

[✂]

As you are aware we replied to yourselves 4th November.

I do hope that the information that we supplied was sufficient. I have attached this again for your reference.

However I have also answered you queries below which are highlighted in red.

Regards

[✂]

[✂]

Category Manager Chilled

McColl's Retail Group

Direct [✂] Mobile [✂] www.mccolls.co.uk

From: [✂]

Sent: 07 January 2015 15:28

To: [✂]

Cc: [✂]

Subject: Pork Farms/Kerry Foods merger inquiry - MMRG invitation to comment

Dear [✂]

Pork Farms Group Ltd / Kerry Foods Ltd merger inquiry

As you may be aware, the Competition and Markets Authority (CMA) has referred the completed acquisition by Pork Farms Caspian Limited (part of the Pork Farms Group of companies) of the chilled savoury pastry (CSP) business of Kerry Foods Limited for an in-depth (Phase 2) merger investigation. A Group of CMA Panel Members have been asked to decide whether the acquisition may be expected to result in a substantial lessening of competition within any market or markets for goods or services in the UK. Further information, including the terms of reference, can be found at: <https://www.gov.uk/cma-cases/pork-farms-caspian-limited-kerry-foods-limited>

In particular, the CMA is concerned with the possibility that there might be a substantial lessening of competition in:

a. the branded, own label and convenience retail segments of:

- the supply of cold pies,
- the supply of sausage rolls, pasties and slices (when considered in combination) or the supply of sausage rolls (when considered individually); and

b. the own label segment of the supply of hot pies.

The CMA is concerned that a lessening of competition may result in higher prices or a reduction in choice or quality for consumers of these CSP products.

The CMA is now seeking views from interested parties.

I would like to thank you for the information you have already provided to the CMA. Now that we are moving to an in-depth phase 2 investigation, I am writing to ask if you wish to make further representations or provide information on any matter relevant to this inquiry. Please feel free to cross-refer to any earlier

responses but if you would like to make an initial submission we would find it extremely helpful and would help shape our investigations. We would welcome your response **by close of business on Wednesday 21 January**.

We may in due course wish to invite you to a hearing and/or to complete a questionnaire to provide us with relevant information to help us assess the effects of the merger.

I should like to draw your attention to the following issues which appear to be relevant to the inquiry and to invite your comments on them:

1. Whether the merger between Pork Farms and Kerry would produce a reduction in competition for any categories of CSP product or whether there are sufficient viable alternative suppliers available that competition would not be expected to be affected
There are sufficient alternatives should we need to seek them
2. Whether retailers possess sufficient buyer power that they would be able to resist any increases in prices (or diminution of service, promotions or other aspects) or reduction in product quality, through resisting changes in terms or switching to alternative suppliers.
We do not believe that our buying power would be diminished
3. Whether other existing producers of these products would be easily able to increase production.
We do not believe this to be an issue
4. Whether existing producers of CSP products would be able to easily switch between the production of different categories of product.
We do not see this as an issue
5. Whether consumers would switch between categories of CSP product in response to small changes in relative prices.
This product is purchased on impulse. A consumer would probably switch between variants should something be out of stock. They are more likely to switch should an alternative product be on promotion.
6. Whether entry into the production of CSP products on a significant scale is possible and likely, and what barriers may exist (such as reputational, regulatory, legal or cost barriers).
We are unable to answer this with any clarity from a retail perspective.
7. The importance of branding in this area and whether there is segmentation of demand for branded, own label and convenience retail segments
We believe that this area is brand driven. McColls do not carry an Own Label variant
8. Whether there are any barriers between the production of branded and own-label products.
Please see point 7.

We should be grateful if you would observe the above deadline as this will assist us in gathering evidence and help to ensure that the timetable for the inquiry is met. However, if you do anticipate problems in meeting this date please contact me as soon as possible.

Should this request be better directed to another individual within your organization, I would be most grateful if you would please pass it on to the appropriate person.

Finally, I enclose with this letter a note explaining the CMA's powers to gather, handle and disclose information. The CMA aims to be open and transparent during its inquiries. In considering whether to disclose or publish any representations or information that you may submit, we will take into account

your views on the sensitivity of the material you provide and any request you may make for anonymity. When you reply to this letter, therefore, please say whether or not you are content for your views to be published on our website and attributed to you. If the submission contains information that you consider to be sensitive, please provide a separate version that you would be content to see published, omitting the sensitive information.

