COMPLETED ACQUISITION BY PORK FARMS CASPIAN LIMITED OF THE BUSINESS AND ASSETS OF THE CHILLED SAVOURY PASTRY BUSINESS OF KERRY FOODS LIMITED

Initial submission of Pork Farms Group

in response to Annex B of the CMA's First Day Letter dated 5 January 2015

29 January 2015

MACFARLANES

Completed acquisition by Pork Farms Caspian Limited of the business and assets of the Chilled Savoury Pastry ("CSP") business of Kerry Foods Limited (the "Transaction")

1 BACKGROUND ON PORK FARMS GROUP, PORK FARMS AND THE TARGET

- **Brief histories of Pork Farms Group, Pork Farms and the Target, together with chronologies of significant events in the last five years. These should include details of their organizations, merger activities, the history of any previous market entry and exit in relation to the supply of CSP products, financial structures and principal activities, including those outside the reference area, if appropriate. This should include a brief description of Pork Farm Group within the wider Vision Group**

Vision Capital

1.1 As set out in the Vision Capital structure diagram attached as Confidential Annex 5 to the response to Annex C of the CMA's First Day Letter dated 5 January 2015 ("**Annex C Response**"), Vision Capital Partners VI L.P. and Vision Capital Partners VI E L.P. (together, the "**Vision Capital Funds**") ultimately control Pork Farms Group Limited (formerly Poppy Acquisition Limited) ("**Pork Farms Group**"). The Vision Capital Funds are managed by Vision Capital Management Limited, a member of the Vision Capital group (referred to collectively herein as "**Vision Capital**"). Vision Capital is an international private equity firm with offices in London and New York. It invests mainly in mature, mid-market companies in Europe and the Americas with transaction sizes between €50 million and €1 billion. Vision Capital currently has approximately €1.6 billion of assets under its management. Further information on Vision Capital's business is available at www.visioncapital.com.

Pork Farms

1.2 Pork Farms Limited ("**Pork Farms**"), a subsidiary of Pork Farms Group, is a private limited company incorporated in England and Wales and is one of the companies in Vision Capital's current investment portfolio. Pork Farms is a food manufacturer and supplier, specialising in CSP products. Pork Farms currently employs around 2,500 people in the UK.

1.3 Pork Farms' principal activity is the manufacture of CSP products for supply into the grocery retail sector, under both brands and retailers' own labels ("**OL**"). Pork Farms produces food under three brands of its own: Pork Farms (cold pies, sausage rolls, as well as savoury slices, Scotch eggs and savoury bites); Scrummy Eggs (Scotch eggs); and Bowyers (cold pies, Scotch eggs and sausage rolls). Pork Farms also produces certain products under the brands that are licensed in from third parties, specifically: Branston (pork pies with pickle and sausage rolls with pickle); and Happy Egg (quiches and Scotch eggs). Until recently, Pork Farms also produced hot pies under the Aunt Bessie's brand, although that licence arrangement is no longer active.

1.4 Pork Farms has four production sites: Palethorpes in Shropshire (producing sausage rolls, hot pies, pasties and slices); Queens Drive in Nottingham (producing cold pies); Riverside in Nottingham (producing quiches); and Shaftesbury in Dorset (producing Scotch eggs and cooked cocktail sausages). Pork Farms' central functions are provided from the Queens Drive site. Further information on Pork Farms' business is available at www.porkfarmsltd.com.

1.5 Pork Farms has not been involved in any acquisitions or disposals in the last five years. However, Pork Farms has made a number of significant investments and improvements over the last five years that have enhanced capacity and contributed to the overall efficiency of its production sites. The more material investments made by Pork Farms at its sites over the last five years may be are summarised as follows:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Pork Farms Caspian Limited

1.6 Pork Farms Caspian Limited ("**Caspian**") is a private limited company incorporated in England and Wales. Pork Farms Group established Caspian as a wholly-owned subsidiary for the purposes of acquiring the CSP business of Kerry Foods Limited ("**KFL**") (such business being referred to throughout this Initial Submission as the "**Target**", with Pork Farms and the Target / KFL (where appropriate) together referred to as the "**Parties**").

1.7 The Target operates from two sites in the UK, in Poole (Dorset) and Spalding (Lincolnshire), and currently employs, directly and indirectly, around 1,250 people in the UK. The Target's CSP offering includes: folded products (such as sausage rolls, pasties and slices); hot pies (which consumers reheat, e.g. as part of a main meal); and cold pies (such as pork pies), as well as certain snacking products (e.g. mini rolls and pasties). The Target's major pastry brand is Wall's (which it previously used under licence from Unilever when part of the Kerry Group, and which is now sub-licensed [redacted]), but it also produces OL products for many UK retailers.

1.8 [redacted]

1.9 The Target has not been involved in any acquisitions or disposals in the last five years [redacted]:

[redacted]

Pork Farms and Pork Farms Caspian Limited

1.10 Prior to the merger, the Target did not constitute a fully-formed stand-alone business, but received significant support from elsewhere within the Kerry Group, where a number of business functions were carried out. As the Kerry Group ceased to provide those functions following the Transaction, and relevant staff involved in the provision of those functions did not transfer as part of the Transaction, such functions were necessarily carried out by Pork Farms from completion.

1.11 Whilst Caspian is a separate entity from Pork Farms, the two companies have a common parent company, Pork Farms Group, and the company directors on the Caspian board are also directors of Pork Farms. This is necessary because the Target business as acquired did not include any senior management, such that it had no employees capable of assuming a board-level role.

1.12 Further details regarding the extent of the integration of Pork Farms and Caspian following the Transaction are detailed in the Interim Order Status Summary note which was submitted to the CMA on 9 January 2015.

2 INFORMATION ABOUT THE TRANSACTION

- **A statement of the circumstances leading up to the merger, together with the history of the previous relationship between the companies (if any) including relevant legal or financial issues. This should include details of the negotiations with KFL/Kerry Group, and the timetable of events leading up to the mergers.**
- **A statement detailing the agreements that implemented the merger, together with a summary of the pre-merger and post-merger structures of Pork Farms Group and KFL. This should include copies of all the agreements that implemented the merger.**
- **A statement explaining the rationale for undertaking this merger, including the benefits and financial synergies expected to be gained from the merger.**

Circumstances leading up to the merger

2.1 The chronology of events leading up to the Transaction can be summarised as follows:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

1 [redacted]

[redacted]

2.2 Aside from the contact arising from the events summarised at paragraph 2.1 above, there were no pre-merger links or relationships between Pork Farms and the Target.

Statement detailing the agreements implementing the merger

2.3 Copies of the merger documentation are attached to the Merger Notice at Annexes 1, 2 and 8 and Confidential Annex 13.

2.4 The pre-merger ownership structures for Pork Farms and KFL were provided as Annex 4 to the Merger Notice.

2.5 As set out above, the Parties completed the Transaction on 17 August 2014, which was implemented through the following steps:

2.5.1 Pork Farms Group (at the time named Poppy Acquisition Limited) established a wholly-owned and newly incorporated vehicle, Caspian, for the purposes of acquiring the Target;

2.5.2 on 17 August 2014, Caspian entered into a business purchase agreement with Pork Farms and KFL ("**BPA**") pursuant to which it acquired the Target in consideration for issuing loan notes with face value of [redacted] in Caspian (a copy of the BPA is provided at Annex 1 to the Merger Notice); and

2.5.3 following the acquisition of the Target by Caspian, Pork Farms Group acquired the loan notes from KFL in Caspian in consideration for issuing preference shares to the same value in Pork Farms Group and KFL subscribed in cash for ordinary shares in Pork Farms Group.

2.6 A copy of the post-merger structure of Pork Farms Group is provided at Confidential Annex 5 to the Annex C Response. This shows that, as a result of the Transaction, Pork Farms Group is now the holding company of both Pork Farms and Caspian. Members of the management team of Pork Farms now hold [redacted]% of the ordinary shares in Pork Farms Group between them, with KFL holding [under 25]% of the ordinary shares and the remaining [more than 50]% of the ordinary shares in Pork Farms Group being ultimately controlled by the Vision Capital Funds.

2.7 KFL holds 45,000 class B ordinary shares which grant it [under 25]% of the voting rights as well as the right to appoint up to two (out of a total of eight) directors to Pork Farms Group's board of directors. KFL also holds [redacted] preference shares in Pork Farms Group, although such preference shares do not confer on it any board representation or voting rights. Schedule 3 (Part 1) of the Shareholders' Agreement (attached as Annex 2 to the Merger Notice) lists a number of reserved matters for which Kerry's consent is also required. However, KFL's veto rights do not go beyond what is necessary to protect the value of its minority shareholding in Pork Farms Group, and none of the matters listed relates to any day-to-day operational decisions/matters.

2.8 [redacted]

2.9 [redacted]

2.10 [redacted]

Rationale for merger

2.11 The Transaction needs to be viewed in the context of the highly challenging and competitive conditions in which CSP manufacturers are currently operating. The grocery sector is undergoing a period of particularly intense competition and the associated problems faced by the larger supermarkets have been well publicised. In addition to competition between the historic "big four" – which has always been very strong – significant numbers of consumers have migrated to the price discounters, such as Aldi and Lidl. As a consequence, the larger retailers have applied even greater pressure on their suppliers in an attempt to remain price competitive whilst maintaining margins. In this context, and against the background of the unsuccessful Project Olympic, Vision Capital and Pork Farms saw the acquisition of the Target as an opportunity to combine the overall strengths of the two businesses in order to meet the increasing expectations by large grocery retailers who demand from CSP manufacturers a secure, efficient and increasingly low cost offering.

