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Completed acquisition by ABP Food Group of RWM Food Group Holdings Limited

ME/5251/11

The OFT's decision on reference under section 33(1) given on 24 January 2012. Full text of decision published 8 February 2012.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **ABP Food Group** and its subsidiaries (jointly, '**ABP**'), including its UK subsidiary Anglo Beef Processors UK, are a processor of beef and lamb active in the Republic of Ireland and elsewhere in Europe. In the UK, ABP operates 10 plants which include abattoirs, boning halls and retail packing facilities, mainly for beef. In the year to 27 March 2011, ABP's worldwide revenues were around €[ ] billion (around £[ ] billion).
2. **RWM Food Group Holdings Limited ('RWM')** was a processor of beef and lamb with plants in Langport, Somerset and in Yetminster, Dorset, which included abattoirs, boning halls, a retail packing facility and a further processing facility. In the period to 2 January 2011, RWM's revenues were around £146.8 million in the UK.

## **TRANSACTION**

3. On 9 October 2011 ABP, through its subsidiary Dealgan Limited (set up specifically for the purposes of this acquisition), acquired RWM (the '**Transaction**').

## **JURISDICTION**

4. As a result of the Transaction ABP and RWM ceased to be distinct. The UK turnover of RWM exceeds £70 million, so the turnover test in section

23(1)(b) of the Enterprise Act 2002 (the 'Act') is met. Therefore, the OFT believes that it is or may be the case that the Transaction has resulted in the creation of a relevant merger situation.

5. The Transaction was announced on 7 October 2011. The OFT launched an own-initiative merger investigation on 25 October 2011. Following an extension under section 25(2) of the Act, the statutory deadline is 22 February 2012. The administrative deadline is 24 January 2012.

## **MARKET DEFINITION**

6. The merged parties overlap in the purchase of live cattle and sheep for slaughter, in the supply of fresh, unprocessed beef for consumption and further processing, and in the supply of lamb. There is also a small overlap in the supply of fresh beef burgers.

### **Product market**

#### *Purchase of live cattle and sheep for slaughter*

7. In previous decisions, the OFT and the European Commission (the 'EC') have identified separate markets for the purchase of specific live animals for slaughter, including cattle.<sup>1</sup> In line with these decisions, ABP submitted that the purchase of live cattle and live sheep for slaughter form separate markets. This was also supported by third-party comments. The OFT has therefore assessed the impact of the Transaction based on separate markets for the purchase of live cattle and live sheep for slaughter. However, there has been no need to conclude on the scope of the relevant market in this respect given the lack of competition concerns.

#### *Supply of beef and lamb*

8. The OFT considered several possible distinctions relating to the supply of beef and lamb, which are discussed below in turn:
  - between different types of meat, in this case beef and lamb
  - between unprocessed and (different types of) processed meat, and

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<sup>1</sup> For example, OFT decision in *Cranswick Country Foods plc/pork processing business of Bowes of Norfolk Limited* ('Cranswick/Bowes'), 9 June 2009, paragraph 13, and EC decision in Case M.5935 *Vion/Weyl* ('Vion/Weyl'), 20 August 2010, paragraph 11, as well as the cases referred to in these decisions.

- between different customer groups (retailers, caterers and processors).

#### Different types of meat

9. In previous decisions, the OFT and the EC distinguished between different types of meat based on lack of both demand- and supply-side substitution between them.<sup>2</sup> ABP has followed the same approach and third parties broadly supported this. Accordingly, the OFT has distinguished between beef and lamb in its competitive assessment of the Transaction, although it was not necessary to reach a conclusion in this respect given the lack of competition concerns.

#### Processed and unprocessed meat

10. Processed meat is meat that has undergone processing with external ingredients such as salt and spices, such as sausages. Unprocessed meat consists of fresh primals and sliced products.<sup>3</sup> Supported by comments from ABP and third parties, the OFT has followed the distinction previously made in OFT and EC decisions between processed and unprocessed meat based on lack of both demand- and supply-side substitution between them.<sup>4</sup>
11. Within processed meat, previous decisions considered further segmentation between different products. The only overlap between the parties in processed beef is in fresh beef burgers. As no competition concerns arise in respect of this product, there was no need for the OFT to consider whether beef burgers were part of a wider market for processed beef. For the same reason, it was also not necessary to consider whether fresh beef burgers are in the same market as frozen beef burgers (produced by ABP but not by RWM). There was also no need for the OFT to consider segmentation of the supply of processed lamb given the negligible overlap between the merged parties in this respect (ABP's main processed lamb product in the UK, a small amount of lamb burgers, is not supplied by RWM).

