs, contracts with one retailer worth approximately £[✂]; and contracts across the whole CSP range with two retailers worth approximately £[✂].

Capacity

95. Pork Farms submitted that the CSP market is characterised by spare capacity during periods of low demand. Given the seasonality of demand,[27] suppliers need to be able to cope with increased demand during peak periods (these may be Christmas and summer or winter, depending on the product). The ability of suppliers to compete for contracts is determined by their capacity. Similarly, the ability of retailers to switch suppliers depends on the extent to which alternative suppliers have sufficient capacity to meet the retailer's volume requirements.

96. Pork Farms submitted in its response to the issues paper that retailers frequently choose to split their supply of CSP products, including own-label CSP products, between two or more suppliers. This would mean that suppliers would need significantly lower levels of spare capacity than if bids were only invited across products or for a large product line.

97. However, third party competitors told the CMA that retailers' volume requirements are particularly large for own-label products as retailers tend to concentrate their own-label supply in one or two suppliers in order to ensure consistency of supply quality and to gain contract efficiencies. Third party retailers confirmed this, saying that they could increase the number of their suppliers by reducing the size of their contracts but that there were disincentives for doing so: it would increase administrative costs[28] from dealing with more suppliers; the risks of supply disruption would be multiplied; dealing with each supplier's separate processes and conditions would be more complex; it would increase the risk of inconsistency between products; and the ability to develop and invest in long term supplier development would be lost.

98. The CMA reviewed historic bidding data provided by the Parties and third parties. Third party retailers told the CMA that they contract for CSP products on either an annual basis, or longer with an annual review. The bidding data confirmed that whilst the large grocery retailers launched a number of smaller tenders, there were not many tenders over the last few years involving their

[27] The CMA noted that CSP products are subject to seasonal changes in demand, for example hot products are more likely to be eaten in the winter, whereas cold products are more likely to be eaten in the summer; some CSP products are also subject to demand peaks coinciding with festivals, such as Christmas. In the response to the issues letter Pork Farms provided an overview of the demand for cold pies (paragraph 4.5) which showed that demand for cold pies peaked in the summer and December (July: [✂]%; August [✂]% and December [✂]%) and was lowest in other Autumn/winter months (February [✂]%; March [✂]% and October [✂]%). All figures are the percentage of total sales of cold pies by Pork Farms in 2013/14.
[28] Such as regular inspections and relationship management.

core business. This indicated that the large manufacturer/retailer relationships for the core CSP products tend to be stable and long term.

99. The bidding data showed that only a small number of manufacturers were asked to bid for contracts and the number of bidders was particularly restricted for larger contracts. As discussed in the competitive assessment, the CMA is concerned that for these larger contracts, there are only a few manufacturers which have the capacity to bid.

100. As part of the competitive assessment, the CMA looked at the capacity currently available in the market, as well as the capacity that will remain after the Transaction.[29]

101. The following section contains the key findings in each of the frames of reference based on these considerations.

Cold pies

- *Shares of supply*

102. The Parties will have a high combined share of supply as a result of the Transaction with a significant increment. This high level of share of supply is reflected in each of the grocery own-label, the grocery branded and the convenience segments. In the grocery own-label segment, both have a similar share, whereas in the grocery branded segment Pork Farms is stronger than the Target. In the convenience segment the Target has a much stronger presence with its branded products. Table 4 shows the Parties' shares of supply in cold pies across segments.

[29] See Merger Assessment Guidelines, paragraph 5.4.11.

TABLE 4 **The supply of cold pies in the UK in year ending 22 June 2014**

	CSP Segment – Cold Pies				
Supplier	*Grocery (Own-label)*	*Grocery (Branded)*	*Grocery total*	*Convenience*[30]	*Cold pies total*
Pork Farms	[15–25]%	[45–55]%	**[25–35]%**	[15–25]%	**[15–25]%**
Target	[15–25]%	[5–15]%	**[15–25]%**	[35–45]%	**[15–25]%**
Total	**[35–45]%**	**[45–55]%**	**[45–55]%**	**[55–65]%**	**[45–55]%**
Main competitors	Samworths ([35–45]%) Vale of Mowbray ([5–15]%)	Samworths ([25–35]%) Vale of Mowbray ([5–15]%)	**Samworths ([35–45]%) Vale of Mowbray ([5–15]%)**	Samworths (15–25]%)	**Samworths ([35–45]%) Vale of Mowbray ([5–15]%)**
Reduction in suppliers	4:3	4:3	**4:3**	3:2	**4:3**

103. In response to the CMA's issues paper Pork Farms provided revised share of supply information for the cold pie segment based on the latest Kantar data,[31] and taking into account recent losses of business by the merged entity. Pork Farms recalculated that the total grocery share of supply following these losses would be:

(a) Pork Farms – [15–25]%;

(b) Target – [15–25]%; **Total – [35–45]%**;

(c) Samworths – [45–55]%; and

(d) Vale of Mowbray – [5–15]%.

The CMA has estimated the impact of the lost business on other competitors. However, Pork Farms did not supply a breakdown of its revised share of supply into the own-label, branded and convenience channels.

104. The CMA considers that these latest share of supply figures do not necessarily represent an accurate picture of market power in the cold pie segment over time. Shares of supply for the cold pie segment have remained relatively stable over the past three years,[32] and this is the case even though

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[30] Pork Farms estimated that including van sales the combined share of supply for cold pies would be approximately [35–45]% with an increment from the merger of approximately [5–15]%. Samworths' share of supply would rise to [15–25]%.

[31] Covering the 52 weeks to the end of November 2014.

[32] Share of supply of cold pies for 2012 – 2014:

Samworths:	2012 ([35–45]%)	2013 ([35–45]%)	2014 ([35–45]%)
Pork Farms:	2012 ([25–35]%)	2013 ([35–35]%)	2014 ([25–35]%)
Kerry:	2012 ([15–25]%)	2013 ([15–25]%)	2014 ([15–25]%)
Vale of Mowbray:	2012 ([15–25]%)	2013 ([5–15]%)	2014 ([5–15]%)
Others:	No other business has >[0–5]% share of supply.		