2.12 [redacted] The opportunity to merge the businesses and to assimilate the Target into Pork Farms' centres of excellence model (i.e. where sites are dedicated to the production of certain CSP products) would, with accompanying investment, enable Pork Farms to create efficiencies and to take costs out of the Target business. [redacted]

2.13 Pork Farms already has a strong record of achieving efficiencies through operating production sites that act as centres of excellence, with increased production efficiency and lower unit costs of production. [redacted]

2.14 Pork Farms believes that the Transaction will create a merged enterprise that is aligned with the interests of its customers and is better equipped to meet the increasing expectations of large grocery retailers. The merger specific efficiencies and customer benefits that Pork Farms believes will result from the Transaction are discussed in further detail in Section 7 below.

3 THE RELEVANT MARKETS

- **An explanation of what you consider to be the economic markets for this inquiry- both in terms of (a) the product and (b) the geographic market.**
- **Your views on competition within the product and geographic markets identified in the terms of reference, and any other market definition you may consider relevant. This should include comments as appropriate on your competitors, customers and suppliers in relation to the relevant markets, on the level of prices and variety and quality of products in the relevant markets, and on any capital structure and financing issues.**
- **Please summarize your current strategy in relation to the supply of CSP products in the UK to the extent that it is not explained in the latest versions of your strategy documents submitted in response to the CMA initial phase 2 factual information request (see Annex C). This should include a full description of any contracts that have been re-negotiated with either Pork Farms or the Target post-merger.**

3.1 In its phase 1 decision to refer the Transaction for an in-depth phase 2 investigation (the "**phase 1 Decision**"), the CMA concluded that the appropriate frame of reference for the purposes of assessing the competitive effects of the Transaction entailed different candidate markets for the supply of CSP products segmented by:

3.1.1 CSP product types, i.e. between: (i) cold pies; (ii) hot pies; and (iii) sausage rolls, pasties and slices (which could potentially be segmented between sausage rolls on the one hand and pasties and slices on the other);

3.1.2 labelling, i.e. segmented between: (i) OL products; and (ii) branded products; and

3.1.3 customer channel, i.e. between: (i) large grocery retailers; and (ii) convenience stores.

3.2 The CMA adopted a cautious approach to market definition in phase 1. However, it is submitted that a more detailed assessment of the relevant facts and of the views cited in support of the CMA's provisional demarcation will demonstrate that its cautious approach is not supported by an in-depth assessment of the evidence. A distinction between different CSP product types appears less well justified in certain cases (notably between sausage rolls and pasties/slices) than it is in others, but on more detailed analysis such distinction is largely irrelevant to the competitive assessment of the Transaction. By contrast, on review of the evidence it becomes clear that the distinctions between OL and branded products, and between the grocery retail and convenience channels, are not empirically sustainable. On the demand side, all of the available evidence indicates that brands are of little or no significance in the market for CSP products. Consumers have no appreciable brand loyalty and are generally not willing to pay any premium for a CSP brand. On the supply side, all of the larger competitors recognised by the CMA (as well as several smaller ones) are demonstrably present in all of the hypothetical segments in question and would evidently face no obstacles in switching across these notional market boundaries, quickly and without any material costs, whether in response to an attempted price increase by the merged business or otherwise. The hypothetical distinctions postulated by the CMA in its phase 1 assessment should therefore be recognised as not withstanding the more detailed investigation associated with a second-phase review.

Product market

3.3 Insofar as it relates to the possible distinction between different types of CSP products, the Parties are essentially agnostic in respect of the product market definition that may be adopted. This is because, even if such product markets are considered on the narrowest basis, the merged business will continue to be subject to strong competitive constraints that will rule out the possibility of any SLC resulting from the Transaction. Those constraints include the threat of entry or expansion by actual or potential competitors, which is discussed in further detail in the section entitled "Barriers to market entry/exit" below.

3.4 That said, for the purposes of the CMA's phase 2 investigation, we believe it is already clear from the information obtained in phase 1 that sausage rolls, pasties and slices should be considered within the same relevant product market, even if only on the basis of the extreme ease of supply side substitutability. All of the relevant products can be produced on the same lines and readily switched between. Both Pork Farms and the Target can produce sausage rolls and pasties/slices on the same lines and on the same day, and do so frequently as a matter of course – circumstances which the Parties believe are equally true for all or virtually all of its competitors.

Demand-side substitutability

3.5 Demand-side switching between different CSP product types is easy: these are essentially similar products sold at similar prices, in respect of which the pattern of consumption is also broadly similar. Retailer buyer power (see Section 6 below) is equally relevant as they are the Parties' direct customers. Whilst neither can properly be considered in complete isolation from the other, it is retailers who control the framework within which consumer purchasing decisions are made and consumer choice is exercised. It is the retailers who make the direct purchasing decisions affecting CSP manufacturers and who control the range and balance of products comprising their CSP category. Whilst consumer purchasing decisions will invariably have some influence on those decisions, they are nonetheless decisions of the retailers. Clearly, Pork Farms is not in a position to provide first-hand evidence detailing how such decisions are made and how they have been reflected in different retailers' CSP category planning and implementation. However, Pork Farms believes that any analysis of retailer CSP categories over time will show a significant degree of customer (i.e. retailer) switching between different types of CSP product across the category. To that end, Pork Farms requests that the CMA requires retailers to provide details of their total CSP product purchases, segmented by reference to each CSP product type, over the last five years in order to ensure that this aspect of demand side substitutability is properly understood for the purposes of the phase 2 investigation.

3.6 As a related point, which may not amount to demand side switching *per se*, it should be noted that the competitive behaviour of suppliers (including the merged business) is (and will continue to be) disciplined by the retailers' ability to exercise their significant countervailing buyer power. Such exercise of buyer power is not limited to the exercise of choice between different types of CSP on the basis that they constitute true demand side substitutes (although that is obviously part of the equation). Retailers are able to go further, such that they would be able to effectively punish a supplier for an attempted price increase in respect of one CSP product type by switching purchases away from that supplier in respect of another CSP product type – regardless of whether the two CSP product types in question are perfect demand side substitutes (whether from a retailer or consumer perspective). As the material CSP manufacturers, including the merged business, are active across a number of different CSP product types and dependent on each such product type for a meaningful proportion of their total sales, this affords the retailers another means by which they are able to defeat any purported exercise of supposed market power, such as an attempted price increase. Further information in respect of the countervailing buyer power enjoyed by retailers and the extent to which it precludes the existence of market power on the part of the merged business is set out in Section 6 below.

3.7 Intuitively and from the consumer's perspective, different CSP products would appear to be substitutes – each of them serving as a key meal component or "centre" and/or as a snack or food "on the go", and each of the CSP product types relevant to the phase 2 investigation essentially being meat and pastry based products. It is acknowledged that particular pairs of CSP product types may not appear to be perfect substitutes but this does not mean that switching does not occur, nor that sufficient switching would not occur in response to a price increase for the products in question to fall within the same relevant product market.

3.8 The evidence that was available in the CMA's phase 1 investigation indicated levels of switching consistent with the position that any SSNIP would be unprofitable, such that one would expect the demand-side response to defeat any attempted price increase by the merged entity. In its phase 1 Decision, the CMA included evidence from respondents who indicated that some CSP customers would switch between one product and another. That evidence showed that over fifty per cent of respondents believed customers would switch between the following pairs of CSP product types: (i) Scotch eggs and cold pies; (ii) cold pies and sausage rolls; (iii) sausage rolls and pasties/slices; and (iv) pasties/slices and hot pies. This appears to us consistent with a chain of demand-side substitution across all of the CSP product types that are relevant to the phase 2 investigation.

3.9 Whilst this evidence has its limitations, from the phase 1 Decision it does not appear that the CMA received any meaningful evidence to the contrary. The point was made that neither the Parties nor third parties provided further evidence in support of their views as to the extent of switching between CSP product types and that the CMA did not have evidence of specific examples of customers or consumers switching in response to a small price increase. Such evidence as was provided indicated customer switching between CSP product types even in the absence of any price increase, which would suggest that an increased level of switching is to be expected as a result of any price increase. The level of switching required to render a SSNIP unprofitable would not need to be particularly high.

3.10 By contrast, the third party observations referred to by the CMA regarding where CSP products are not demand side substitutes do not conflict with the evidence illustrating that a chain of substitution exists. Specifically:

3.10.1 *Where one is typically consumed hot and the other cold.* The only relevant CSP products that are habitually consumed hot are hot pies. This would not affect their suitability as a substitute meal centre and even as food on the go as there will be many circumstances where the consumer in question has ready access to a microwave (e.g. where these are available within retail outlets, as is often the case for convenience stores at filling stations). More importantly, it does not affect hot pies' substitutability with pasties and slices (the next link in the chain), which are often consumed cold but can equally be heated, depending on consumer preference. The same is true for sausage rolls, which form the next link in the chain.

3.10.2 *Where they are subject to different seasonal patterns of demand.* It is difficult to see how this assertion, of itself, could have any material bearing on the existence of a chain of substitution. Seasonal demand patterns driven by the weather and its effect on transient consumer preferences are no more valid than the hot/cold distinction referred to above. Other seasonal demand patterns may be driven by factors that are just as likely to endorse substitutability rather than to counter it: e.g. cold pies are assumed to be popular at Christmas; retailers run price promotions on cold pies in the run up to Christmas; sales of cold pies increase; sales of other CSP products may fall – what is there to say that customers are not switching away from other CSP products to cold pies in response to the cold pie promotional price decrease?

3.10.3 *Where one is typically eaten as a snack and the other part as part of a main meal.* All CSP product types are capable of serving as a meal centre and the distinction between a snack and a main meal is a particularly vague one. That a hot pie and a Scotch egg are not perfect substitutes in the context of a particular meal does not contradict the existence of a chain of substitution. Scotch eggs and pork pies could be direct substitutes that might accompany a salad, just as a hot pie or a Cornish pasty might be to go with mash, peas and gravy. Products better suited for snacking or as food on the go might tend to be smaller than those which are more frequently used as meal centres, but all CSP product types encompass a range of different product sizes.