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<sup>2</sup> For example, *Cranswick/Bowes*, paragraph 15, and *Vion/Weyl*, paragraph 36.

<sup>3</sup> ABP submitted that the merged parties' supplies of frozen beef are negligible. While the OFT does not have precise data on the merged parties' supplies of frozen lamb, their share in the supply of all lamb is small, as set out below, and the OFT has no reason to believe that this is different for frozen lamb. The OFT has not therefore further considered the supply of frozen beef or lamb.

<sup>4</sup> For example, *Cranswick/Bowes*, paragraph 22, and *Vion/Weyl*, paragraph 36.

## Supply to different customer groups

12. The OFT may define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers, and require a separate analysis.<sup>5</sup> In several previous decisions concerning food products generally, the OFT distinguished separate markets for retail customers and food service customers.<sup>6</sup>
13. In its most recent decision regarding meat products, the EC segmented the sale of fresh (unprocessed) beef by customer group into the sale to (i) retailers, (ii) caterers (such as restaurants, government institutions and airline caterers) and (iii) industrial processors.<sup>7</sup> The OFT applied a similar segmentation in its previous decisions, in which it distinguished between the supply of (pig) meat for consumption, with a possible further segmentation between retailers and caterers, and the supply of meat for further processing (that is, the supply to processors).<sup>8</sup>
14. One of the reasons given in previous decisions for a distinction between meat for consumption and meat for further processing is that resale between different customer groups is limited because there is only a small number of cuts that are sold for both purposes, and even for those cuts the scope for resale is limited given the need for freshness.<sup>9</sup> The OFT's investigation in the present case found no evidence of any such reselling.
15. ABP did not conclude on the need for a distinction between customer groups, but did use this distinction as the basis for its market share estimates in its submission to the OFT. Third-party comments were mixed. Some third parties referred to the different requirements of different customer groups, such as the need for producing retail packs for retail customers and the need for further cutting and/or mincing for some caterers. Another third party stated that it would be relatively easy for a meat producer to switch supplies between customer groups as long as the

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<sup>5</sup> *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.2.28.

<sup>6</sup> See for example the cases referred to in the OFT's decision of 23 September 2011 in *Greencore/Uniq*, paragraph 11.

<sup>7</sup> *Vion/Weyl*, paragraph 37.

<sup>8</sup> For example, *Cranswick/Bowes*, paragraphs 14 to 21.

<sup>9</sup> EC decisions in Case M.1313 *Danish Crown/Vestjyske Slagterier*, 9 March 1999, paragraph 35, and Case M.3337 *Best Agrifund/Nordfleisch*, 19 March 2004, paragraph 24. The ability to resell is also one of the factors listed in the *Merger Assessment Guidelines* (paragraph 5.2.30).

producer had the correct expertise and equipment, although the OFT notes that producers must first acquire these with the associated cost and time.

16. The OFT notes that there may be an asymmetric constraint, as it may be more difficult for suppliers of processors to switch supplies to retailers and caterers, due to factors including the additional retail packing and cutting/mincing requirements respectively, than it is for suppliers of retailers and caterers to switch supplies to processors. In view of the factors set out above, on a cautious basis the OFT has analysed the Transaction on the basis of separate markets for the supply of fresh, unprocessed beef to (i) retailers, (ii) caterers and (iii) processors, but given the lack of competition concerns there was no need for the OFT to reach a conclusion regarding this aspect of the product market. Further, it was not necessary for the OFT to consider customer segmentations for the supply of fresh, unprocessed lamb in view of the merged parties' limited position in the supply of lamb, as set out below.