Source: figures provided by Pork Farms.

retailers have occasionally switched supply volumes between the major providers. These latest figures submitted by the Parties do not take into account any prospective contracts for which the Parties might be bidding and/or might win in the near or medium term. In other words, it is not clear that this immediate fall in the Parties' share of supply represents a continuing reduction in their market power. Moreover, the CMA would expect to see a degree of switching and increased competition immediately following a major structural change in the market such as Pork Farms' acquisition of the Target.

105. The CMA considers that, in spite of the recent and anticipated losses of business, the Parties continue to hold a significant degree of market power across all segments of cold pies. In particular, the merged entity will only face credible competition from two competitors, with one of these, the Vale of Mowbray, being considerably smaller than both Samworths and the merged entity. For several of the larger own-label grocery contracts, only Samworths would be likely to have the ability to compete with the merged entity.[33] This is supported by third party retailer comments. The CMA also notes that the majority of the lost business in cold pies was lost to Samworths (Vale of Mowbray won a small contract worth £[✂]), and on this basis the merged entity's loss of business has not materially affected the competitive landscape in cold pies, with retailers still facing a very limited choice.

106. For these reasons, the CMA considers that, even if the merged entity's market power has reduced following recent contract losses, the shares of supply held by the merged entity, and the small number of credible competitors, indicate that it is likely to retain a significant degree of market power across all cold pie segments.

107. Also in response to the issues letter, Pork Farms provided the CMA with revised estimates of shares of supply in the convenience sector to take into account van sales. These recalculations (see footnote 30) indicate that the merged entity might have a lower share of supply. The CMA believes that the real share of supply is likely to be somewhere between the two figures (ie between [35–45]% and [55–65]%). Nevertheless, the revised share of supply estimates still demonstrate that the merged Parties will face credible competition in the convenience segment from only one competitor, ie Samworths. This is confirmed by the Parties' internal documents where the competitor profiles[34] list only Samworths as a competitor in the cold pies convenience sector. It is also supported by third party convenience retailer comments. For these reasons, the CMA considers that the share of supply of

[33] Annex 14c of the Merger Notice, page 95: Competitor profiles: Vale of Mowbray is considered to be a smaller scale manufacturer.
[34] Annex 14c of the Merger Notice, pages 90–96.

the merged entity in the cold pie convenience segment and the reduction of competition in this segment from three to two large competitors, indicates that the merged entity will likely retain a significant degree of market power in this sector.

108. The bidding data provided by the Parties and collected from third parties shows a similar set of competitors. Based on this data, it appears that, over the last three years, the Parties competed for tenders with each other and with [✂] and [✂].

109. The majority of third party retailers considered the Target as one of the main competitors to Pork Farms for own-label cold pies, and vice versa. Third parties also considered Samworths and Vale of Mowbray as the main competitors to the Parties. No other supplier was mentioned by retailers.

110. Internal documents submitted by Pork Farms also suggest that the Parties are competing with each other closely, and with Samworths, for the supply of cold pies. For example, one document states that 'in driving commercial advantage, Tesco has focused its supply across its top 2 suppliers (Kerry and Samworths) at the expense of Pork Farms'.[35]

111. Specific concerns were also raised by some third party retailers. One customer, [✂], was concerned that the number of potential suppliers of large volumes of cold pies to [✂] in the own-label grocery segment would reduce from two to one.

112. Another retailer also expressed concerns regarding the grocery own-label cold pie segment, believing that the Transaction would significantly reduce the choice of suppliers.

113. One competitor expressed concerns that, in the convenience segment, the key recognised brands (Pork Farms, Wall's [Target] and Ginsters [Samworths]) would effectively drop to two separately-owned brand ranges.

114. In terms of capacity, Pork Farms initially submitted that the merged entity planned [✂].

115. [✂].

116. In cold pies, the Parties' internal documents indicate that [✂] faces some capacity constraints in cold pies.[36] Third parties informed the CMA that they believe that there are significant levels of spare capacity within the industry as

[35] Annex 14c of the Merger Notice, page 205.
[36] Annex 14c of the Merger Notice, page 90.

a whole, but that this spare capacity is needed to deal with demand fluctuations. One third party said that, although it has significant levels of spare capacity, it needed this level of spare capacity to deal with periods of peak demand, such as Christmas and during promotions. This meant that, during the peak periods, it was operating at close to full capacity.

117. The CMA considers that, although there is some spare capacity in cold pie production, this capacity is used by manufacturers at peak times, so there is limited capacity available for manufacturers to bid for new, substantial, contracts.

118. The CMA reviewed information provided by the parties and third parties on the total capacity in cold pie production. The CMA compared this to the value of retailer contracts. This showed that only Pork Farms, KFL or [✂] have sufficient capacity to fulfil individually the own-label contract of any of the largest retailers. Given that in the own-label segment, retailers typically have contracts with only one or two suppliers, the number of manufacturers with sufficient capacity to bid for these contracts is limited. For the branded segment, volumes are lower, so the choice of supplier could be broadened.

- *Conclusion on cold pies*

119. Based on the evidence set out above, the CMA considers that, subject to any countervailing factors (see below), there is a realistic prospect of an SLC in the provision of cold pies. In particular, the CMA considers that there is a realistic prospect of an SLC in the provision of cold pies to each of the following:

(a) own-label products in the grocery segment;

(b) branded products in the grocery segment; and

(c) the convenience segment.

Sausage rolls, pasties and slices

- *Shares of supply*

120. The Parties will have a high combined share of supply as a result of the Transaction in the own-label grocery segment. In the convenience segment, combined market shares are still high, albeit with a low increment, though not as high as in the own-label grocery segment. In the branded grocery segment, the Parties' combined share of supply is not significant enough to indicate a cause for concern. In sausage rolls, pasties and slices the Target is stronger

than Pork Farms across all segments. In the own-label segment, Pork Farms has a much stronger presence than in the convenience segment. Table 5 shows the Parties' shares of supply in sausage rolls, pasties and slices across segments.