3.11 Pork Farms is exploring the extent to which available data sources (e.g. Kantar) might be used to provide further evidence in respect of customer switching and demand side substitutability. Pork Farms intends to provide the CMA with further evidence in this regard, either as part of the responses to the CMA's Market Questionnaire or by way of a separate submission, which it expects to show meaningful levels of customer switching consistent with the points made above.

Supply-side substitutability

3.12 In respect of sausage rolls and pasties/slices, as noted above it is clear that the speed and low cost of supply-side substitutability means these should properly be considered within the same relevant product market. In particular:

3.12.1 Many suppliers (Pork Farms and the Target included) produce both types of product on the same line and can (and frequently do) switch production from one type of product to the other on the same day. All suppliers should be capable of doing so with ease, quickly and at low cost and Pork Farms believes this will certainly be the case for all of Samworths, Peters, Farmers Boy, Cranswick, Higgidy and Welsh Pantry.

3.12.2 Third party evidence referred to in the phase 1 Decision also supports supply-side substitution between sausage rolls and pasties/slices, as third parties confirmed that "*switching production across these products is relatively easy and has low cost*".

3.12.3 The CMA's analysis of the main suppliers of each CSP product, although it is not a comprehensive reflection of the universe of CSP manufacturers or their available CSP ranges, nevertheless shows that all CSP manufacturers listed as producing sausage rolls also produce pasties/slices.

3.12.4 The CMA's phase 1 Decision concludes that there is evidence that shifting production between sausage rolls and pasties/slices is relatively easy, which we regard as a telling (if understated) acknowledgment.

3.13 In respect of supply-side switching between other pairs of CSP product types, Pork Farms acknowledges that there are differences between the equipment and processes used in each case but does not consider these to be particularly material. Whether or not these different CSP product types should be considered within the same relevant product market based on the ease of supply side switching alone may be open to debate but that analysis ought properly to be considered alongside the extent of demand side switching referred to above. This would present a more credible basis for considering the different CSP product types in question as part of a wider relevant product market.

3.14 However, market definition is not an end in itself and the far more relevant point is that supply side switching between all different CSP product types is sufficiently easy, quick and low cost for all CSP manufacturers of any scale to be potential material competitors in any CSP product segment where they are not currently present. For that reason, whilst also relevant to this section, Pork Farms' views in respect of supply side switching are set out in more detail in Section 4 below on barriers to market entry/exit. More detailed information in respect of the ease and costs of switching will also be provided in response to the CMA's Market Questionnaire.

OL and branded

3.15 As an appropriate starting point, we believe it is helpful to consider the market characteristics one would expect to find evidence of in circumstances where customer demand in respect of OL products was genuinely different from that for branded products, such that a demarcation between the two for market definition purposes would (at least in respect of demand-side substitutability) appear valid. In such circumstances, one would expect evidence showing that customers have significant brand loyalty and that their preference for branded products is strong enough for such products to attract a meaningful brand premium, which would then be reflected in appreciably higher prices for branded products when compared to their OL alternatives. Brand loyalty and willingness to pay a premium would have to be enduring enough for a SSNIP in respect of branded products not to be rendered unprofitable by a sufficient proportion of customers switching to OL products. One would also expect to see significant spending on advertising and marketing by manufacturers of branded products to establish and maintain brand identity.

3.16 The CSP product market exhibits none of these key characteristics. Price differences between OL and branded CSP products are not marked and there is no demonstrable brand loyalty. Consumer survey evidence shows that only a small proportion of consumers – around 24% – consider brands to be an important purchasing criterion. Material spending on advertising and marketing in respect of branded CSP products is also absent. There is no evidence on the demand side in support of the view that OL and branded products should be treated as distinct products markets.

3.17 On the supply side, it is not even necessary to consider the time and costs associated with notional switching between OL and branded products. In each of the relevant CSP product categories, all of the more material competitors recognised by the CMA in its phase 1 decision are already active in the production of both OL and branded products. There is no meaningful difference in the manufacturing of branded and OL CSP products. As noted above (and explained at paragraph 13.14 of the Merger Notice), CSP manufacturers producing both OL and branded CSP products can produce OL products on the same production lines that they use to produce branded products, switching rapidly and at no significant cost in precisely the same way that they that they would switch between two different SKUs with the same label characteristics.

3.18 In its phase 1 Decision, the CMA appeared to base its conclusions on segmentation on various third party representations, all of which Pork Farms believes can be shown to be largely irrelevant and/or without meaningful foundation. This appears to have been the case in spite of examples from retailers that provided evidence of switching between OL and branded CSP products in response to promotional price changes. Aside from the (as far as we can tell, unsupported) assertion of some third parties that there is no substitution between OL and branded CSP products, the representations that the CMA relied upon in support of segmentation between branded and OL products appeared to be limited to the claims that lack of capacity or investment costs and time associated with building a brand would present obstacles, and the claims of some branded suppliers that they do not have the incentive to switch given the higher margins that they achieve on branded products.

3.19 Data provided by Pork Farms (as extracted from its transactional database, a copy of which has been provided to the CMA for the purposes of its phase 2 investigation) shows that standard margins [redacted]

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3.20 If that is the only reason why such competitor could not commence supplying OL products from a current position in branded is that all of its readily available capacity happens to be currently deployed in the manufacturing of branded products, that actually suggests that both fall within the same product market for reasons of supply side substitutability. Similarly, a lack of incentive to switch based only on current higher margins in respect of branded products is of little or no evidential value for the purposes of market definition. The more obviously relevant question is whether such an incentive to switch might arise in the event of a price increase of 5-10% in respect of the relevant OL products. In any event, the standard margin data set out above shows that it is already worth supplying OL products at current prices. Accordingly, if prices rise, it will become yet more attractive and more OL products will be produced. All of this constitutes clear evidence that OL and branded products fall within the same relevant product market.

3.21 For the reasons set out above, Pork Farms sees no justification for any segmentation of the CSP market(s) by reference to the distinction between OL and branded products and considers that the reasons advanced in support of such segmentation in the phase 1 Decision do not stand up to scrutiny, making such distinction essentially arbitrary. Even on the basis of supply side switching alone, it is clear that all of the more material suppliers (and many of the smaller ones) in respect of each of the relevant CSP product types are active in the supply of both OL and branded products and face no meaningful barriers either in switching between them for production purposes or in competing for new customer business on either side of this notional divide. In that context, in circumstances where the CMA has recognised only the more material suppliers in characterising the Transaction as a 4 to 3 merger, and where the sales of those suppliers account for the significant majority of the candidate market or markets in question, it appears particularly perverse for the CMA to attach undue significance for market definition purposes to the views of the same small suppliers that it has excluded in its characterisation.

3.22 The argument that the investment costs and time associated with building a brand for CSP products would appear to be neither credible nor consistent with what we know of the market(s) for CSP products. As the phase 1 Decision appeared to recognise, brands are not generally important in the CSP product segments and customers do not appear to place any material value on CSP brands. The purchasing activities of retailers reinforce this view, as the purchasing of branded products through tenders or by approaching several suppliers demonstrates that the brands in question are not strong. In a competitive environment where brands are weak and do not attract any meaningful premium, the time and costs associated with building a brand cannot be material. To put it another way, the investment of significant time and money to establish a brand to compete in such a market could not credibly be regarded as rational, profit-maximising behaviour.

3.23 In the phase 1 Decision the CMA also made further observations regarding the supposed differences between the competitive set of CSP manufacturers for OL products when compared to branded products. On analysis, it should be recognised that none of these observations carry any evidential weight in support of the contention that OL and branded CSP products might comprise distinct product markets. With only two exceptions, what the CMA actually observed was not a difference in the manufacturers comprising the competitive set in question but merely a difference in their relative shares of supply. Such differences may reflect a different choice of focus from one manufacturer to the next but they do not constitute evidence of distinct product markets – particularly where the market participants in question are evidently present on both sides of the notional division and could clearly switch between the two at will.

3.24 Even the two exceptions that were identified by the CMA add little or nothing to the argument in favour of segmentation. The Morrisons example provides compelling evidence of the ability of the large grocery retailers to sponsor or encourage entry into the CSP market, including by entering on their own behalf. However, to attach any relevance to the fact that Farmers Boy (Morrisons in-house CSP manufacturer) is not active in the branded sector for market definition purposes appears to be entirely misguided. As part of the same enterprise as Morrisons supermarkets, its decision not to supply products to competing retailers is entirely explicable as a matter of supplier choice and by the fact that other supermarkets would not compromise their own interests by stocking the products of their direct competitor. Supermarket paternity and choice of focus notwithstanding, it is difficult if not impossible to distinguish between the concepts of Farmers Boy as an OL product and Farmers Boy as a (perhaps secondary or tertiary) brand. If, for example, Morrisons should choose to supply Farmers Boy products to a third party convenience retailer, would not that alone make it a brand?

3.25 The presence of several suppliers of branded hot pies with little or no presence in the supply of OL products is a similarly poor justification for market segmentation. Again, this is essentially a choice of supplier focus ostensibly driven, not by any meaningful distinction relating to grocery or convenience retail, but by a level of brand recognition that has been fostered in other markets. These are products that are also sold as fast food, out of mobile units on the street in shopping areas and from stalls and counters at football matches and other live entertainment events. That they attract a level of brand recognition in that context which might also facilitate their sale in grocery retail and convenience outlets and helps to explain the relevant suppliers' choice of focus but it does not suggest that the relevant grocery and/or convenience market should be segmented in this way.

