

Completed acquisition by Bernard Matthews Limited of Lincs Turkeys Limited

ME/4599/10

The OFT's decision on reference under section 22(1) given on 27 August 2010. Full text of decision published 28 September 2010.

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. **Bernard Matthews Limited (BML)**¹ primarily rear and slaughter turkeys in East Anglia. It sells a variety of turkey products to the retail sector, food service and food processing sectors in the UK.
2. **Lincs Turkeys Limited (Lincs)** primarily rear, slaughter and process turkeys in the UK. It subsequently sells different turkey products to the retail, food service and food processing sectors. The target's (Lincs) UK turnover for the financial period ending 2 January 2010 was £23.77 million.

TRANSACTION

3. BML completed the acquisition of Lincs on 30 April 2010.
4. The administrative deadline expired on 20 August 2010 and the statutory deadline expires on 30 August 2010.

¹ BML's parent company, Bernard Matthews Holdings Limited (through different subsidiaries) have similar activities in Germany and Hungary (BM Group). The BM Group turnover in the financial period ending 3 January 2010 was £330 million, of which £206 million related to sales in the UK.

JURISDICTION

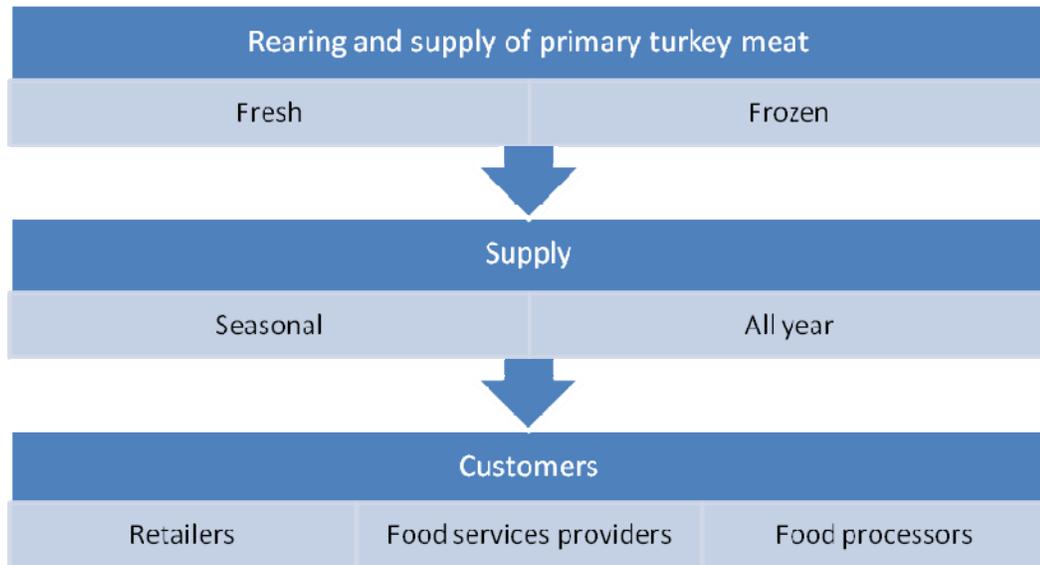
5. Prior to the merger, BML and Lincs formed two separate enterprises that have ceased to be distinct for the purposes of the Enterprise Act 2002 (the Act) as a result of the merger.
6. The OFT believes that the share of supply test under section 23(2) of the Act is satisfied because post-merger BML has an estimated combined share of supply of [more than 25] per cent (including an increment of [less than 10] per cent) based on the units of UK fresh seasonal turkey in 2009. The OFT therefore believes that it is or may be the case that this transaction has resulted in the creation of a relevant merger situation.