TABLE 5 **The supply of sausage rolls, pasties and slices in the UK in year ending 22 June 2014**

	CSP Segment – Sausage Rolls, pasties and slices				
Supplier	*Grocery (Own-label)*	*Grocery (Branded)*	*Grocery total*	*Convenience*[37]	*Total*
Pork Farms	[15–25]%	[0–5]%	**[5–15]%**	[0–5]%	**[5–15]%**
Target	[25–35]%	[5–15]%	**[15–25]%**	[25–35]%	**[25–35]%**
Total	**[45–55]%**	**[5–15]%**	**[35–45]%**	**[35–45]%**	**[35–45]%**
Main competitors	Samworths (25–35%) Peters (5–15%) Farmers Boy (0–5%)	Samworths (65–75%) Peters (5–15%)	Samworths (45–55%) Peters (5–15%) Farmers Boy (0–5%)	Samworths (25–35%) Peters (5–15%) Wrights (0–5%)	Samworths (35–45%) Peters (5–15%) Farmers Boy (0–5%) Wrights (0–5%)
Reduction in Suppliers	4:3	4:3	**4:3**	5:4	**4:3**

121. The CMA notes that in this market Samworths has a strong brand (Ginsters). In the Parties' internal competitor profile[38] it is noted that Samworths is investing heavily in the Ginsters brand, which maintains a leading position within branded pasties. The CMA considers that in this market consumers would be less likely to switch between branded and own-label products due to this strong brand. Also, Samworths informed the CMA that it would not have the incentive to switch from producing its branded pasties to own-label pasties as margins are higher in the branded segment.

122. In response to the issues paper Pork Farms provided revised share of supply information in the sausage rolls, pasties and slices sector based on the latest Kantar data[39] and taking into account the recent losses of business by the merged entity.[40] Pork Farms recalculated that the share of supply following these losses in the total grocery sector would be:

[37] Pork Farms estimated that including van sales the combined share of supply for sausage rolls, pasties and slices would be approximately [15 – 25]% with an increment of approximately [0 – 5]%. Samworths' share of supply would rise to [25 – 35]% and Peters approximately [5 – 15]%.
[38] Annex 14c of the Merger Notice, page 90.
[39] Covering the 52 weeks to the end of November 2014.
[40] Pork Farms also submitted an estimate of the merged Parties' share of supply if imminent losses of business are taken in into account. The CMA considers that it cannot take account of the imminent losses submitted by the Merged Parties as no decision on future contracts has been taken. The merged Parties may not lose this business, and the CMA cannot pre-judge the likely conclusion of future contract negotiations between the merged entity and suppliers.

(a) Pork Farms – [5–15]%;

(b) Target – [15–25]%; **Total – [25–35]%;**

(c) Samworths – [35–45]%;

(d) Peters – [5–15]%;

(e) Farmers Boy – [0–5]%; and

(f) Welsh Pantry – [0–5]%.

The CMA has estimated the effect of the losses on other parties. Pork Farms also said that the merged entity had been threatened with losing [✂] ([✂]), which could result in the merged entity's share of supply falling to [25–35]%, with an increment from the merger of only [0–5]%. Pork Farms did not, however, supply a breakdown of share of supply into the own-label, branded and convenience channels.

123. For the same reasons discussed in relation to cold pies at paragraph 104, the CMA notes that, in spite of the recent losses of business, the merged Parties will hold a significant degree of market power in the grocery own-label and convenience segments of sausage rolls, pasties and slices. In particular, the merged entity will only face credible competition from two competitors with one of these, Peters, being considerably smaller than both Samworths and the merged entity. For a number of the larger own-label contracts only Samworths is likely to have the ability to compete with the merged entity.[41] Hence the CMA considers that, even if the merged entity's market power has been diminished following recent losses, the shares of supply held by the merged entity and the small number of credible competitors, indicates that it will retain a high level of market power across grocery own-label and convenience segments of the sausage rolls, pasties and slices segment.

124. Also in response to the issues letter, Pork Farms provided the CMA with revised estimates of shares of supply in the convenience sector, taking into account estimates of van sales (see footnote 37), which indicate that the merged entity may have a lower share of supply than initially estimated. The CMA believes that the real share of supply is somewhere between the two figures (ie between [15–25]% and [35–45]%). Nevertheless, even the revised share of supply estimates still demonstrate that the merged Parties will face credible competition in the convenience from only two competitors,

[41] Annex 14c of the Merger Notice, page 95: Competitor profiles: Peters is considered to be a smaller scale manufacturer.

Samworths and Peters. The Parties' internal competitor profiles[42] list Samworths as a major competitor in the sausage rolls, pasties and slices convenience sector and list a number of other competitors, including Peters, as small scale manufacturers in this sector. Hence the CMA considers that the shares of supply of the merged entity in the sausage rolls, pasties and slices convenience segment, and the reduction of competition from four to three large competitors, with the third being a relatively small scale manufacturer, indicates that the merged entity will retain a high level of market power in this segment.

125. In addition, third parties said that there were limited suppliers for sausage rolls and that the set of competitors for the combined sausage roll and pasties and slices sector is not wider than that for the sausage roll sector on its own.

126. The CMA has not received any third party concerns relating directly to the pasties and slices segment. However, the CMA believes that the comments received from third parties in relation to the sausage roll segment (see paragraphs 137 to 147) could also relate to a wider sausage rolls and pasties and slices frame of reference.

127. In terms of capacity, Pork Farms initially submitted that the merged entity plans [✂].

128. [✂].

129. Third parties informed the CMA that levels of spare capacity in the production of sausage rolls, pasties and slices are much lower than those in cold pies as the level of fluctuations in seasonal demand is much lower in sausage rolls, pasties and slices.

130. One third party, estimated that about [0%–10%] of its total capacity is spare. Another third party estimated it had about [30%–40%] of its total capacity as spare capacity. The CMA notes that, given the scale of this supplier, this level of spare capacity would not be sufficient to allow it to supply individually the own-label needs of one of the large retailers in this sector.

131. Based on this evidence, the CMA considers that there is limited capacity available for manufacturers to bid for new, substantial contracts, although smaller retailers would have a slightly wider choice of potential suppliers.