## **Geographic market**

### *Purchase of live cattle and sheep for slaughter*

17. In its most recent decision regarding meat products, the EC considered both a possible national market and possible large regional markets for the purchase of live cattle and sheep for slaughter, but it ultimately left the geographic scope of the market open.<sup>10</sup> In relation to purchasing live pigs for slaughter, the OFT used Great Britain (excluding Northern Ireland) as the geographic market.<sup>11</sup>
18. ABP submitted that the market for the purchase of live cattle and sheep for slaughter is Great Britain, excluding Northern Ireland due to the limitations of transporting live animals over sea. It stated that both it and RWM regularly source cattle and sheep from more than 250 miles from their sites. Most of the merged parties' competitors confirmed that live cattle and sheep were transported throughout Great Britain. However, although some third parties noted that it is not uncommon for live cattle and sheep to travel up to 400 miles, several third parties stated that live cattle and sheep are typically transported around 100 to 200 miles. Both the merged parties and third parties referred to animal welfare regulations under which live cattle and sheep may be transported for a maximum of eight hours

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<sup>10</sup> *Vion/Weyl*, paragraphs 14 to 19.

<sup>11</sup> *Cranswick/Bowes*, paragraphs 24 to 26.

without unloading, which allows transport over a significant distance. One third party stated that sheep tend to be transported further than cattle.

19. This suggests that the geographic scope of these markets may be Great Britain. However, because the OFT's investigation also suggests that many live cattle and sheep are transported not further than 100 to 200 miles and the Transaction's impact is concentrated in the South West of England given the location of RWM, on a cautious basis the OFT has considered the purchase of live cattle and sheep both in Great Britain and in the South West of England. There was no need for the OFT to reach a conclusion in this respect, given the lack of competition concerns set out below.

#### *Supply of beef and lamb*

20. ABP submitted that the geographic scope of the supply of beef and lamb is wider than the UK in view of the significant level of imports: around 35 per cent of all beef products and around 54 per cent of processed beef products for retailers.<sup>12</sup> Third parties confirmed that both beef and lamb imports were significant, although some third parties noted that lamb imports (mainly from New Zealand) were largely seasonal. However, several customers stated a preference for British beef and, to a smaller extent, British lamb.
21. The EC previously left open whether the market for the supply of beef was national or larger.<sup>13</sup> In this case, based on third-party comments and in line with an earlier decision in relation to pig meat,<sup>14</sup> the OFT has, on a cautious basis, analysed the merger on the basis of a UK market for the supply of beef and lamb as well as the segments of this supply identified above (paragraphs 10 to 16). There was no need for the OFT to reach a conclusion on the geographic scope of the supply of beef and lamb, given the lack of competition concerns set out below.

#### **Supply of cattle hides and sheep skins**

22. The merged parties further overlap in the supply of abattoir by-products, specifically cattle hides and sheep skins to hide and skin processors and traders, including tanneries. The OFT has distinguished between the supply

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<sup>12</sup> Based on *A pocketful of meat facts 2011*, Agriculture and Horticulture Development Board (AHDB) Market Intelligence, sponsored by the English Beef and Lamb Executive (EBLEX) and the British Pig Executive (BPEX).

<sup>13</sup> *Vion/Weyl*, paragraphs 40 to 44.

<sup>14</sup> *Cranswick/Bowes*, paragraphs 27 to 31.

of cattle hides and sheep skins as third-party comments indicated a lack of demand- and supply-side substitution. The OFT has not segmented the market by size of hide or skin because third parties noted that beef and lamb abattoirs can handle different sizes of cattle and sheep respectively.

23. ABP submitted that the merged parties' market position in relation to cattle hides and sheep skins correlates with their size in UK beef and lamb processing respectively. The OFT did not receive any evidence to the contrary and third parties, including customers, did not raise any concerns about by-products. ABP and third parties also suggested that the geographic scope of the supply of hides and skins was wider than the UK, in which case the parties' position is very small. As the Transaction does not give rise to competition concerns in beef and lamb in the UK, as set out below, the OFT has therefore not reached any conclusions on the relevant market in this respect and has not further discussed this element of the Transaction.

## **Conclusion**

24. For the reasons set out above, the OFT has assessed the competition impact of the Transaction in the following possible markets:
- the purchase of live cattle for slaughter in Great Britain and the South West of England
  - the purchase of live sheep for slaughter in Great Britain and the South West of England
  - the supply of fresh, unprocessed beef to retailers in the UK
  - the supply of fresh, unprocessed beef to caterers in the UK
  - the supply of fresh, unprocessed beef for further processing to processors in the UK
  - the supply of fresh beef burgers in the UK, and
  - the supply of lamb in the UK.