Kind regards

[REDACTED] Competition and Markets Authority
Victoria House | Southampton Row | WC1B 4AD | [REDACTED]

E-Mail Exchange with the Phase 1 Case team submitted in October / November 2014

[REDACTED],

I have been asked to reply to your query below.

With regard to your query I am unable to give specific examples of these within this organisation but I am happy to advise the theory of what we might do:

- 1) Renegotiate – This is the ideal scenario which we would seek to achieve and from my experience in working in other retailers is the likely outcome that would be achieved
- 2) Delist – If we failed to achieve an agreed price then we would look to delist and possibly seek an alternative product
- 3) Seek another Supplier – This is last resort and would only happen if we could not reach agreement in points 1 and 2.

I hope that this is sufficient information for your needs.

If you require anything further please do not hesitate to contact me.

Regards

[REDACTED]

Category Manager Chilled

McColl's Retail Group

Direct [REDACTED] Mobile [REDACTED] www.mccolls.co.uk

From: [REDACTED]

Sent: 04 November 2014 11:53

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: OFFICIAL: UK Competition Authority request for information - Completed acquisition by Pork Farms Caspian Limited of the business and assets of the chilled savoury pastry business of Kerry Foods Limited

Importance: High

Sensitivity: Confidential

Dear [REDACTED]

OFFICIAL: UK Competition Authority request for information - Completed acquisition by Pork Farms Caspian Limited of the business and assets of the chilled savoury pastry business of Kerry Foods Limited

Thank you again for your response on Thursday. We have considered your responses to our questionnaire and have a follow-up question:

1. In response to questions 15 and 17 of our questionnaire you mention that you could renegotiate, delist or move to another supplier in response to a price increase by a supplier of CSP products. Could you please provide examples of situations where you have applied any of these responses?

We would be grateful if you could provide a response by noon on Friday (7 November). I would be happy to talk through this question with you over the phone if that is more convenient for you.

Thank you and kind regards

[redacted] | **Assistant Economist | Mergers**

Competition and Markets Authority | Victoria House | Southampton Row | London | WC1B 4AD |

T: [redacted]

Email: [redacted]

From: [redacted]

Sent: 30 October 2014 09:52

To: [redacted]

Cc: [redacted]

Subject: OFFICIAL: UK Competition Authority request for information - Completed acquisition by Pork Farms Caspian Limited of the business and assets of the chilled savoury pastry business of Kerry Foods Limited

[redacted]

Please find attached requested submission from McColls regarding Pork Farms acquisition of Kerry Foods.

Regards

[redacted]

[redacted]

Category Manager Chilled

McColl's Retail Group

www.mccolls.co.uk

**Completed acquisition by Pork Farms Caspian Limited of the business and assets of the chilled savoury pastry business of Kerry Foods Limited
Questions for Customers (Retailers)
Date: 23 October 2014**

Company / Business Name	McColls Retail Group
Contact Person	[X]
Contact Email	[X]
Contact Phone Number	[X]

Evidence: *If possible please provide evidence to support any of your answers, such as any internal documents, commissioned research reports or quantitative analysis.*

Data

1. Please complete the following table with your purchases in 2013 of branded and own label chilled savoury pastry (CSP) products.

Manufacturer	Brand Name ¹ / Own label ²	Type of CSP product ³	Volume of sales (Units)	Value of sales
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]

Product Market

2. Looking at the CSP Products listed in the **first column** of the table below, do you consider that consumers find any of the CSP products in the **other columns** are good alternatives to those in the first column?

First column	Other columns					
	Pork pies.	Hot pies	Sausage rolls	Pasties and slices	Quiches	Scotch eggs
Pork pies	X					
Hot pies		X				
Sausage rolls			X	x		
Pasties and slices			x	X		
Quiches					X	
Scotch eggs						X

*In answering this question, please indicate with X whether, following a price increase of 5%-10% for **one CSP product**, customers would switch to purchasing the other product listed. Please explain your answers (i.e. why some types of CSP products are good alternatives and others are not).*

Pasties and slices are more expensive than Sausage Rolls and the switch would be on choice rather than price

¹ Please record brand name

² Please record Own Label name and if it is value/economy, standard, or premium

³ In particular, pork pies, hot pies, sausage rolls, pasties and slices, quiches and scotch eggs

3. **Own Label / Branded Products:** Please explain to what extent you consider that 'own label' and branded CSP products are substitutes for one another from an end- consumer's perspective⁴.