132. These capacity limitations would appear to be a particular issue in the sausage roll part of this segment. Sausage rolls are the product most affected

[42] Annex 14c of the Merger Notice, pages 90–96.

by peaks in demand in this segment, with demand being around 40% higher in the Christmas period compared with low demand periods. Sausage rolls is also the largest part of this segment. Manufacturers would, therefore, find it difficult to bid for large sausage roll contracts as their capacity is limited by the need to retain spare capacity to deal with peaks. Switching spare capacity from pasties and slices to sausage rolls is possible, but because volumes are much higher in sausage rolls, there is limited ability among suppliers to increase sausage roll capacity in this way.

133. The CMA also reviewed information provided by the parties and third parties on the total capacity in the production of sausage rolls, pasties and slices. The CMA compared this with the value of retailer contracts. The CMA notes that only the Parties, [✂] and [✂] have the capacity to fulfil individually the full contract in this segment of any of the largest retailers. For the largest retailer, only [✂] would have the capacity to process the full contract.

134. One retailer told the CMA that it was concerned that, because of the size of its contract for own-label products, the Transaction would reduce the number of possible suppliers from three to two. Another retailer said that it believed the number of potential suppliers for its own-label products in this segment would reduce from two to one. Another retailer said that it was concerned as both Pork Farms and KFL played a significant role in the supply of its own-label sausage rolls.[ii]

135. The CMA notes that the Parties will have higher shares of supply if a narrower market of just sausage rolls is considered (see paragraphs 137 to 147), suggesting that the Parties are closer competitors in this segment alone than they are in the sausage rolls, pasty and slices segment.

- *Conclusion on sausage rolls, pasties and slices*

136. Based on the evidence set out above, the CMA considers that, subject to any countervailing factors (see below), there is a realistic prospect of an SLC in the provision of sausage rolls, pasties and slices in the own-label grocery segment. Further, although the Parties' combined share in the convenience segment is lower than in the own-label grocery segment, for the reasons set out above, the CMA cannot rule out that the Transaction gives rise to significant competition concerns in the convenience segment as well. Therefore the CMA considers that, subject to any countervailing factors (see below), there is a realistic prospect of a substantial lessening of competition in the convenience segment too.

Sausage rolls

137. For the reasons set out in the frame of reference section above (see paragraphs 45 to 56), the CMA has also considered whether there are competition concerns if a narrower product market is considered, separating out sausage rolls from pasties and slices. In this section we discuss the competitive effects of the Transaction under this narrower frame of reference.

- *Shares of supply*

138. The Parties will have a high combined share of supply as a result of the Transaction, with a significant increment as a result of the merger. The Parties' combined share of supply is particularly high in the own-label grocery segment (share of supply of [65–75]%, with an increment of [25–35]%). Market shares are also high in the branded grocery segment and in the convenience segment, although the increments are not as significant ([5–15]% and [0–5]% respectively). In sausage rolls, the Target is stronger than Pork Farms across all segments. Pork Farms has a much stronger presence in the own-label grocery segment than in the branded grocery or convenience segments. Table 6 shows the Parties' shares of supply in sausage rolls across segments.

TABLE 6 **The supply of sausage rolls in the UK in year ending 22 June 2014**

CSP Segment – Sausage Rolls

Supplier	*Grocery (Own-label)*	*Grocery (Branded)*	*Grocery Total*	*Convenience*[43]	*Sausage Rolls Total*
Pork Farms	[25–35]%	[5–15]%	**[15–25]%**	[0–5]%	**[15–25]%**
Target	[35–45]%	[35–45]%	**[35–45]%**	[25–35]%	**[35–45]%**
Total	**[65–75]%**	**[45–55]%**	**[65–75]%**	**[35–45]%**	**[55–65]%**
Main competitors	Samworths ([5–15]%) Peters ([5–15]%) Farmers Boy (5–15]%)[44]	Peters ([15–25]%) Samworths ([15–25]%)	Samworths ([5–15]%) Peters ([5–15]%) Farmers Boy ([5–15]%)	Samworths ([5–15]%) Peters ([5–15]%) Wrights ([5–15]%)	Samworths ([5–15]%) Peters ([5–15]%) Farmers Boy ([0–5]%) Wrights ([0–5]%)
Reduction in Suppliers	4:3	4:3	**4:3**	5:4	**4:3**

139. In Pork Farms' response to the issues letter, it did not provide a breakdown of revised share of supply figures for the sausage rolls segment, although the business it has lost since the Transaction appears to relate directly to the

[43] Pork Farms did not provide any update for van sales in the sausage roll market.
[44] Farmers Boy is Morrisons' in-house supplier. It does not compete for contracts outside of the Morrisons own-label product.

sausage roll segment (see the analysis at paragraphs 121 to 124). However, given the higher shares of supply that the merged entity holds in the supply of sausage rolls, the CMA believes that the loss, and potential loss, of business in the sausage rolls sector is unlikely to change its conclusion in this segment.

140. The majority of third parties considered the Parties to be each other's main competitors in the supply of sausage rolls. Samworths and Peters were also considered to be among the Parties' main competitors in the own-label sausage roll segment. Other competitors mentioned were Welsh Pantry and Farmers Boy.

141. The bidding data provided by the Parties and by third parties for own-label sausage rolls shows that the Parties competed with each other in the majority of tenders, sometimes with other parties.[45]

142. The Parties' internal documents show that the Parties believe themselves to compete closely against each other in this product segment. For example, as a result of a large push by Kerry of the Wall's brand, sales increased through a combination of increased penetration and purchase frequency. This was at the expense of other brands in the category, including Pork Farms, which observed penetration decline, possibly due to consumers switching to Wall's.[46]

143. Several third party retailers raised concerns in relation to own-label sausage rolls. Two retailers were concerned that the Transaction would reduce the number of potential suppliers which were capable of producing the volume of own-label sausage rolls they required. One of these stated that the Transaction would reduce the set of possible suppliers to two.

144. Another retailer said that it was concerned that the proposed Transaction would affect its negotiating position as both the Target and Pork Farms played significant roles in the supply of own-label sausage rolls.

145. One retailer told the CMA that the convenience segment was likely to be more affected by the Transaction due to brand reliance.