3.26 Further evidence in respect of the distinctions between OL and branded CSP products will be provided by Pork Farms in response to the CMA's Market Questionnaire, which can be expected to reinforce the same conclusions. When all relevant CSP products are considered, there are no appreciable differences between OL products on the one hand and branded products on the other. Although there may be some differences in quality between products in the same CSP category, such differences are equally apparent between different branded products as they are between different OL products. More importantly, across each of the relevant CSP product "markets" in question, one will see that for all OL products there are branded alternatives of equivalent quality. To the extent that branded CSP products may be targeted at certain groups of consumers, there will typically be comparable OL CSP products targeted at the same group or groups. Branded and OL CSP products do not represent a stark choice for consumers. Documents provided by Pork

Farms in phase 1, the Parties' and third parties' bidding data, as well as third party evidence obtained by the CMA in phase 1, all suggest that brands are weak and of very limited relevance in a market where the vast majority of consumers do not consider brand to be an important purchasing criterion.

3.27 The argument that current spare capacity is relevant to the question of market segmentation has been dismissed for the reasons explained above. The argument that CSP manufacturers need to be able to produce at scale in order to compete for OL business is similarly flawed and one can only infer that this is based on the misconception that retailers will only contemplate placing their OL requirements for a given category of CSP products with one or two suppliers as high volume packages. This is demonstrably not the case and the variety of different manners in which retailers may choose to place their OL business is discussed in more detail in Section 6 below. However, for market definition the most relevant point is this: any CSP manufacturer with a production line (as opposed to the very small scale, artisan or craft bakers) capable of producing one or more categories of CSP products necessarily has sufficient capacity to supply OL CSP products to large grocery retailers. How a manufacturer then chooses to deploy such capacity is a matter of choice- not a structural factor pertinent to market segmentation.

3.28 The argument that the terms, conditions and technical standards required by retailers in respect of OL products is somehow higher than for branded products is equally without foundation. Whilst specific requirements vary from retailer to retailer, the technical standards required for OL products are fundamentally no higher than those that may be demanded in respect of branded products. As a valid example of all of these points, it should be noted that Deli Santé, a relatively small supplier and recent entrant that was only founded in 2006, has successfully established a relationship with Waitrose for the supply of OL CSP products, including cold pies.

3.29 Pork Farms is exploring the extent to which available data sources (e.g. Kantar) might be used to provide further evidence to rebut the case for segmentation between OL and branded products. Pork Farms intends to provide the CMA with further evidence in this regard, either as part of the responses to the CMA's Market Questionnaire or by way of a separate submission, which it expects to lend further weight to the points set out above.

3.30 For the reasons set out above, Pork Farms does not believe that there is any tenable basis upon which any candidate market for CSP products might justifiably be segmented between OL and branded products. On balance, the evidence referred to in the phase 1 Decision appeared to us to support this conclusion. Once the various factors without probative value have been disregarded for the reasons set out above, we believe the conclusion that OL and branded CSP products are comprised within the same relevant product market is incontrovertible.

Grocery retail and convenience channels

3.31 Pork Farms considers the hypothetical segmentation between the grocery retail and convenience channels to be equally weak when subject to detailed scrutiny. The products concerned are essentially identical, including in respect of the retailer OL CSP products that are sold through the convenience store outlets of the major supermarkets. In respect of the CSP product types in issue – cold pies, sausage rolls, pasties/slices and hot pies – all of the more significant competitors are already active in both the grocery retail and convenience channels, or are absent solely through choice for commercial reasons, such that their ability to respond to a price increase in the convenience channel is not affected by any hypothetical obstacles to supply-side switching.

3.32 It is acknowledged that the demonstrably incomplete and unreliable independent market data sources in respect of the convenience channel may have contributed to the CMA's cautious approach to this aspect of market definition in phase 1. However, all of the reasons explained above as to why there is no valid basis for a distinction between OL and branded CSP product supply in the grocery channel are equally relevant here. Most importantly of all, any supplier active in the grocery retail channel in respect of a particular category of CSP products would be able to supply in the convenience channel. The phase 1 Decision presents no meaningful evidence to the contrary in this regard. If prices for CSP products were to rise in either channel as a result of the Transaction, every indication is that such price increase would not be profitable. Supply-side switching alone would ensure that this is the case, but the demand side constraints discussed above would also be expected to impose a significant constraint. On that basis, the grocery and convenience channels can only be considered as comprised within the same relevant product market.

3.33 As with the notional distinction between OL and branded product markets, the CMA's phase 1 Decision appears to attach undue relevance to various descriptive factors that, properly considered, should have no bearing on market definition. These include: (i) differences in distribution and delivery mechanisms; (ii) a markedly different balance in respect of the prevalence branded as opposed to OL products; and (iii) supposed differences in the competitive set of suppliers.

3.34 As noted above, all of the more significant competitors recognised by the CMA in its phase 1 Decision are already present in both the grocery retail and convenience channels, or are absent solely through choice for commercial reasons. Van sales operations aside, distribution methods in the convenience channel are essentially the same as in the grocery channel. Further information in this regard will be provided by Pork Farms in response to the CMA's Market Questionnaire but in both channels physical distribution from the supplier's perspective typically involves assuming responsibility for transporting the products in question to a regional distribution centre, from which point responsibility for distribution is assumed by the customer or by the customer's agent or contractor. Van sales operations are of no relevance in this regard as they are not a condition for access to the convenience channel – as evidenced by the fact that Pork Farms has no such operations – and, in any event, all of the principal competitors to the Parties recognised by the CMA in its phase 1 Decision already have their own van sales operations.

3.35 That branded products account for a markedly larger proportion of CSP product sales in the convenience channel than they do in the grocery sector is hardly surprising but it is of no significance when contemplating market definition. If, as we consider to be clear from the points explained above, there is no justification for segmenting between OL and branded products in respect of CSP products generally, it should follow that such distinction does nothing to indicate that the convenience channel merits consideration as a distinct market. The prevalence of branded products is nothing more than a side effect of the obvious – that few of the convenience retailers have "own labels". That may or may not be informative in respect of the distinction between different retail markets but it is a matter of indifference when it comes to wholesale supply by manufacturers.

3.36 In truth, the distinction between grocery retail and impulse/convenience is far from a clear one in any event and the apparent differences between the two are not only irrelevant for the purpose of market definition but also distorted and exaggerated by the manner in which independent market data sources are compiled and presented. For example, a significant proportion of the sales of the large grocery retailers are actually made through convenience outlets: the mini-supermarkets and convenience outlets on the high street or petrol forecourts that operate under variant fascia such as Tesco Express, Sainsbury's Local and Morrisons M Local. These sales are not captured by the available Nielsen data, effectively excluding the vast majority of OL CSP product sales from the only third party data source in respect of the convenience channel, rendering it largely useless as a result. The supposed differences in the competitive set of CSP suppliers to the convenience channel are to a large extent fictions sustained by this data deficiency but, even if that was not the case, they are also readily dismissed for the same reasons discussed in respect of the (largely identical) differences noted by the CMA with regard to OL and branded products in the grocery retail channel.

3.37 The CMA also appears to have drawn an artificial distinction between the ways that contracts are negotiated with grocery retailers as opposed to convenience customers. The large grocery retailers' presence in the convenience channel negates such a distinction but, in any event, it is misleading to characterise grocery retailers as users of tender process supplemented by bi-lateral negotiation whilst convenience customers are dependent on direct negotiation alone. Further information in respect of supply agreements and negotiations will be provided by Pork Farms in response to the CMA's Market Questionnaire but in reality no such clear distinction exists, grocery retailers repeatedly engage in direct negotiation without conducting formal tender processes, and many convenience customers exercise their significant buyer power through buying groups (such as Nisa) or wholesale "routes to market" (such as Palmer & Harvey) in a manner that is just as effective.

Geographic market

3.38 For reasons set out in the Merger Notice, and consistent with the CMA's conclusions in the phase 1 Decision, the Parties consider the relevant geographic market for the manufacture and wholesale supply of CSP products (however it may be segmented by reference to product type) to be UK-wide. Further information relevant to geographic market definition will be submitted in response to the CMA's Market Questionnaire but Pork Farms expects that such information will only serve to underline the same conclusions.

4 BARRIERS TO MARKET ENTRY/EXIT

- **A description of all the barriers to entry and expansion and the barriers to exit in the supply of CSP products. In addressing this issue, please explicitly consider factors such as legal or regulatory barriers, patents or know-how, branding, retailer contracts, licences, the importance of economies of scale and/or scope, the minimum efficient scale for a business and access to sources of supply. Please also consider the role of incumbency advantages in the form of information, reputation and cost as a barrier to entry or expansion.**
- **Your views as to whether there will be any sizeable entry into the supply of CSP products in the next three years. Similarly, your views on whether there will be any sizeable exit in the next three years.**

4.1 As explained in the Parties' Merger Notice and the Response to the Issues Letter, the barriers to entry and expansion for CSP products generally are relatively low and would not deter entry/expansion in practice, imposing a meaningful competitive constraint on the merged business.

4.2 Evidence was provided in both the Merger Notice and the Response to the Issues Letter in phase 1 in respect of barriers to entry and expansion and further detailed evidence will be provided by Pork Farms in response to the CMA's Market Questionnaire. However, we would make the point here that such barriers need to be considered in their proper context. Barriers to true *de novo* entry are seldom relevant, less still in circumstances where the credible threat of entry or expansion emanates from participants in closely related markets or market segments. It is the barriers (or the lack thereof) affecting the most likely entrants that have the greatest effect as a competitive constraint and which – save for those cases where barriers to *de novo* entry are indeed *de minimis* – are likely to be the most informative in any competitive assessment.

4.3 Such barriers also need to be considered in relative terms, i.e. compared to the costs of incumbency. A £1 million investment to gain effective entry to a market may seem material at first glance but, if an incumbent would have to invest close to that to maintain an effective presence without being marginalised, such an investment is, in any real sense, much less of a barrier. These factors are particularly relevant when considering the state of the Target business, which is discussed in more detail in Section 5 below. Compared to the levels of investment into the Target business that are required to maintain it as a going concern, on a sustainable basis and as a continuing competitive presence in the CSP market, the costs of entry or expansion by other actual of potential CSP manufacturers are readily surmountable. In this context it is important to note that virtually all of the more material competing CSP manufacturers with an existing platform from which to expand their CSP activities –

including Samworths, Vale of Mowbray, Peters, Welsh Pantry, Cranswick and others – have, to the best of Pork Farms' belief, [redacted], such that their own incumbency costs should not have any material impact on the otherwise low relative barriers to entry or expansion.