We do not stock Own Label

- a. If you consider that end consumers consider own label products to be more substitutable in some CSP product areas than others, please explain⁵.

We do not range own label CSP products

- b. Please explain how important consumers consider brands are in this market.

This market is more brand driven than most

Geographic market

4. Do you purchase or contract CSP products on a UK basis? If not, please outline the scope of your purchasing (e.g. EU wide, GB and NI, or regionally).

UK only

- a. Do any aspects of your contracts, prices or promotional activities with the parties and their competitors vary by region?

No

Competitive assessment – Own label CSP products

5. Do you consider Pork Farms and the CSP business of Kerry Foods Limited (Kerry Foods), or any of their individual products, to be particularly close competitors?

- a. In which product(s) do the parties compete most closely

Sausage Rolls, Pasties and Slices

6. Please list the main competitors to each of the parties' own label products. Please explain if there are any differences within each product type (e.g. value/economy, standard and premium products).

Do not deal in Own label

CSP Product (own label)	3 main competitors to	
	Pork Farms	Kerry Foods
Pork pies	1. 2. 3.	1. 2. 3.
Hot pies	1. 2. 3.	1. 2. 3.
Sausage rolls	1. 2. 3.	1. 2. 3.
Pasties and slices	1. 2.	1. 2.

⁴ In answering this question, please indicate whether, following a price increase of 5%-10% for one type of product, customers would switch to purchasing the other product listed, or accept the price increase.

⁵ Please highlight any differentiation between value/economy, standard and premium private label products if appropriate.

CSP Product (own label)	3 main competitors to	
	Pork Farms	Kerry Foods
	3.	3.
Quiches	1. 2. 3.	1. 2. 3.
Scotch eggs	1. 2. 3.	1. 2. 3.

Competitive assessment – Branded CSP products

7. Do you consider Pork Farms and the CSP business of Kerry Foods Limited (Kerry Foods), or any of their individual products, to be particularly close competitors?
 - a. In which product(s) do the parties compete most closely?
Sausage Rolls Pasties and Slices
8. Please list the main competitors to each of the parties' branded CSP products.

CSP Product (branded products)	3 main competitors to	
	Pork Farms	Kerry Foods
Pork pies	1.Ginsters 2.Peters 3.	1.N/A 2. 3.
Hot pies	1.Ginsters 2. 3.	1.N/A 2. 3.
Sausage rolls	1.Ginsters 2.Kerry 3.Peters	1.Ginsters 2.Pork Farms 3.Peters
Pasties and slices	1.Ginsters 2.Kerry 3.Peters	1.Ginsters 2.Pork Farms 3.Peters
Quiches	1.N/A 2. 3.	1.N/A 2. 3.
Scotch eggs	1.N/A 2. 3.	1.N/A 2. 3.

Negotiations and pricing

Own label CSP products

9. To what extent are your purchases of own label CSP products done through tenders or through direct negotiations with manufacturers? Please explain how frequently these typically occur. Does this vary by:
 - a. CSP product
N/A
 - b. Own label product type (value/economy, standard, premium)?
N/A
10. Please explain how you choose to stock particular own label CSP products.
 - a. What are the main factors that suppliers compete over?

- b. Please explain the importance of each factor and consider any differences between CSP products, store size (one stop, mid-sized, convenience) and product type (value/economy, standard, premium).

Do not stock Own Label products

Branded CSP products

11. Do you believe that any of the merging parties' products are "must stock"? Which products? Please explain your definition of "must stock".

Sausage Rolls, Pasties, Slices, Pork Pies and Scotch Eggs

12. To what extent are your purchases of branded CSP products done through tenders or through direct negotiations with manufacturers? Does this vary by CSP product? Please explain how frequently these typically occur.