146. On capacity issues, comments and analysis were provided for the combined sausage rolls, pasties and slices market (see paragraphs 127 to 128).

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[45] Farmers Boy, Morrisons' in-house manufacturer, only competes for Morrisons' contracts and therefore is not a direct competitor to the merged entity across this sector and, for this reason has not been included in the supplier count.
[46] Page 151 Annex 14c to the Merger Notice.

- *Conclusion on sausage rolls*

147. Based on the evidence set out above, the CMA considers that, subject to any countervailing factors (see below), there is a realistic prospect of an SLC in the provision of sausage rolls. In particular the CMA considers that there is a realistic prospect of an SLC in the provision of sausage rolls to each of the following:

(a) own-label products in the grocery segment;

(b) branded products in the grocery segment, and

(c) the convenience segment.

- *Overlap with the Denny brand in Northern Ireland*

148. Kerry's Denny brand is the main brand of CSP products in Northern Ireland. As mentioned at paragraph 78, as a result of the Transaction Poppy has entered into a contract manufacturing agreement with a company within Kerry for the merged entity to manufacture and package CSP products under the Denny brand. These CSP products are sent to Denny which then distributes them throughout the island of Ireland, including in Northern Ireland. Denny has a particularly high share of supply in sausage rolls (around [35–45]% in Northern Ireland according to data submitted by Pork Farms). Denny has no presence in own-label sausage rolls, which accounts for about [35–45]% of all sausage roll sales in Northern Ireland. The CMA understands that Pork Farms also supplies both own-label and branded sausage rolls to Northern Ireland through the UK retailers which have sales in Northern Ireland.

149. The CMA understands that:

(a) Kerry and Pork Farms' route to market in Northern Ireland is different. Kerry sells directly to retailers in the Republic of Ireland[47] and Northern Ireland, whereas Pork Farms only supplies CSP products to Northern Ireland through its UK-wide contracts with national retailers. Third party retailers have informed the CMA that Pork Farms does not have the ability to identify which of the products it supplies to the retailers are destined for sale in Northern Ireland;

(b) Pork Farms does not have the ability to increase the prices or to reduce the quality of its products which go to Northern Ireland as it cannot differentiate these products from others it supplies to the rest of the UK.

[47] For those retailers who are based in the Republic, but have outlets in Northern Ireland.

The CMA considered whether Pork Farms had the incentive to increase prices or reduce the quality of products across the UK in the hope that sufficient numbers of consumers would divert to Kerry products in Northern Ireland to compensate for lost profits across the UK. However, as the Northern Ireland market makes up approximately 1% of the turnover of the major UK retailers, there would be no prospect of Pork Farms gaining sufficient profit from any diversion to make this worthwhile; and

(c) if Kerry were to increase the prices of its Denny branded products in Northern Ireland, it would receive only a limited proportion of any increased economic benefit from diversion to the Parties' products.[48]

For these reasons, the CMA believes that the Parties and Kerry have no incentive to reduce prices or to reduce quality to take advantage of any market power they may have in Northern Ireland.

150. Therefore, the CMA concludes that there is no realistic prospect of an SLC in the supply of sausage rolls or other CSP products in any of the segments in Northern Ireland.

Hot pies

- *Shares of supply*

151. Shares of supply in the hot pie sector as a whole are not high enough to indicate a cause for concern to competition. However, the CMA notes that in the own-label grocery segment the Parties will have a combined share of supply of [35–45]%, with an increment arising from the merger of [15–25]%. Table 7 shows the Parties' shares of supply in hot pies across segments.

[48] Kerry holds only [<25]% of ordinary shares in Poppy (see paragraph 25 above). Kerry also holds the majority (around [✂]%) of preference shares in Poppy, but the CMA understands (based on clause 11 of the Shareholders' Agreement relating to Poppy of 17 August 2014 (Annex 2 to the Merger Notice) and Pork Farms' submissions) that [✂].

TABLE 7 **The supply of hot pies in the UK in year ending 22 June 2014**

	CSP Segment – Hot pies				
Supplier	*Grocery (Own-label)*	*Grocery (Branded)*	*Grocery Total*	*Convenience*	*Total*
Pork Farms	[15–25]%	<[0–5]%	**[5–15]%**	[0–5]%	**[5–15]%**
Target	[15–25]%	[0–5]%	**[5–15]%**	[0–5]%	**[5–15]%**
Total	**[35–45]%**	**[0–5]%**	**[25–35]%**	**[0–5]%**	**[25–35]%**
Main competitors	Samworths ([45–55]%) Peters ([5–15]%)	Pukka ([35–45]%) Higgidy ([5–15%) Hollands ([5–15]%) Pieminster ([0–5]%) Peters ([0–5]%) Samworths (3%)	Samworths ([25–35]%) Pukka ([5–15]%) Peters ([5–15]%) Higgidy ([0–5]%) Hollands ([0–5]%) Pieminster (1%)	Wrights ([15–25]%) Peters ([5–15]%) Pukka ([5–15]%) Welsh Pantry ([0–5]%)	Samworths ([25–35]%) Pukka ([5–15]%) Peters ([5–15]%) Higgidy (0–5]%) Welsh Pantry (2%) Holland (2%)
Reduction in Suppliers	4:3	N/A	**5:4**	N/A	**6:5**

152. The CMA notes that in the hot pie sector there are a number of strong branded products, such as Pukka Pies. Therefore, the CMA considers that for hot pies consumers may be less likely to switch between branded and own-label products. Moreover, on the supply-side, businesses such as Pukka Pies would not have the incentive to switch from producing a branded product to own-label hot pies as margins are higher in the branded segment.

153. In response to the issues letter Pork Farms provided revised share of supply information in the hot pies sector based on the latest Kantar data[49] and taking into account the recent losses of business by the merged entity. Pork Farms recalculated that the shares of supply in the total grocery segment following these losses would be:

(a) Pork Farms – [5–15]%;

(b) Target – [5–15]%; **Total – [25–35]%;**

(c) Samworths – [25–35]%;

(d) Pukka – [5–15]%;

(e) Peters – [5–15]%;

[49] Covering the 52 weeks to the end of November 2014.