4.4 The information set out in Section 7 below in relation to efficiencies and customer benefits is also relevant to the consideration of matters affecting entry and expansion. Not only do the investments already identified by Pork Farms serve to illustrate the costs of incumbency faced by the target business, they also demonstrate how a supplier's ability to expand its capacity is far from limited to the binary decision of whether to acquire and install a new production line or not. The same can be said for several of the examples of previous Pork Farms investments listed in the chronology at Section 1 above. Capacity expansion in order to accommodate increased customer volumes can be far more incremental than one would be led to believe by the CMA's phase 1 Decision and the third party comments referred to therein. In light of the above, a number of third party comments in the CMA's phase 1 Decision appear to be misplaced.

4.5 The CMA's phase 1 Decision notes that Pork Farms' claims that barriers to entry and expansion are low "*contradicts the information contained in some of the Parties' internal documents*" and cites, in support of this statement, [redacted] at Confidential Annex 14 to the Merger Notice. [redacted] This document – and others prepared by third parties for the Parties in connection with a sale process – manifestly are not internal documents <u>of the Parties</u> and cannot simply be assumed to be reflective of the Parties' views.

4.6 Third parties expressed concerns in phase 1 that barriers to entry in CSP production were high due to the cost of equipment required to manufacture CSP products, the high manufacturing/technical standards required by retailers and, for branded CSP products, the cost of creating brand awareness. In this regard, Pork Farms notes the following:

4.6.1 As explained in the Merger Notice, several manufacturers could expand through the use of spare capacity on existing equipment or have available space within existing facilities that would allow them to enter or expand into further CSP segments through the addition of a new manufacturing line.

4.6.2 The costs and lead times in respect of new manufacturing equipment are relatively low and, in practice, any entrant would most likely be able to acquire the required line at significantly lower cost and in a much shorter timeframe from one of the sellers of second-hand equipment.[2] In this regard it is important to note that the vast majority of the equipment required for CSP manufacturing is not unique to CSP production and is widely used across the food manufacturing sector more generally (which in turn means that such equipment becomes available on the second-hand market far more frequently than one would expect in relation to CSP alone). More detailed information in respect of the costs and lead times of acquiring new and second-hand manufacturing equipment will also be provided in response to the CMA's Market Questionnaire

4.6.3 Compliance with the manufacturing/technical standards of retailers in respect of OL products is not a meaningful barrier. For suppliers entering from another CSP market, most – and all of the more substantial suppliers who constitute the greatest threat – will already supply OL products to retailers. In any event,

[2] Whilst the costs of second-hand equipment vary, the Parties believe that a suitable line could be acquired for somewhere in the region of £1 million and installed within a period of no more than 3 months. Information about the costs of second-hand equipment has already been provided in the Merger Notice.

the technical standards required for OL products are fundamentally no higher than those that may be demanded in respect of branded products.

4.6.4 There are no discrete advertising or promotion costs that a manufacturer would have to incur for the purposes of entry or expansion and successful entry or expansion may be effected purely through the capture of OL CSP business from retailers. In any event, the notion that the time and costs in building a brand in CSP would present a manufacturer with any meaningful obstacle is clearly misplaced, as explained in paragraph 3.19 above.

4.7 In its phase 1 Decision, the CMA also noted that it had not received evidence from third parties regarding retailers' intentions, ability and/or incentive to sponsor entry or expansion in the next two years. Those retailers who expressed a view said that they had not sponsored entry and did not have any plans to do so in the short term, and those competitors who expressed a view claimed that they had not been sponsored. However, Pork Farms considers that there is a clear track-record of retailers encouraging or sponsoring supplier entry or expansion in the CPS market whenever it has been in their interests to do so (as set out and evidenced in paragraphs 26 and 27 of the Merger Notice and paragraph 7 of the Response to the Issues Letter), such that it is difficult to reconcile the views expressed by such retailers and suppliers with what Pork Farms regards as verifiable examples that were drawn to the attention of the CMA. In any event, whether a retailer may plan to sponsor entry at current prices is not really relevant; the more pertinent point is whether retailers would be able to do so if prices were to increase as a result of the Transaction, which Pork Farms considers would be the case.

4.8 Given the examples to which the CMA's attention has been drawn, we cannot see how the CMA can conclude anything other than that the threat of sponsored entry is credible and can be expected to discipline the competitive behaviour of the merged business. However, as it appears that neither grocery retailers not competing CSP manufacturers can be relied upon to volunteer a comprehensive and accurate record of actual or intended entry or expansion that has been sponsored or encouraged by retailers in some way, [redacted] CSP manufacturers should be required to provide the same information, although in their case such examples of investments in the last five years would be informative regardless of retailer sponsorship or encouragement.

4.9 Pork Farms believes that the most reliable means by which the CMA might ensure that it has as complete a picture as possible of likely expansion in the short term, will be for it to obtain information from all of the relevant equipment manufacturers in respect of all orders, proposals and enquiries made by any CSP manufacturer in the last few years, and requests that the CMA contacts those manufacturers and requires them to provide such information for the purposes of the phase 2 investigation. Pork Farms may provide more detailed information in respect of anticipated entry and expansion in response the CMA's Market Questionnaire but, based on its current knowledge, it believes that competing CSP manufacturers have recently undertaken, are undertaking, ore are planning to undertake the following investments or projects that will increase their respective capacities materially (although the CMA will appreciate that it has no way verifying these beliefs or quantifying their impact with any accuracy):

4.9.1 [redacted]

[redacted]

[redacted]

4.9.2 [redacted]

4.9.3 [redacted]

4.9.4 [redacted]

4.9.5 [redacted]

4.10 In addition to the above, it seems that the CMA has either failed to consider or has given insufficient weight to evidence already provided by the Parties in their previous submissions, in particular with regard to:

4.10.1 possible entry candidates indicated in the Merger Notice (see paragraph 27.3);

4.10.2 examples of recent entry and/or expansion listed in the Merger Notice (see paragraph 27.1); and

4.10.3 the fact that any perceived long term agreements do not bind retailers and that past success with a particular customer provides no guarantee that a CSP manufacturer will retain the business with that customer as customer loyalty is demonstrably low (see Addendum to the Merger Notice and the Parties' responses to the CMA further questions of 10 November).

5 THE COUNTERFACTUAL

- **A description of what would have happened, in the absence of the merger situation, to the Target and in the market in general.**

5.1 In its phase 1 Decision, in the absence of evidence from the Parties supporting a different counterfactual, the CMA considered the relevant counterfactual to be the pre-Transaction conditions of competition. It is acknowledged that this is generally the counterfactual to be adopted for the purposes of any phase 1 investigation of a completed merger and, at the relevant time, Pork Farms was not in possession of sufficient information to present evidence to the contrary [redacted].

[Pork Farms has provided information relating to the competitive strength of the Target for the CMA to consider in respect of what may have happened to the Target absent the Transaction.]

5.2 [redacted]

5.3 [redacted]

5.4 [redacted]

5.5 [redacted]

[redacted]

5.6 [redacted]

5.7 [redacted]

5.8 [redacted]

5.9 [redacted]

6 THE COMPETITIVE EFFECTS OF THE MERGER

- **A statement setting out the expected consequences of the acquisitions on competition, including in particular the effect on retailers and final consumers. You may wish to cover in your answer the expected effects on prices, quality, availability and innovation. The submission should address the issues identified by the CMA in its decision that it is under a duty to refer the merger to a phase 2 inquiry.**

6.1 Pork Farms considers that the key arguments set out in the Merger Notice and in its subsequent submissions during phase 1 as to why the Transaction cannot be expected to result in any SLC remain entirely valid, notwithstanding the CMA's conclusions in its phase 1 Decision. The CMA's basis for its phase 1 Decision may broadly be summarised as follows:

6.1.1 in a number of narrowly defined hypothetical candidate markets for the supply of certain types of CSP product, the Transaction appeared to result in a relatively high combined share of the supply on the part of the merged entity and a reduction in the number of more material suppliers from 4 to 3;

6.1.2 the Parties appeared to have been close competitors prior to the merger;

6.1.3 the high combined shares of supply and the 4 to 3 reduction in suppliers indicated that the merged entity may have a meaningful degree of market power, particularly as a result of the reduced choice available to retailers (and particularly in respect of OL CSP products);

6.1.4 some third party comment from competitors and retailers supported the view that the merged business may have a degree of market power as a result of the Transaction; and

6.1.5 in view of the comments made by third party competitors and retailers (many of which appear not to have been supported by meaningful evidence and/or not to have been tested by the CMA), the CMA did not feel that it had sufficient evidence to conclude that countervailing factors, including in respect of retailer buyer power and the ease of entry and expansion, were sufficient to mitigate against its concerns regarding the creation of market power and the possibility of a SLC arising.