## **UNILATERAL EFFECTS**

### **Purchase of live cattle and sheep for slaughter**

25. ABP purchases live sheep for slaughter only in Northern Ireland, reflecting the fact that ABP's only lamb abattoir in the UK is in Lurgan, Northern Ireland. RWM's purchases of live sheep are only in Great Britain (mainly the South West). In view of the OFT's conclusion on the geographic scope of

the purchase of live sheep for slaughter (paragraph 19 above) and in particular the fact that there appears to be little, if any, competition between Northern Ireland and Great Britain due to the limitations of transporting live animals over sea, there is therefore no overlap between the merged parties in this respect in any plausible market.

26. As regards the purchase of live cattle for slaughter, ABP has estimated the merged parties' and their main competitors' shares in Great Britain, as set out in Table 1 below.

**Table 1: Purchase of live cattle for slaughter in Great Britain in 2010**

<b>Company</b>	<b>Number of animals</b>	<b>Share (per cent)</b>
ABP	[ ]	[10-20]
RWM	[ ]	[0-5]
<b>Combined</b>	[ ]	<b>[10-20]</b>
Vion	[ ]	[0-10]
Dunbia	[ ]	[0-10]
Woodheads	[ ]	[0-10]
Dawn Meats	[ ]	[0-5]
Others	[ ]	[50-60]
<b>Total</b>	<b>2,228,764</b>	<b>100</b>

Source: ABP's estimates. The total figure is based on Defra statistics.

27. At a national level, the parties' combined share at around [10-20] per cent is relatively low and the increment is small at around [0-five] per cent. The combined share is not high enough to raise concerns over unilateral effects, provided the relevant geographic market is Great Britain. That said, at a regional level, the impact of the Transaction is concentrated in the South West of England, as this is the location of RWM's facilities (see paragraph 2 above). However, ABP was unable to provide estimates of the merged firm's share at a regional level.
28. One third party raised a concern about the strong position the merged firm has acquired in the South West, as the Transaction has added ABP's cattle abattoir in Sturminster, Dorset to RWM's abattoirs in Yetminster, Dorset and Langport, Somerset. This third party noted that there was only a limited number of competing abattoirs in the South West and that other abattoirs were located further afield, in particular in Northern England. No

other third parties raised a concern about the Transaction's impact on the purchasing of live cattle.

29. ABP listed several competing cattle abattoirs in the South West. This included an abattoir and boning hall owned by St Merryn (part of Vion, one of the merged firm's largest competitors), which was also mentioned by a third party as a competing abattoir in the South West. ABP also referred to abattoirs in Wales, Lancashire and Bedfordshire that are owned by four of its major competitors, as confirmed by third-party data. ABP stated that these competitors regularly source cattle and/or lamb from the South West for slaughtering in these abattoirs, using agents and collection centres based in the South West to facilitate this. For example, Dunbia, a large beef processor, uses three separate collection centres in the region (two in Gloucester and one in West Devon).
30. There are also a large number of livestock auction markets in the South West that are an alternative route to market for farmers. A report for the English Beef and Lamb Executive (EBLEX) identified 16 livestock markets as operational in the South West in 2010.<sup>15</sup> ABP noted that there are 15 at present. Data from the Agriculture and Horticulture Development Board provided by ABP shows that auction markets account for around 19 per cent of all finished cattle sales and 57 per cent of all sheep sales in England. This corroborates the view that there are a number of alternatives for cattle farmers in the South West besides the merged parties.
31. Based on these factors, and the fact that the OFT's investigation shows that cattle is regularly transported over distances that can reach all of Wales and most of England (see paragraph 18 above), the OFT considers that there are sufficient alternative purchasers of cattle raised in the South West of England to conclude that the merged firm's position in the South West of England after the Transaction does not give rise to competition concerns.
32. The OFT further notes that, in any event, an increase in buyer power for merging firms does not often raise a competition concern based on unilateral effects.<sup>16</sup> In this case, there are unlikely to be concerns in respect of the merged parties' buyer power, because they continue to face sufficiently strong downstream competition in the supply of beef, as

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<sup>15</sup> *Livestock Markets in the 21<sup>st</sup> Century*, prepared by MLCSL (December 2010), page 39.

<sup>16</sup> *Merger Assessment Guidelines*, paragraphs 5.4.19 and 5.4.20.

evidenced below by their low market shares. Moreover, the merged firm may pass on some of the benefits of its greater buyer power to its customers.