(f) Higgidy – [0–5]%;

(g) Welsh Pantry – [0–5]%; and

(h) Holland [0–5]%.

The CMA has estimated the effect of the losses on other parties. Pork Farms did not supply a breakdown of shares of supply into the own-label, branded and convenience channels.

154. For the same reasons as discussed in relation to cold pies at paragraph 104, the CMA notes that, in spite of the recent losses of business, the merged Parties will hold a significant degree of market power in the own-label grocery hot pie segment. In particular, the merged entity will only face credible competition from one competitor, ie Samworths. Hence, the CMA believes that, even if the merged entity's market power has been diminished following recent losses, the shares of supply held by the merged entity and the small number of large competitors in this segment, indicates that it will retain a high level of market power across the grocery own-label segment of hot pies.

155. The majority of third parties considered the Parties to be each other's main competitors for own-label hot pies, though Samworths and Peters were also considered as main competitors. Other competitors mentioned were Welsh Pantry, Cranswick and Pukka.

156. Bidding data provided by the Parties showed that the Parties competed with each other for several own-label grocery hot pie contracts. Other competitors which participated in tenders against the Parties were Samworths, Peters and Welsh Pantry.

157. One third party retailer said that it was concerned that the number of potential suppliers of hot pies to [✂] in the own-label grocery segment would reduce from three to two.

158. Another third party retailer said that the Transaction could affect its negotiating position as both the Target and Pork Farms were significant suppliers of own-label hot pies.

159. [✂].[50]

160. Third parties said that material levels of spare capacity in hot pie production are needed to manage peaks of demand, such as Christmas and promotions. One third party competitor said that it needed to have its high level of spare

[50] Response to the CMAs follow up questions from 14 October 2014.

capacity in order to deal with peak periods. It said that at peak periods it was operating at near to full capacity.

161. Another third party competitor estimated that about [30%–40%] of its total capacity was spare. The CMA notes that this volume of spare capacity would not be sufficient for the full own-label needs of one of the large or medium-sized retailers.

162. On the basis of this evidence, the CMA considers that there is limited capacity available for manufacturers to bid for new, substantial own-label hot pie contracts, although smaller retailers have a wider choice of potential suppliers.

163. Several retailers said that they tended to concentrate their supply of own-label hot pies through one or two main suppliers, with these suppliers typically having about 40% of the total value of a retailer's sales. The CMA notes that only the Parties, [✂] and [✂] have the spare capacity available to supply this size of own-label hot pie contract. One competitor told the CMA that it could, in theory, transfer spare capacity from its sausage rolls, pasties and slices production to hot pies to add additional capacity without too much difficulty, but in practice it could not do this as it has no spare capacity in the sausage rolls, pasties and slices segment.

164. As in the case of cold pies and sausage rolls, pasties and slices, the CMA is concerned that a reduction in capacity would limit the ability of retailers to respond to price increases in hot pies by switching to alternative suppliers, in particular in peak demand periods when spare capacity is reduced.

165. One retailer said that it was concerned that, because of the volume of its own-label hot pie contracts, the Transaction will reduce the number of suppliers from three to two. Another retailer was even more concerned saying that the number of potential suppliers for its own-label hot pie products would reduce from two to one. Another retailer said more generally that the Transaction would reduce significantly the choice of suppliers for its own-label hot pie needs.

166. A [✂] said that the number of potential suppliers for [✂] in the own-label grocery segment for major contracts would reduce from three to two.

- *Conclusion on hot pies*

167. Based on the evidence set out above, the CMA considers that, subject to any countervailing factors (see below), there is a realistic prospect of an SLC in the provision of hot pies to the own-label grocery segment.

Scotch and savoury eggs

168. The CMA has examined whether there is a realistic prospect of an SLC in the supply of scotch and savoury eggs as a result of a loss of competition between Pork Farms and Kerry, given that Kerry may have acquired material influence over Pork Farms as a result of the Transaction. The CMA notes that Kerry does not itself manufacture scotch and savoury eggs, but it supplies scotch eggs manufactured for it by Tulip. The CMA considers that this supply of scotch eggs should be attributed to Kerry for the purposes of the competitive assessment, since Kerry sets the competitive parameters for the supply.

169. Shares of supply in the savoury and scotch eggs sector as a whole are not high enough to indicate a cause for competition concern. However, in the convenience segment Kerry and Pork Farms will have a combined market share of [35–45]%, with an increment arising from the Transaction of [5–15]%. Pork Farms' recalculation of shares of supply in the convenience segment (see footnote 51), seeking to take into account van sales, indicates that the merged Parties may have a lower share of supply. The CMA believes that the real share of supply is somewhere between the two figures (ie somewhere between [5–15]% and [35–45]%) and, on this basis, the CMA still believes that the merged Parties will have a significant degree of market power in the convenience segment. Table 8 shows the relevant shares of supply in scotch and savoury eggs across segments.

TABLE 8 **The supply of scotch and savoury eggs in the UK in year ending 22 June 2014**

CSP Segment – scotch and savoury eggs

Supplier	*Grocery (Own-label)*	*Grocery (Branded)*	*Grocery Total*	*Convenience*[51]	*Total*
Pork Farms	[15–25]%	[5–15]%	**[15–25]%**	[5–15]%	**[15–25]%**
Kerry	<[0–5]%	[0–5]%	**<[0–5]%**	[25–35]%	**[0–5]%**
Total	**[15–25]%**	**[5–15]%**	**[15–25]%**	**[35–45]%**	**[15–25]%**
Main competitors	Tulip ([65–75]%) Dearne Valley ([5–15]%)	Tulip ([25–35]%)	Tulip ([55–65]%) Dearne Valley ([5–15]%)	Samworths ([35–45]%) Dearne Valley ([0–5]%)	Tulip ([55–65]%) Dearne Valley ([5–15]%) Samworths ([5–15]%)
Reduction in Suppliers	N/A	N/A	**N/A**	4:3	**N/A**

[51] Pork Farms estimated that including van sales the combined share of supply of the Parties and Kerry for scotch and savoury eggs would be approximately [15–25]% with an increment of approximately [0–5]%. Samworths' share of supply would rise to approximately [35–45]% and Peters around [5–15]%.