6.2 Whilst the "low bar" set by the legal test for reference and the CMA's cautious approach in phase 1 investigations are acknowledged, Pork Farms submits that any detailed investigation in phase 2, with a rigorous approach to the collection, verification and weighing of available evidence, should lead to the conclusion than the Transaction cannot be expected to result in any SLC in any properly defined relevant market for the supply of CSP products within the UK. In this regard, it is important to recognise the following points from the outset in order to ensure that they are all taken fully into account for the purposes of the phase 2 assessment:

6.2.1 [redacted]

6.2.2 insofar as it concerns the demarcations between: (i) branded and OL products; and (ii) grocery retail and convenience channels, the approach to product market segmentation adopted by the CMA in phase 1 does not stand up to closer scrutiny for the reasons set out in Section 3 above, and on the basis of any tenable product market definition the field of actual and potential competitors to the merged business is wider, the competitive constraints imposed upon it are stronger, and the likelihood of entry and expansion is far greater than the CMA recognised in its phase 1 Decision;

6.2.3 shares of supply based on the independent market data sources that are available are a poor indicator of possible market power – this is particularly the case in respect of the Nielsen data that is available in respect of the convenience channel, which is demonstrably incomplete to the extent that (notwithstanding the absence of any justification for treating the convenience channel as a distinct market) no meaningful weight can be attached to it;

6.2.4 the ease of customer switching and the extent to which this mitigates against any risk of possible market power on the part of the merged entity was not fully taken into account by the CMA in phase 1, which appears largely to be due to the mistaken belief that retailers concentrate their OL supply arrangements with only one or two suppliers in particularly high volume packages, such that certain CSP manufacturers face structural barriers that effectively preclude them from competing for such OL business;

6.2.5 the best contemporaneous pre-merger evidence within the documents submitted in phase 1, that may genuinely be regarded as internal to the Parties and reflective of their views, is Pork Farms' Business Plan for the merged business, which appears to have been largely ignored for the purposes of the CMA's phase 1 Decision; and

6.2.6 the CMA similarly failed to take proper account of the considerable countervailing buyer power of CSP customers – both the large grocery retailers and the wholesalers and buying groups active in the convenience channel – despite evidence demonstrating the existence of such buyer power, ostensibly relying on the retailers' bare denials of the existence any buyer power.

The Target as a competitive force and closeness of competition

6.3 [redacted]

6.4 [redacted]

6.5 [redacted]

6.6 [redacted] Moreover, the phase 1 Decision does not appear to advance any evidence to suggest that the Parties should have been considered uniquely close competitors when compared to other significant suppliers. With the more complete picture now available in phase 2, it appears clear that Samworths was the closest competitor to Pork Farms in all of the relevant ~~CSP product categories prior to the~~ Transaction and will continue to impose the strongest constraint going forward. It now also appears that other CSP suppliers – including Vale of Mowbray in respect of cold pies and Peters in respect of hot pies, sausage rolls and pasties/slices – would have been closer competitors to Pork Farms in the counterfactual than the Target business.

Market power and customer switching

6.7 The CMA formed the view in phase 1 that the Parties combined shares in several CSP product segments indicated a significant degree of market power and that, given the small number of credible competitors and the limited choice faced by retailers, it was likely to retain a significant degree of market power notwithstanding the evidence presented in respect of recent, post-Transaction losses of business. The segments in which the CMA identified such concerns were as follows:

6.7.1 cold pie – grocery OL;

6.7.2 cold pie – grocery branded;

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3 [redacted].

6.7.3 cold pie – convenience;

6.7.4 sausage rolls / pasties / slices – grocery OL;

6.7.5 (potentially) sausage rolls / pasties / slices – convenience;

6.7.6 sausage rolls – grocery OL;

6.7.7 sausage rolls – grocery branded;

6.7.8 sausage rolls – convenience;

6.7.9 hot pies – grocery OL.

6.8 Pork Farms' views in respect of market definition are set out in Section 3 above. On the basis that the justifications for segmenting CSP product markets based on the OL/branded and grocery/convenience distinctions are not empirically sustainable, any hypothetical concern in respect of the supply of OL hot pies to the grocery channel can immediately be shown to be misplaced. When one properly considers the speed and cost of supply-side substitutability between sausage rolls and pasties/slices, it also becomes apparent that there can be no basis for a valid concern in respect of those CSP product types. Accordingly, the following paragraphs focus on addressing the perceived concerns in respect of the relevant product market for the supply of cold pies, although it should be noted that all of the points made in respect of the existence of market power and the ease of customer switching are at least equally applicable to hot pies, sausage rolls, pasties and slices.

6.9 Pork Farms is currently in the process of obtaining updated Kantar data and intends to provide the CMA with updated share of supply data either in response to the CMA's Market Questionnaire or in parallel by way of a separate submission. Whilst Pork Farms cannot predict with certainty what the Parties' combined share of supply in respect of cold pies will be, it does not believe that it will be sufficiently high as to be regarded as indicative of market power in respect of a market where there are at least two material competitors currently active and where products have been recognised by the CMA as essentially undifferentiated. The basis for any perceived competition concerns is further eroded when one considers the low barriers to entry and expansion (see Section 4 above), the Target's diminished and diminishing stature as a significant rival (see Section 5 above) and the abilities of retailers to exercise strong countervailing buyer power and to sponsor entry or expansion (discussed further below). However, even if these factors were given only limited weight, Pork Farms believes that the threat of customer switching is sufficiently material to discipline the competitive behaviour of the merged business post-Transaction and that this can be shown to be the case.

6.10 As explained by Pork Farms in the Merger Notice and in its Response to the Issues Letter in phase 1, and illustrated by the examples of recent business losses provided to the CMA in that process, customer switching is easy and customers are readily able to move volumes from one supplier to another in order to ensure that they obtain the most competitive terms available. The threat of switching alone is sufficient to ensure that the merged business has neither the ability nor the incentive to implement a price increase in respect of cold pie products, thereby rebutting any suggestion that it may enjoy a degree of market power.

6.11 The concerns specifically identified by the CMA in phase 1 in respect of the cold pie segments may be summarised as follows:

6.11.1 the merged entity will only face credible competition from two competitors, Samworths and Vale of Mowbray;

6.11.2 only Samworths will be able to compete with the merged business for the larger own label grocery contracts;

6.11.3 Samworths will be the only credible competitor of the merged business in the convenience channel;

6.11.4 such spare capacity as is available in the cold pie segment is required in order to deal with seasonal demand fluctuations.

6.12 These concerns are misplaced. First of all, it should be acknowledged that a reduction in material competitors from 4 to 3 is not indicative of any SLC in and of itself. In a market where products are undifferentiated and rival suppliers have (or are believed to have) sufficient capacity readily available in order to absorb new business, and therefore to compete for each other's existing business, there is no particular reason to expect that a 4 to 3 merger would result in any SLC.

6.13 The CMA's concern in respect Vale of Mowbray's lack of ability to compete for material OL cold pie contracts is far less relevant in the context of a relevant product market for the supply of cold pies that is not segmented by reference to either label or channel. In any event, such concern appears to be founded on several key misconceptions, specifically: (i) the belief that all retailers concentrate their OL supply requirements into only one or two suppliers; (ii) the belief that the resulting OL supply relationships between retailer and supplier are necessarily concerned with particularly high volumes of products; (iii) the assumption that a retailer is not able to switch such OL product volumes from one supplier to another without switching the entirety of the volumes concerned (or at least such a significant proportion of them that the switched business would also constitute particularly high volumes); and (iv) that a retailer would need to be able to switch a high volume package of OL business away from the merged business in order for potential concerns regarding the existence of market power and a Transaction-specific SLC to be allayed.

6.14 Pork Farms does not believe that all retailers concentrate their OL supply requirements for particular types of CSP products with only one or two suppliers. More importantly, there is no reason why any retailer would have to do so. The argument that this is somehow necessary to ensure consistency of supply quality and to gain contract efficiencies does not stand up to scrutiny. In respect of supply quality, retailers own the recipe for their OL products and suppliers are required to manufacture the products in question to the retailer's specification. Individual SKUs of OL product could be switched without compromising the supply quality or consistency in respect of the SKUs in question, and without any impact on the quality or consistency in respect of SKUs that may be left with the incumbent supplier. It is evident from previous examples of switching – including those in respect of recent cold pie business losses referred to in Pork Farms' Response to the Issues Letter – that such issues do not prevent switching cold pie volumes generally. On the basis that competing suppliers are evidently capable of satisfying these requirements in respect of larger volumes of business there is no apparent basis for suggesting that they would not be able to do so in respect of smaller parcels of business. In fact, certain retailers – notably Aldi and Lidl – will readily switch part of a SKU away from an incumbent supplier if the volumes involved pass a particular threshold (a threshold which those retailers do not disclose and which is not known to Pork Farms).

6.15 In respect of contract efficiencies and the supposed disincentives for dealing with more suppliers: (i) administrative costs would be marginal for any retailer and *de minimis* in the context of switching in response to an attempted price increase; (ii) switching cold pie volumes would not necessarily entail dealing with more CSP suppliers given the presence of Samworths, Pork Farms and the Target in other CSP product segments, and Vale of Mowbray's share of supply of cold pie would suggest that this does not present retailers with a meaningful obstacle to dealing with them; (iii) risks of disruption might be increased (multiplied would be an exaggeration) in terms of frequency of instance but should be reduced in terms of the impact of any given occurrence – a key consideration in any dual- or multi-sourcing strategy; (iv) the balance of the commercial relationships involved is such that it is typically the supplier who must adhere to the retailer's processes and conditions, not the other way around; and (v) the retailers' assertion that they seek to develop and invest in long term supplier development needs to be assessed by reference to retailer behaviour and retailer buyer power (discussed further below), factors which Pork Farms believes demonstrate that it is invariably the supplier who bears the costs of any investment in that relationship.

6.16 It is by no means necessarily the case that in agreeing to supply OL cold pie products to a retailer the supplier in question is committing itself to particularly high volumes. For example, even the with only a single line using the more basic equipment available (such as a simple two lane orbiter machine for forming the cold pies, which Pork Farms believes could readily be acquired on the second hand market for around £150,000[4]), a CSP supplier would be able to manufacture 3,000 pies per hour. On a 12 hour production day operating only five days a week that equates to annual production of cold pies with an estimated retail sales value of around £[redacted] million. That figure could obviously be increased significantly by introducing additional shifts and moving to 24/7 operation. Even at only £[redacted] million RSV, that is more than enough to absorb many existing retailer OL "contracts" for cold pie in their entirety. In practice, competing suppliers have more sophisticated equipment[5] and can readily operate 24/7, so their true capacity is far higher than this. It follows that many of the OL cold pie supply relationships in question cannot be regarded as involving particularly high volumes that would necessarily preclude any active supplier for competing for the business.