33. The OFT has nevertheless conducted a more detailed assessment of two possible theories of harm from anticompetitive buyer power:

- whether the merged firm may be able to secure lower prices than its competitors when purchasing cattle for slaughter; and in turn whether suppliers of cattle for slaughter may recoup the lower prices obtained by the merged firm with higher prices to its competitors (a 'waterbed effect'), with the effect of reducing downstream competition, and
- whether the merged firm has an incentive to lower the amount of cattle it purchases so as to reduce the purchase price it pays, recouping lost retail sales through higher prices in the supply of fresh beef (known as 'demand withholding').

34. In the first 'waterbed effect', a key factor is whether the merged firm's competitors are already sufficiently 'squeezed' that they exit the market or cut back their operations. The OFT has no evidence to suggest that this is the case for ABP's competitors in the supply of beef. On the contrary, many of ABP's competitors are of a similar scale to ABP and RWM combined. Moreover, it is not plausible that any increased buyer power of the merged parties would extend beyond South West England given their low combined share of purchases of cattle in Great Britain. As ABP's competitors source British cattle from outside South West England, the OFT would not expect any price rise of cattle in South West England to weaken their businesses significantly.

35. In the second 'demand withholding' effect, a key factor is whether the merged parties have sufficient market power in the supply of fresh beef to enable it to charge higher prices. In ABP's case, and as outlined below, the combined market share in the supply of beef is sufficiently low that the OFT does not consider 'demand withholding' a credible theory of harm.

### **Supply of fresh, unprocessed beef for consumption**

36. ABP provided the OFT with an estimate of the merged parties' shares in the supply of fresh, unprocessed beef for consumption, that is, to retailers and caterers, in the UK. The OFT has also received the revenues of the merged parties' main competitors. This is set out in Table 2 below.

**Table 2: Supply of fresh, unprocessed beef for consumption in the UK in 2010**

Company	Supply to retailers		Supply to caterers	
	Value (£000)	Share (per cent)	Value (£000)	Share (per cent)
ABP	[ ]	[25-35]	[ ]	[0-5]
RWM	[ ]	[0-5]	[ ]	[0-5]
<b>Combined</b>	[ ]	<b>[25-35]</b>	[ ]	<b>[0-5]</b>
Vion	[ ]	[10-20]	[ ]	[0-5]
Hilton Food Group	[ ]	[5-15]	[ ]	[0-5]
Woodheads	[ ]	[5-15]	[ ]	[0-5]
Dawn Meats	[ ]	[0-10]	[ ]	[0-5]
Dovecote Park	[ ]	[0-10]	[ ]	[0-5]
Dunbia	[ ]	[0-10]	[ ]	[0-5]
Others	[ ]	[20-30]	[ ]	[85-95]
<b>Total</b>	<b>1,824,578</b>	<b>100</b>	<b>1,790,000</b>	<b>100</b>

Source of the total figure for the supply to retailers: Kantar World Panel and ABP data.

Source of the total figure for the supply to caterers: *A pocketful of meat facts* (see footnote 12 above).

Source of company figures: relevant companies and ABP estimates. The OFT notes that in relation to the supply to retailers, the figures it received from ABP's competitors may represent the value of their sales at wholesale prices, while ABP's figures and the total market figures represent the value at retail prices. In that case, the shares of ABP's competitors is therefore underestimated.

37. The merged parties' combined share of the supply to retailers of around [25-35] per cent is not so high as to raise concerns over unilateral effects.<sup>17</sup> In addition, the increment is very small at only around [0-five] per cent. In the supply to caterers, the merged parties' combined share is very small at only around [0-five] per cent. In a possible combined market for the supply of fresh, unprocessed beef for consumption, that is, to both retailers and caterers, the merged parties' combined share would be [10-20] per cent, with an increment of [0-five] per cent.
38. Data to estimate shares of capacity (as opposed to supply) was not available to the OFT. However, responses from competitors to ABP and RWM indicate that these competitors had more spare capacity than the

<sup>17</sup> *Merger Assessment Guidelines*, paragraph 5.3.5.

merged parties. The OFT would therefore expect the parties' share of capacity, in general, to be lower than their share of supply.