170. Third party responses indicated that the set of competitors in the convenience segment is limited, with the Parties, Samworths and Dearne Valley being the only potential suppliers mentioned.

171. The CMA notes that the largest supplier of scotch and savoury eggs in the UK, Tulip, does not have any presence in the convenience segment (though it does manufacture scotch and savoury eggs for this segment for distribution by Kerry). The CMA considers that, in the event Kerry were to introduce a price increase,[52] it is unlikely this would be a commercially viable strategy due to its role solely as distributor. A price increase leading to a reduction in demand would cause a drop in revenues for Tulip, which would then be incentivised to find another distributor. Therefore, the CMA believes it would be difficult for Kerry to exercise any market power. Taking this into account, and the Parties' relatively lower shares of supply in the convenience segment, the CMA considers that there is not a realistic prospect of an SLC in this segment.

- *Conclusion on scotch and savoury eggs*

172. Based on the evidence set out above, the CMA considers that there is no realistic prospect of an SLC in the provision of scotch and savoury eggs.

Conclusion on horizontal unilateral effects

173. Overall, the CMA considers that, subject to any countervailing factors (see below), a realistic prospect of an SLC as a result of the acquisition by Pork Farms of the Target may arise in the following products in the specified segments:

(a) Cold pies, in the following segments:

(i) own-label products in the grocery segment;

(ii) branded products in the grocery segment; and

(iii) the convenience segment.

(b) Sausage rolls, pasties and slices, in the following segments:

(i) own-label products in the grocery segment; and

[52] For example on the basis that it considered it had sufficient market power that its increased margin, and the proportion of any profit it achieved from sales which divert to Pork Farms, would offset any reduction in demand, making this a profitable strategy.

(ii) the convenience segment.

(c) Sausage rolls, in the following segments:

(i) own-label products in the grocery segment;

(ii) branded products in the grocery segment; and

(iii) the convenience segment.

(d) Hot pies, in the own-label products in the grocery segment.

Countervailing factors

Entry and expansion

174. The CMA considers entry and expansion separately, where entry is defined as the event of a supplier launching one or more products in a market in which it was not previously present; whereas expansion is defined as the event of a supplier increasing its market presence by either increasing sales of its existing products or through the introduction of new products. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be (a) timely, (b) likely, and (c) sufficient.[53]

175. Pork Farms submitted that barriers to entry and expansion for the supply of CSP products are relatively low and would not deter entry in practice. Pork Farms said that the threat of entry would remain credible following the Transaction and would continue to impose a meaningful competitive constraint on the merged business. Pork Farms stated that across the CSP sector and in other related markets there are many potential entrants. This contradicts the information contained in some of the Parties' internal documents.[54]

176. Pork Farms submitted that current suppliers which are already active in the manufacture of sausage rolls and/or cold pies are readily able to increase output on their existing lines without incurring any meaningful expenditure, as these suppliers have spare capacity equivalent to approximately 20–25% of the current market size. Further, Pork Farms submitted that current CSP manufacturers could expand into the sausage roll or cold pie segments

[53] See Merger Assessment Guidelines, paragraph 5.8.3.
[54] For example, annex 14c of the Merger Notice page 85: 'CSP is a competitively defensible category due to the high entrance costs, expertise and the benefits of scale for existing manufacturers', and 'Recent new entrants remain small in scale'.

through the addition of a new manufacturing line at a cost of £2 million and a lead time for installation of up to 12 months, although these costs could be significantly reduced if second hand equipment was used.

177. Pork Farms said that manufacturers in other related food markets, and in particular manufacturers of frozen pastry products, already benefitted from a similar platform as existing CSP suppliers which would allow them to enter any CSP segment with a similar cost and within a similar timeframe.

178. Pork Farms also submitted that large retailers were able to encourage or sponsor entry. In particular, Pork Farms highlighted the entry of Samworths into the quiche market in 2006 through support from Tesco, Cranswick's recent entry into the CSP market with support from Marks and Spencer and Asda's support of Welsh Pantry.

179. In response to the issues paper Pork Farms set out the changes in processes which it believed would be required for a producer of other CSP products to move into cold pie production. Pork Farms said that, of the 11 production stages, only two required equipment which differed from other CSP production. Pork Farms said that the cost of acquiring this equipment would be less than £500,000, and once acquired the equipment could then be incorporated into a line that has been used for other types of CSP production.

180. However, most third parties said that barriers to entry in CSP production were high due to the cost of equipment required to manufacture CSP products, the high manufacturing standards required by retailers and, for the case of branded products, the cost of creating brand awareness.

181. In terms of expansion, third parties listed a number of factors which could make expansion challenging:

(a) Although expansion to own-label supply does not require investment in marketing and brand awareness, technical standards required by retailers may represent a barrier, in particular for smaller CSP manufacturers.

(b) Expansion through the addition of a production line is limited by the availability of space, which can only be addressed by expanding existing facilities or acquiring a new site.

(c) Expansion to cold pies is particularly challenging for manufacturers of other CSP products. Third parties said that the manufacturing process is significantly different for cold pies, the equipment is bespoke and expansion to this product is not as efficient as expansion to other CSP products, which would allow for multifunctional manufacturing lines.

(d) Even where expansion does not involve introducing a new product, third parties said that a major expansion of capacity would require volume assurances from retailers in order to be viable. Expansion would involve considerable sunk costs, in particular if it required acquiring a new building or expanding existing facilities.

182. Third parties stated that, for the reasons outlined above, new entry or expansion would require significant levels of investment which would only be justified by anticipated volumes. Further, the costs involved would depend on the size of the company, the product the manufacturer is currently producing, and the CSP product to which it would be seeking to expand. Third parties explained that expansion to own-label is less costly, as it does not require investment in brand awareness, but smaller manufacturers said that they would find expansion into own-label products particularly difficult due to the cost of meeting retailers' technical requirements.