6.17 For similar reasons, there is no basis for the assertion that a retailer would only be able to switch OL cold pie volumes away from an incumbent supplier if the volumes it decided to switch were particularly high. [redacted]

6.18 The key point here is that the competitive behaviour of the merged business – or for that matter any other CSP manufacturer – is not disciplined only by the threat of losing the entirety of its OL supply volumes from existing customers. It is clearly not the case that, for a given market to operate effectively and competitively without any supplier being able to exercise market power, all of the competing suppliers – even if there are only three of them – need to be able to meet the entirety of each customer's supply requirements. In order to demonstrate that a given supplier does not have any appreciable market power, it is only necessary to demonstrate that customer switching would be sufficient to make an attempted price increase unprofitable, thereby defeating it.

6.19 Retailers have a variety of different options open to them when deciding to switch volumes away from an incumbent supplier – whether in respect of CSP products generally, OL cold pie products or any other CSP sub-set – including by switching:

6.19.1 the entirety of the volumes in question away from the incumbent to a single competing supplier;

6.19.2 the entirety of the volumes in question away from the incumbent for division between two or more competing suppliers;

6.19.3 a collection of SKUs comprising a significant proportion of the volumes in question;

6.19.4 a small selection of SKUs that may or may not comprise a particularly significant proportion of overall volume but that have been cherry-picked in order to comprise an attractive package for a competing supplier – these will typically be the more profitable SKUs for the incumbent supplier and may well have been identified by the retailer providing the competing supplier with information and/or representations in respect of its existing prices (either

[4] Further information in respect of all relevant equipment and costs will be provided by Pork Farms in response to the CMA's Market Questionnaire.

[5] [redacted]

because the retailer wanted to test the market, or because that supplier was touting for business, or both) who will have identified the SKUs that offered it the best profit opportunity;

6.19.5 a single SKU; or

6.19.6 part of a single SKU only.

6.20 That the likes of Aldi and Lidl are readily prepared to take the option of moving only part of a single SKU suggests that little or no weight can be attached the representations of larger retailers who claim it is effectively necessary to concentrate their OL cold pie supply requirements in high volume packages. If it makes economic sense for a retailer with relatively small OL cold pie sales by volume to switch small amounts of business in this way, it is inconceivable that the retailers with much larger OL volume requirements would face any genuine obstacles to doing so. It appears far more likely that, in practice, those retailers simply have no need to actually switch business in this way, because a combination of the ease of customer switching and the significant countervailing buyer power of retailers mean that they are almost always able to achieve their objectives without having to resort to doing so. To put it another way, one does not see this type of switching in response to attempted price increases because none of the suppliers have sufficient negotiating power to attempt to implement any price increase (beyond those affecting all suppliers that are necessary across the market in order to accommodate increased input costs).

6.21 Given the retailers' freedom of choice over how to approach switching between suppliers, any distinction between "larger" OL supply contracts and "other" OL supply contracts for the purposes of the CMA's competitive assessment would appear to be unsustainable. Such contracts are only "larger" if, and for as long as, the retailer in question chooses them to be. All of the points raised in Section 3 above in respect of the lack of justification for a demarcation between OL and branded products would appear similarly relevant here.

6.22 The variety of different ways in which retailers may switch volumes away in order to defeat an attempted price increase contributes to the credibility of the threat of switching. For as long as the threat of losing sufficient volumes to defeat a price increase remains sufficiently credible, there can be no question of the merged business enjoying market power. In the present case, the credibility of the threat is underpinned by a variety of factors, including: (i) Pork Farms' genuine belief, based on the level of market intelligence available to it, that its competitors have sufficient readily available capacity to take material volumes away from it; (ii) the retailers' consistent message to Pork Farms that they are able to take volumes away from Pork Farms if it does not accede to their demands; and (iii) the incontrovertible first-hand evidence of material volumes being lost post-Transaction. [redacted] It is hard to imagine more compelling evidence that the threat of customer switching is sufficient to rule out the existence of market power.

6.23 Pork Farms has already provided the CMA with details in respect of material business, including cold pie business, lost post-Transaction in its periodic compliance statements. However, for ease of reference such lost business is summarised again below – from which it will also be apparent that three of the four examples involve the relevant retailer switching its OL product supply requirements for a particular category of CSP products to another CSP manufacturer **in part only**. It should be noted that the annualised net sales values in each case have been updated to reflect the anticipated effect across a full financial year based on the most up to date sales information:

6.23.1 [redacted]

6.23.2 [redacted]

6.23.3 [redacted]

6.23.4 [redacted]

6.24 For the reasons set out above, the precise level of volume that retailers would need to switch away from the merged business in order to defeat any attempted price increase does not appear to be particularly relevant. The fact is that the threat of sufficient switching is not just credible but demonstrably real. Given the ability of retailers and/or their new preferred suppliers to cherry-pick and the variation in margins across different SKUs supplied to the same customer, Pork Farms considers that the volumes in question would only be low. In any event, the best information that Pork Farms and the Target would be able to provide in this regard will be comprised within the transaction databases for each of the businesses, copies of which have already been provided to the CMA for the purposes of the phase 2 investigation.

6.25 Just as the reasons outlined above illustrate why Vale of Mowbray cannot be disregarded as a credible competitor in respect of OL CSP supply, its apparently limited presence in the convenience channel does not suggest that it is an equally credible competitor in respect of supply to convenience customers. The explanation provided in Section 3 above as to why any segmentation based on channel is not empirically sustainable is particularly relevant here, but it is worth noting specifically that in this context one would not even be considering notional supply-side switching as Vale of Mowbray is already present. Whilst its presence is not well reflected in available Nielsen data (which, as noted above, is sufficiently incomplete to be of no meaningful value and potentially misleading), Pork Farms understands that it supplies (directly or indirectly) Nisa convenience stores.

Capacity

6.26 The CMA has noted potential concerns that there may be insufficient spare capacity in the market to ensure that the merged business would face the competitive constraints necessary to rule out any SLC. Such concerns are largely addressed above, as the available evidence demonstrates that any such perceived capacity concerns will not diminish the threat of customer switching. In this regard it is important to note that it is the threat of switching and the extent to which that threat is credible from the Parties' perspective that will discipline the competitive behaviour of the merged business post-Transaction. The true extent of competitors' available capacity is not something that would ever come to the attention of Pork Farms or the Target in the ordinary course of business and, as a result, it is not something that has any effect on the dynamics of competition. If it is clear that the merged business has sufficient belief in the possibility of its competitors having available spare capacity to treat the threat of customer switching as material, it is of little consequence whether those competitors actually have spare capacity readily available or not, or how much spare capacity there might genuinely be.

6.27 One point that is worth clarifying at this stage is the argument that a proportion of capacity must necessarily be kept spare during periods of low demand in order to accommodate future uplifts attributable to seasonal demand fluctuations. Whilst Pork Farms tried to take account of this point when providing capacity estimates in phase 1, it is not an argument that bears closer scrutiny. In practice, all CSP manufacturers are capable of smoothing demand by freezing quantities of CSP products in order to avoid capacity constraints. It is true that not all CSP products may be safely frozen in order to optimise capacity utilisation, and that it is certain of the larger cold pie SKUs that are not suitable for freezing in this way, but it remains the case that the vast majority of products may be frozen (and are frozen in practice). Pork Farms can freeze around [redacted]% of its current cold pie production post-baking. PGI restrictions in respect of Melton Mowbray pork pie prevent post-bake freezing of those products, although such restrictions only affect Pork Farms and Samworths (neither of which is capacity constrained) as the two Melton Mowbray producers. CSP manufacturers can also freeze all cold pies – including Melton Mowbray pork pies – pre-baking (referred to as "green" pies). As a result, a CSP manufacturer with a pre-baking freezing process for "green" Melton Mowbray pies (which Pork Farms believes is the case for Samworths) or who otherwise only produces non-Melton Mowbray cold pies (i.e. all other manufacturers, including Vale of Mowbray), can be expected to be able to freeze 70% (or possibly more) of its cold pie production by value. Products may be frozen for a period of up to three months, which is ample time to ameliorate the impact of seasonal demand peaks.

6.28 To the best of Pork Farms' knowledge, all CSP manufacturers can and do manage demand fluctuations in this way. In-house frozen storage capacity is not required in order to achieve this as that may be outsourced to third party providers of off-site facilities (and it is in part through using such facilities that Pork Farms is aware of the industry-wide nature of this activity). As a result, there is no need to keep any material proportion of capacity free in periods of low demand and if a manufacturer were to approach full capacity utilisation then the only impact would be the need to extend the planned freezing programme by a few weeks, which would be readily achievable. The only qualification to this is that there is theoretically a short period approaching the end of the year when taking on additional volumes would come too close to the commencement of a planned freezing programme to compensate by smoothing demand in this way. However, the standard industry practice of providing 12 weeks' notice in respect of lost business and new business effectively ensures that this pinch point is never reached in practice.

6.29 Because of the ease with which demand may be smoothed by freezing, Pork Farms believes that at all material times during the year the only rational, profit maximising response by a CSP manufacturer that is presented with the opportunity to supply additional volumes of CSP products at an adequate margin using capacity that is currently spare would be to seize that opportunity and commence supply.

6.30 It is also important to note that the ability of a CSP manufacturer to increase its available capacity is not limited to the decision to acquire and install a new line in a process that can be expected to take several months. Whilst competitors can and do expand capacity in this way, there is a broad range of different steps that manufacturers may take (the precise details of which will vary from case to case depending on the particular circumstances of the manufacturer) to increase current available capacity.