Renegotiation takes place yearly

13. Please explain how you choose to stock a particular brand?

Profitability, retail price to consumer, value for money to consumer. Level of marketing support from supplier

- a. What are the main factors that suppliers compete over?
Cost, retail price, consumer brand awareness, marketing support to retailers
- b. Please explain the importance of each factor and consider any differences between CSP products and store size (one stop, mid-sized, convenience).
Cost and profitability is important plus supplier marketing support. Product would be ranged by store size and space on fixture

Tender data – branded and own label CSP products

14. Please provide us with details on the tenders you have issued for branded and own-label CSP products in the last 3 years, including:

- a. Date
- b. Value of contract
- c. Incumbent
- d. Length of contract
- e. Firms Invited to Tender
- f. Product(s) that was (were) tendered, differentiating between: i) Branded; ii) Own label - value/economy; iii) Own label – standard; iv) Own label - premium
- g. Firms that were shortlisted
- h. Details on the contract awarded.

N/A

Buyer Power

15. If a supplier tried to increase the price of one CSP product by 5% - 10%, please explain how you might be likely to react. Would that reaction be different for different CSP products and for branded/own label products?

Rebut then renegotiation. Worst case scenario would be delist

16. Please explain whether there are any issues with changing a supplier, and if these vary by CSP product.

No issues

17. Please explain what 'levers' you have to negotiate price with a supplier of CSP products, or rebut a price increase (e.g. delisting, promotions, distribution payments, etc.). Please provide specific examples of situations where you have used these levers to negotiate to reduce prices, resist a price rise, or in any other manner.

Delisting, reduction of distribution. Move to another supplier

18. Do you believe the proposed merger will affect your negotiating position vis-a-vis the merged party or its competitors? Please explain.

No. There is still competition in the category

19. Do you believe that you have the ability and/or incentive to sponsor the entry or expansion of another brand to achieve the same position in your stores as the Parties' branded products? Please explain how this might work and how quickly this could be implemented.⁶

Negotiation and switching to another supplier would be straightforward. Notice would have to be given to the incumbent supplier of between 1 and 3 months.

Effect of the merger

20. Do you have any competition concerns about this transaction? Please explain if you have any concerns about:

- a. Competition in own label CSP products
- b. Competition in branded products

None

21. Which customers or customer types (e.g. supermarket, convenience) are most likely to be affected by this transaction? Is this different for own label and branded products?

Our customers will see no change

General question

22. Leaving aside any effects that this merger may have, are you aware of any feature of the CSP product markets, or activities of the firms acting in them, that you consider to restrict or distort competition between firms? If so, please give details.

⁶ Please provide any examples of switching in the past. Where possible, please provide supporting documentary evidence.

None

Copy of note of telephone conversation on 6 November 2014 with McColl's Retail Group recorded as part of the phase 1 Investigation

Completed acquisition by Pork Farms Caspian Limited of the business and assets of the chilled savoury pastry business of Kerry Foods Limited

Telephone conversation on 06/11/2014 with McColl's Retail Group

CMA: [REDACTED]

McColl's: [REDACTED]

-
- Price changes tend to be annual. If a supplier proposed a price increase, McColl's would look to renegotiate for a lower price increase, and normally suppliers and McColl's will meet somewhere in the middle.
 - Delisting or changing supplier as a result of a proposed price increase is very infrequent. McColl's would look to renegotiate.
 - McColl's has an exclusive agreement with Pork Farms (written agreement). This agreement includes all Pork Farms CSP products, but does not require stocking the full line of products for each category segment (e.g. McColl's will stock sausage rolls from Pork Farms but will not necessarily stock all varieties of sausage rolls). The agreement was signed for 18 months and is expiring soon.
 - The most common length of McColl's agreements with suppliers is 12 months.
 - Exclusive agreements are common in the convenience sector.
 - CSP products are must-stock. The fact that a product is considered must-stock is driven by the retailer rather than the supplier.
 - McColl's runs promotions of CSP products 2 or 3 times a year. There are no set promotional calendars. Promotions are normally proactively proposed by the supplier and

there would be negotiations between McColl's and the supplier on specific aspects of these promotions.

- Quality of CSP products vary across suppliers. McColl's considers Pork Farms' products to be better quality than Kerry's, although this opinion may vary across retailers.
- Before having an agreement with Pork Farms, McColl's used to have an agreement with Kerry.
- From McColl's point of view, the merger could be potentially positive, because Pork Farms is a better company than Kerry.