183. The CMA asked third parties, both competitors and retailers, about sponsored or supported entry or expansion. All third party retailers which expressed a view said that they had not sponsored entry and did not have any plans in the short or medium term to sponsor entry. All third party competitors which expressed a view said that they had not been sponsored to enter or expand into the market.

184. The CMA has not received evidence from third parties regarding retailers' intentions, ability and/or incentive to sponsor entry or expansion in the next one to two years, and therefore, there is insufficient evidence for the CMA to conclude that sponsored entry in the manufacturing and supply of CSP products is likely.

185. The CMA considers that there is insufficient evidence for it to conclude that new entry into a CSP market is likely.

186. Subject to the availability of space, expansion through the introduction of additional manufacturing lines seems to be less costly and quicker. However, expansion in cold pies seems to be particularly difficult, as the manufacturing process is different and equipment is specialised. The CMA observes that recent examples of expansion in the CSP market, eg by Cranswick have not been in cold pie facilities.

187. Some competitors told the CMA that they have expansion plans in place. One smaller competitor said that it had plans to grow by [30%–40%] each year in line with the expected growth of the retailers which it supplies. Another had plans to expand, [✂]. The CMA notes that both of these competitors are small compared with the Parties and Samworths and such expansion plans would

not have a material effect on the Parties' share of supply. Neither of these examples presents the level of expansion which would sufficiently mitigate the CMA's concerns with the Transaction.

188. The CMA considers that there is insufficient evidence at this stage for it to conclude that expansion into a CSP market is likely.

189. Therefore, the CMA considers that entry or expansion is unlikely to be timely and sufficient to mitigate its concerns arising from the Transaction.

Buyer power

190. Pork Farms submitted that the countervailing buyer power of the large grocery retailers is sufficient in itself to eliminate any possibility of the merged entity increasing prices above a competitive level. Pork Farms explained that the nature of the CSP market is such that CSP manufacturers are heavily dependent on a small number of customers, ie the large grocery retailers. These customers are strong, sophisticated purchasers whose purchasing decisions are primarily driven by competition in their own downstream market (ie competition between grocery retailers).

191. Pork Farms submitted that, moreover, retailers can easily switch to alternative CSP manufacturers and/or encourage or sponsor entry or expansion, where it is in their interests to do so. Pork Farms concluded that the merged entity will have neither the ability nor the incentive to increase prices above a competitive level (or to reduce service levels or the quality of its products below a competitive level). Pork Farms said that, if the merged entity was to attempt to do so, the large grocery retailers would swiftly and easily defeat such an attempt. However, Pork Farms did not provide any evidence in support of the actions it claimed that the retailers typically carried out, such as threatening to remove parts of a contract from a supplier in response to a price rise. As discussed at paragraph 97, third party retailers have pointed out to the CMA that they would not have the incentive to do so.

192. In response to the issues paper Pork Farms said that the Competition Commission, in its report on the Grocery Market Investigation,[55] had found that all large grocery retailers, wholesalers and buying groups have buyer power in relation to at least some of their suppliers and that, where there was an exception to this, this was only in relation to suppliers of the most prominent branded goods. However, Pork Farms failed to provide the CMA

[55] The supply of groceries in the UK market investigation, a report by the Competition Commission, 30 April 2008.

with sufficient evidence that retailers exerted particularly high levels of buyer power in relation to the supply of CSP products.

193. Based on the Parties' submissions and comments from third parties, the CMA understands that the CSP grocery market is often characterised by long-term relationships between retailers and their preferred suppliers, often developed over many years, and therefore the threat of delisting a supplier's product is limited. Third party retailers told the CMA that delisting would be used as a last resort, and negotiations would be preferred until an agreement is reached, which could involve price increases. One third party retailer told the CMA that its negotiating position would be weakened by the Transaction.

194. Third party retailers also told the CMA that, in the grocery market, switching suppliers can be difficult, as retailers would need to incur administrative costs and time, as well as undertaking technical audits of suppliers' facilities. One third party told the CMA that switching can be particularly difficult for products with geographical denomination (eg Melton Mowbray pork pies and Cornish pasties). Also, some retailers raised concerns about the number of suppliers available to them after the Transaction and, in particular, about the number of suppliers able to provide the volumes they required. The reduction in the number of viable suppliers as a result of the Transaction would reduce the ability of these retailers to exercise any buyer power they may have.[56]

195. The CMA also notes that Pork Farms arguments on buyer power relate to the grocery segment and would be unlikely to apply to the convenience segment.[57]

196. Overall, the CMA considers that for the purposes of its phase 1 investigation it does not have sufficient evidence to conclude that buyer power is sufficient to mitigate its concerns arising from the Transaction.

Third party views

197. The CMA contacted competitors and customers of the Parties as part of its market testing. Although the majority of retailers were not, in general, concerned, some did express concerns that the number of suppliers available to them, particularly to compete for the supply of own-label products, would be much reduced. Some competitors were also concerned.

[56] Merger Assessment Guidelines, paragraph 5.9.3.
[57] *Merger Assessment Guidelines*, paragraphs 5.9.1 and 5.9.6.

198. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

199. Consequently, the CMA believes that it is or may be the case that the Transaction has resulted or may be expected to result in an SLC within a market or markets in the UK.

200. The CMA therefore considers that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised pursuant to section 22(3)(b) whilst the CMA is considering whether to accept undertakings under section 73 of the Act in lieu of a reference. Pursuant to section 73A(1) of the Act, Pork Farms has until 24 December 2014 to offer an undertaking to the CMA that might be accepted by the CMA under section 73(2) of the Act. If Pork Farms does not offer an undertaking by this date, if Pork Farms indicates before this date that it does not wish to offer an undertaking, or if pursuant to section 73A(2) of the Act the CMA decides by 5 January 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered by Pork Farms, or a modified version of it, then the CMA will refer the Transaction for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Andrea Coscelli
Executive Director, Markets & Mergers
Competition and Markets Authority
17 December 2014

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[i] The CMA is content to recognise that Farmers Boy is active in the convenience sector through the Morrisons Local stores.

[ii] The CMA has been asked to point out that there is no situation where Pork Farms and KFL both supply own-label sausage rolls to the same retailer.