BACKGROUND

Supply chain

7. Several stages can be distinguished in the production and processing of meat from turkeys: eggs are acquired from industrial hatcheries, the poults (young turkeys) are reared and farmed – for a period of about 16 weeks - either in the producers' own farms or by third party farmers (contract growers); and after slaughtering, the slaughtered turkeys are divided into primary meat (which can be fresh or frozen whole birds or 'crowns' – the torso minus legs and wings), dark meat (wings and legs) and abattoir-by-products (such as blood, bones and fat to be sold for different applications).
8. The primary meat is sold on the downstream markets to different customer groups: retailers (supermarkets); wholesalers (which might distribute to smaller retailers); caterers (such as food service suppliers and restaurants); food processors (such as deli/convenience products manufacturers) and commodity traders.² Primary meat sold to industrial processors will be further processed (convenience products) and sold to retailers and caterers.

² Based on BML's best figures (which excludes any sales to commodity/wholesale markets), the OFT has estimated that retail customers consume between [25-35] and [50-60] per cent of the total turkey consumption in the UK, with food processors acquiring a slightly lower proportion (between [25-35] and [40-50] per cent) and food services, between [five-15] and [15-25] per cent.



9. The transaction did not include the acquisition of Linc's meat processing and packing company (Parkham Chilled Foods), therefore there is no overlap at the processing stage of the supply chain.
10. Demand for turkeys is mostly seasonal. The parties estimate that for the top [] retailers [] per cent of the turkey meat is supplied during the Christmas period. This moulds the business economics of this sector: fixed-costs must be sustained throughout the year but there is limited all-year-round (AYR) demand leaving significant spare capacity at the slaughtering and processing stages for the rest of the year. In addition there are additional offers during the seasonal peak by relatively small local producers (farm gate sales, including farmers markets, and local butchers).

MARKET DEFINITION

Product scope

Turkey meat as a separate market from other protein and poultry meats

11. BML submits that its turkey products compete with other proteins (such as meat and fish) and with any other grocery offering for a meal. UK and EC decisions in the meat sector have considered that each type of meat forms a separate market because of imperfect substitutability. In Cargill/Seara,³ the

³ See for example, Case No IV/3476. – Cargill/Seara, decision of 28 October 2004. Paragraph 10

European Commission noted that different types of poultry might form separate markets; but, on the facts of that case, it did not need to conclude on that point.

12. Notwithstanding the above statement, BML argued that, at the very least, other poultry (for example chicken) should be included in the candidate product market. The argument being that a five per cent price increase in the supply of turkey meat would lead to a fall in demand sufficiently large to make such a price increase unprofitable, in particular by customers switching to other poultry.
13. All customers and most competitors consulted in the present case have tended to reject both the above contentions. They told the OFT that the supply of primary turkey meat forms a separate product market. They argued that at Christmas, turkey had a unique seasonal character driving demand; and during the rest of the year, grocery retailers and some caterers believed it was a 'must-stock' product in order to be able to offer an adequate selection of white meat to consumers.
14. In light of these contradicting views, together with the lack of any robust quantitative (surveyed or scanned) data, the OFT has taken a cautious approach and assessed the competitive impact of this merger against a set of narrow candidate relevant markets: the rearing and supply of turkey meat (as distinguished from other protein sources and poultry meat). This can be segmented further by customer group, processing or chilled status (fresh, frozen or processed) as is explained below. However, given the lack of substantiated competition concerns regardless of the candidate relevant market, it is not necessary to conclude on market definition.

The supply of fresh and frozen turkey meat as separate candidate markets

15. The OFT believes that the supply of turkey meat at different refrigerated conditions should be assessed separately. EC precedents⁴ have taken a different approach and referred to 'fresh' as comprising both fresh and frozen meat which has not been processed in any way. The OFT has reached a different view in this case because of the representations it has received that from a product perspective, fresh and frozen turkey meat have different shelf-

⁴ See for example, Case No COMP/M. 5705- MARFRIG ALIMENTOS/SEARA, decision of 18.12.2009, paragraph 8.

life,⁵ alleged different cooking properties, texture, consumers' preference, and some significant price differences.