39. The merged parties face competition from several significant suppliers. One of the competing suppliers listed at Table 2 above is Woodheads, which is owned by the supermarket chain Morrisons. Morrisons is Woodheads' largest retail customer of fresh, unprocessed beef [ ]. The OFT will generally only include production used for self-supply within the relevant market if it can be demonstrated that it would be profitable for the supplier to forgo its use and sell into the merchant market (that is, to other users) in response to a price increase.<sup>18</sup> On that basis it is not clear whether it is appropriate to include Woodheads in the market. However, Woodheads may nevertheless act as an indirect competitive constraint on the merged firm through its influence on the retail prices of beef in Morrisons. Also, even if Woodheads was not included in the market, this would make little difference to the merged firm's share of supply.
40. The OFT did not receive material concerns about the Transaction regarding the supply of fresh, unprocessed beef for consumption. In view of this factor and the other factors discussed above, the OFT does not believe that the Transaction raises competition concerns in this respect.

#### **Supply of fresh, unprocessed beef for further processing**

41. ABP provided the OFT with the merged parties' revenues from the supply of fresh, unprocessed beef for further processing, that is, to industrial processors, in the UK, but ABP was unable to provide the OFT with an estimate of the size of the market. The OFT has therefore added up the revenues of the merged parties and the revenues it received from their main competitors to arrive at an estimate of the market size. This is set out in Table 3 below.

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<sup>18</sup> *Merger Assessment Guidelines*, paragraph 5.2.20 (fourth bullet point).

**Table 3: Supply of fresh, unprocessed beef for further processing in the UK in 2010**

<b>Company</b>	<b>Value (£000)</b>	<b>Share (per cent)</b>
ABP	[ ]	[10-20]
RWM	[ ]	[20-30]
<b>Combined</b>	[ ]	<b>[35-45]</b>
Vion	[ ]	[10-20]
Dunbia	[ ]	[0-10]
Woodheads	[ ]	[10-20]
Dawn Meats	[ ]	[10-20]
Dovecote Park	[ ]	[0-10]
<b>Minimum total market</b>	[ ]	<b>100</b>

Source: relevant companies.

42. The total market figure in Table 3 underestimates the actual size of the market, as it does not take account of revenues of suppliers other than those listed in the table. Third-party comments showed that, besides those suppliers, additional significant suppliers include Foyle Meats, Kepak Group and Linden Group. In addition, Woodheads supplies [ ] beef for further processing to third parties (that is, those outside the Morrisons group), so the issue of whether to exclude Woodheads due to self-supply (see paragraph 39 above) does not arise here.
43. ABP also referred to the value of the supply of processed beef to retailers, which is around £1.78 billion.<sup>19</sup> Although this reflects the value after processing and is likely to include a retail margin, the large difference between this value and the minimum market size of £[ ] million calculated at Table 3 above further supports that this market size is an underestimate.
44. The OFT therefore believes that the merged parties' share of the supply of fresh, unprocessed beef for further processing is significantly below the [35-45] per cent in Table 3. The OFT was unable to verify ABP's submission that, based on its general industry knowledge, the merged firm's share would be below 25 per cent. However, the OFT expects this share to be below 40 per cent, a share which will not often give the OFT cause for concern over unilateral effects in horizontal mergers regarding

<sup>19</sup> *A pocketful of meat facts* (see footnote 12 above).

undifferentiated products.<sup>20</sup> The OFT further notes that, in addition to competition from several firms that already supply processors, the merged firm also faces a constraint from those competitors that focus on the retail and catering channels, as the OFT's investigation suggested they may be able to expand their supply to industrial processors relatively easily (see paragraph 16 above). No third parties raised concerns in relation to the supply of fresh, unprocessed beef for further processing. Taking all these factors into account, the OFT does not therefore believe that the Transaction raises competition concerns in this respect.

### **Supply of fresh beef burgers**

45. As noted above, the only overlap between the parties in processed beef is in fresh beef burgers. The value at retail prices of RWM's sales of fresh beef burgers is very small at around £[ ]. Although the retail value of ABP's sales is significantly higher at around £[ ] million, ABP submitted that given its UK market size estimate of around £95 million (based on Kantar World Panel data) the merged parties' combined share in the supply of fresh beef burgers would be only around [15-25] per cent with a very small increment. The OFT received revenue information from the parties' competitors that confirmed that the merged firm faces significant competition in the supply of fresh beef burgers. No third parties raised concerns about the Transaction in this respect.

46. Based on these factors, the OFT does not consider that the Transaction raises competition concerns in the supply of fresh beef burgers.