6.31 To the extent that the manufacturer is not currently operating on a three shift pattern seven days a week to facilitate 24/7 operation, current available capacity can be increased materially by changing shift patterns to introduce additional shifts – a measure that can readily be achieved in a short period of time by introducing overtime and/or hiring temporary workers, which may be long term or short term but is readily reversible, and which permits incremental increases to available capacity without capital investment.

6.32 Modest investment in change parts, increased mechanisation of upgraded items of equipment can result in meaningful increases to available capacity, as illustrated by several of the examples concerning the Target sites that are detailed in Section 7 below. Even a small investment in items as ostensibly mundane as racks for ovens can remove bottlenecks and have a significant impact, e.g. where a simple change from 18- or 16-shelf racks to 20-shelf racks in a batch manufacturing process could deliver a capacity uplift of 11% or 25%.

6.33 The basis on which third parties may have provided capacity estimates to the CMA is not clear to Pork Farms but in phase 2 this is an area where evidence clearly needs to be provided on a consistent basis. If the CMA is to give any credence to third party representations in respect of capacity constraints, those representations should be supported by clear evidence of spare capacity based on the starting point of a 168 hour operating week, subject only to the types of verifiable adjustment illustrated by Pork Farms' explanation regarding OEE in response to Question 29 of the CMA's Market Questionnaire, and evidence in respect of the relatively quick and low cost measures that could be implemented to increase available capacity in response to a new business opportunity with a typical 12-week lead time.

Retailer buyer power

6.34 It is abundantly clear to Pork Farms that retailers wield significant buyer power that effectively militates against any possibility of the merged business enjoying or exercising market power. However, in its phase 1 Decision the CMA concluded that there was insufficient evidence available to it to conclude that buyer power mitigated its concerns over a possible SLC. In this regard, it is a source of frustration to Pork Farms that the CMA appeared to take the retailers' bare denials at face value, notwithstanding the weight of historic evidence to the contrary, in which regard we would refer the CMA to Section 8 of Pork Farms' Response to the Issues Letter in Phase 1.

6.35 It is also disappointing that the CMA's phase 1 Decision appeared to have little or no regard to Pork Farms' last pre-Transaction Business Plan for the merged business, which was attached as Confidential Annex 11a to the Merger Notice. In terms of the Parties' internal documents, that Business Plan constitutes the best contemporaneous evidence that might legitimately be regarded as reflective of Pork Farms' own views at the time. (A position which should be contrasted with other documents provided in the course of phase 1, prepared by third party consultants with a specific agenda a year previously, but which the CMA appeared to treat as meaningful evidence of the Parties' views.) [redacted].

6.36 It is no surprise that the retailers themselves have denied the existence of buyer power, although we consider it telling that the comments from retailers that were referred to in the phase 1 Decision did not appear to us, at least in the vast majority of cases, to evince any kind of merger-specific concern. Rather, those comments appeared to be nothing more than an expression of the retailers' policy line, designed only to protect their own wider interests.

6.37 Pork Farms will provide more detailed information in respect of both buyer power and the ability of retailers to sponsor or encourage entry or expansion in response to the CMA's Market Questionnaire but notes that the responses relevant to an assessment of retailer buyer power are not limited to Questions 39 and 40 under the heading "Buyer Power", as evidence demonstrating the existence of buyer power will also be comprised in the responses elsewhere (including Questions 15 to 22). Pork Farms will also provide such supporting documentary evidence as is available with these responses. However, any documentary records are likely to be extremely limited and to shed light on only a tiny proportion of the interactions that occur with retailers, and through which buyer power is most typically exercised. The vast majority of the discussions in question take place on telephone calls or in face to face meetings, in respect of which written records are rarely kept. A proportion may also be partially reflected in email correspondence but references will often appear cryptic without the relevant context and in any event the relevant emails will not have been saved or recorded as a matter of course, with the result that a high proportion will have by now been deleted and will be lost.

6.38 Given the importance of this to a balanced and comprehensive competitive assessment in respect of the Transaction, Pork Farms considers it critical that the CMA is able to obtain the best evidence possible in respect of retailer buyer power. As individual suppliers can only be expected to hold piecemeal records at best, it will be necessary for evidence to be provided by the retailers themselves. [redacted]

[redacted]

6.39 In order for the retailers' responses to be verified to the extent possible, we also consider that the same information and documentation should be requested from other CSP manufacturers [redacted]

6.40 Pork Farms considers that the evidence to be provided in response to these requests is fundamental in order to properly understand the true nature of the relationships between CSP suppliers and retailers. In its phase 1 Decision the CMA notes its understanding that the CSP grocery market is often characterised by long term relationships between retailer and their preferred suppliers and so concludes that the threat of delisting is limited. As Pork Farms has explained in previous submissions (see in particular the Addendum to the Merger Notice and the Parties' responses to the CMA further questions of 10 November) any perceived long term agreements do not bind retailers to use a particular CSP manufacturer for all or even some of their OL or branded CSP requirements and that past success with a particular customer provides no guarantee that a CSP manufacturer will retain the business with that customer as customer loyalty is low. In particular, contracts between retailers and CSP suppliers are frequently not signed or even reduced, in whole, in writing. As a result, retailers can and do demand immediate changes in prices and face little contractual obstacles to switching suppliers if their demands are not met. Even in the context of long term agreements with CSP manufacturers – retailers always remain capable of putting their requirements for CSP products back out to tender, or simply switching volumes to another supplier.

6.41 The argument put forward at paragraph 194 of the phase 1 Decision, that delisting is only a last resort and that negotiations will be preferred, is not evidence of an absence of retailer buyer power. Negotiations conducted under the express or implied threat of a delisting that result in the retailer extracting better terms, lower prices and/or increased promotional or trade support are clear evidence that significant buyer power does exist. Pork Farms believes that the evidence to be obtained will clearly show that retailers regularly achieve this. Delists do not need to happen if the retailer has already forced what it wanted.

Third party comments

6.42 The Parties recognise that the CMA will undertake its own detailed investigation of this case as part of the phase 2 process, including considering afresh the third party evidence and arguments that have been put to it as well as gathering and reviewing additional evidence. Nevertheless, Pork Farms is concerned that the Decision makes reference to a number of third party comments that are demonstrably: (i) factually incorrect; (ii) indicative of views that clearly cannot be sustained in the face of other available evidence; or (iii) simply irrelevant to any competitive assessment regarding the Transaction. Pork Farms has not at this stage attempted to address every misplaced third party comment beyond those most relevant to the specific issues on which this Initial Submission focuses but may do so by way of separate submission should similar comments emerge in the course of the phase 2 investigation.

6.43 The CMA seems to acknowledge, in its phase 1 Decision, that the majority of retailers were not concerned with the Transaction and that only a few expressed concerns regarding the number of suppliers remaining in the market. Nonetheless, it is worth reiterating that the comments from retailers that were referred to in the phase 1 Decision did not appear to us, at least in the vast majority of cases, to evince any kind of merger-specific concern. Rather, those comments appeared to be nothing more than an expression of the retailers' policy line, designed to protect their own wider interests by denying the existence of their (evident) buyer power and claiming to be subject to a (manifestly absent) strong negotiating position on the part of suppliers.

7 EFFICIENCIES AND CUSTOMER BENEFITS

7.1 Pork Farms considers that there are significant merger specific efficiencies and customer benefits that will result from the Transaction. These efficiencies and benefits need to be viewed in the context of the highly challenging and competitive conditions in which CSP manufacturers are currently operating and in which less efficient manufacturers, [redacted] are struggling to achieve adequate margins.

7.2 [redacted]

7.3 [redacted]

7.4 By assimilating the Target into Pork Farms' centres of excellence model and with accompanying investment, Pork Farms expects to be able to create efficiencies (including some limited input costs savings) and to take costs out of the Target business. This is considered necessary in order to build a successful merged business as the competitive environment essentially precludes the possibility of obtaining increased prices from retailers. This was recognised and partly reflected in the Business Plan for the merged business which was included as Confidential Annex 11 to the Merger Notice[6]. Pork Farms anticipates additional efficiencies (not reflected in the Business Plan at the time of the Transaction) when the businesses become fully integrated and it has a better understanding of the investments necessary in the Target's facilities.

7.5 The cost savings referred to in the Business Plan include: [redacted]

7.6 [redacted]

[6] Whilst the latest updated version of the Business Plan was provided as Confidential Annex 7 to the Annex C Response, that version does not include details of the same investment, saving and efficiency plans. As a consequence of the uncertainty created by the on-going CMA investigation process and the restrictions imposed under the CMA's Interim Order, Pork Farms is not in a position to determine how or when many of its plans might be implemented, making it impossible to incorporate them into the updated Business Plan in any meaningful way.

7.7 [redacted]

7.8 Pork Farms already has a strong record of achieving efficiencies mainly through operating production sites that act as centres of excellence (i.e. dedicated to the production of certain CSP products) with increased production efficiency and lower unit costs of production. In this regard, the Transaction is expected to generate a number of efficiencies [redacted]

7.8.1 [redacted]

7.8.1.1 [redacted]

7.8.1.2 [redacted]

7.8.1.3 [redacted]

7.8.2 [redacted]

7.8.3 [redacted]

7.8.4 [redacted]

7.9 Further steps that Pork Farms is contemplating taking in order to improve performance at the Target sites include the following:

7.9.1 [redacted]

7.9.2 [redacted]

7.9.3 [redacted]

7.10 Including for the reasons discussed in Section 6 above in respect of the countervailing buyer power of retailers, any savings in respect of input costs that are realised as a result of the

Transaction will largely be appropriated by the retailers. [redacted].

7.11 In light of the above, since the merged business will remain subject to intense pressure to minimise costs and prices and to maintain and improve quality and service standards, the Transaction can only be expected to ultimately benefit both customers and consumers (as compared to any appropriate counterfactual).