### **Supply of lamb**

47. As ABP submitted that it did not have detailed data on the supply of lamb in the UK, it used the domestic production of lamb in the UK as a proxy. ABP's estimates of the merged parties' shares in this production are set out in Table 4 below, together with their main competitors' shares.

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<sup>20</sup> *Merger Assessment Guidelines*, paragraph 5.3.5.

**Table 4: Domestic production of lamb in the UK in 2010**

<b>Company</b>	<b>Volume (tonnes)*</b>	<b>Share (per cent)</b>
ABP	[ ]	[0-5]
RWM	[ ]	[0-10]
<b>Combined</b>	[ ]	<b>[0-10]</b>
Vion	[ ]	[5-15]
Randall Parker	[ ]	[5-15]
Dunbia	[ ]	[5-15]
Woodheads	[ ]	[0-10]
Euro Quality Lambs	[ ]	[0-10]
Dawn Meats	[ ]	[0-5]
Others	[ ]	[50-60]
<b>Total</b>	<b>277,316</b>	<b>100</b>

Source of total production: Defra statistics.

Source of company figures: relevant companies and ABP estimates.

\* Carcass weight equivalent (calculated by multiplying the number of animals slaughtered by the average weight per carcass).

48. As the total production figure in Table 4 is for domestic production, it does not take account of imports and exports. The OFT expects domestic production to overstate slightly the merged parties' share in the supply of lamb. This is because UK imports were slightly larger than UK exports in lamb and mutton in 2010<sup>21</sup> and because the merged parties do not have any sheep abattoirs outside the UK that they could use to export lamb to the UK. The OFT further notes that even if Woodheads was not included in the market due to its position in the Morrisons group (see paragraph 39 above), this would make little difference to the merged firm's share of supply.
49. The merged firm's share in the supply of lamb in the UK is therefore low at around [0-10] per cent with a small increment of around [0-5] per cent. The OFT did not receive any evidence to suggest that the merged firm's share would be significantly different if it had separately considered the supply of processed and unprocessed lamb or the supply of unprocessed lamb to different customer groups, such as retailers and processors (see further at paragraphs 10 to 16 above). No third parties raised any concerns

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<sup>21</sup> Based on *A pocketful of meat facts* (see footnote 12 above).

about the Transaction in respect of the supply of lamb. The OFT therefore does not consider that the Transaction gives rise to competition concerns regarding the supply of lamb.

## **BARRIERS TO ENTRY AND BUYER POWER**

50. As the Transaction does not give rise to concerns over unilateral effects, there is no need for the OFT to reach a conclusion regarding barriers to entry or buyer power.

## **THIRD-PARTY VIEWS**

51. Third-party views have been discussed above where relevant. None of the merged firm's customers or competitors raised material concerns. One of the merged firm's suppliers raised a concern regarding the firm's position in the purchase of cattle in the South West of England, which has been discussed above.

## **ASSESSMENT**

52. ABP and RWM overlap in the purchase of live cattle and sheep for slaughter, in the supply of fresh, unprocessed beef for consumption and further processing, and in the supply of lamb. There is also a small overlap in the supply of fresh beef burgers.
53. The merged parties' combined share in the purchase of live cattle for slaughter in Great Britain is not high enough to give the OFT cause for concern at [10-20] per cent, with an increment of around [0-5] per cent. The merged parties do not overlap in the purchase of live sheep for slaughter in Great Britain, as ABP's purchases are only from Northern Ireland while RWM's purchases are only from Great Britain. The OFT did not receive an estimate of the parties' shares in the South West of England, where the main impact of the Transaction is due to the location of RWM's abattoirs and one of ABP's abattoirs in this region. However, the merged firm will continue to face significant competition for the purchase of live cattle in this region, including from competitors' abattoirs in Wales and elsewhere in England.
54. The Transaction does not add significantly to ABP's share in the supply of fresh, unprocessed beef for consumption (that is, to retailers and caterers), nor to its share in the supply of beef burgers. In the supply of fresh, unprocessed beef for further processing, the OFT did not receive an

accurate share estimate. However, based on the available evidence, the OFT believes that in this activity the merged parties' combined share is below 40 per cent (a level that will not often give the OFT cause for concern) and that they continue to face significant competition.

55. The merged parties' combined share in the supply of lamb is low and the increment resulting from the Transaction is very small. The OFT did not receive any evidence to suggest that their share is significantly different in separate segments of the supply of lamb.
56. Consequently, the OFT does not believe that it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

57. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.