16. In addition, recent regulatory changes⁶ concerning the labelling of previously frozen meat products⁷ sold in the European Union now differentiate much more clearly between what can be described and sold as fresh and frozen turkey meat. Several third parties (customers and competitors) have stressed the significant (yet unmeasured) impact that such a change in regulation is having in the competitive dynamics of the sector. In effect, shortening the shelf-life of primary meat reshapes the production cycle and has led large producers to expand significantly their facilities so that they can supply larger amounts of 'fresh' turkey meat during the short peak seasonal timeframe.

Segmentation by customer groups, seasonal supply and quality

17. As stated above,⁸ fresh turkey meat reaches consumers through different distribution channels, each of which may form a separate frame of reference. From the demand side, switching alternatives vary depending on the customer's commercial offering (which, in turn, is driven by their own consumers demand). The European Commission took a similar approach in analogous precedents related to the supply of fresh (albeit different) meat proteins;⁹ and, the OFT has received no evidence to depart from these candidate markets based on those customer groups: retailers, food service (including caterers and restaurants) and processing companies.
18. As noted above,¹⁰ demand for turkey meat is significantly seasonal. This led the Department for the Environment, Food, and Rural Affairs (DEFRA) to conclude that 'the UK turkey industry comprises two main sectors: all-year-round and seasonal production.'¹¹ The seasonal tradition makes plausible the

⁵ This factor will be particularly significant when discussing about the geographic scope of this product. See below at paragraph 14.

⁶ See Council Regulation (EC) No 1047/2009 of 19 October 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets as regards the marketing standards for poultry meat, OJ L 290, p.1; Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultry meat, OJ L 157, p.46.

⁷ This refers to meat which has been frozen for transport and then defrosts prior to sale to be consumed as a fresh or chilled product.

⁸ See paragraph 8 above.

⁹ See for example, Case No COMP/M. 5705- MARFRIG ALIMENTOS/SEARA, decision of 18.12.2009, paragraph 9. This case related to the rearing and production of chicken meat.

¹⁰ See paragraph 10.

¹¹ Report by DEFRA on 'The UK Turkey and Geese Production industry: A short study', 2007.

idea that a hypothetical seasonal monopolist would be able to increase prices without all-year-round sales constraining in any way such an increase. However, BML pointed out that during the peak seasonal period (Christmas), two further distribution channels constrain its pricing behaviour: local butchers, and farm gates sales (including farmers' markets). In aggregate, BML estimates that in 2009, these two additional points of sale represented 22 per cent of the total market share for 'fresh' seasonal turkey sales. Nonetheless, the OFT has taken a cautious approach assess the transaction differentiating both seasonal and all-year-round sales.

Does 'British-reared' turkey meat form a separate candidate market?

19. Some third parties suggested that 'British-reared' turkey meat forms a separate relevant market. Three retail customers said that their selection criteria is based upon procuring 'British meat' only rather than strict pricing but two of these, however, admitted that the market is increasingly becoming 'international'.
20. BML agreed that for some UK customers, British provenance of their turkey meat is paramount and therefore, for such customers, imports are not an alternative. This might apply to both the supply of fresh and frozen turkey meat, for supplies during the peak seasonal period and all-year-round. However, BML argued that any such customers would continue to have alternative sources of supply of British turkey meat available to them.
21. Notwithstanding the strong qualitative evidence submitted suggesting that this market is actually 'international', even by those customers who purchase 'British-reared' meat only, the lack of robust quantitative evidence (such as scanned or any other substantive market data) has led the OFT to take a cautious approach and review the impact of this transaction on a narrow candidate market - the supply of 'British-reared' turkey meat - with all further segmentations, both frozen and fresh as well as seasonal and all-year-round.

Geographic scope

22. The relevant geographic market is the smallest area in which a hypothetical monopolist could profitably sustain a small but significant increase in prices. Defining the relevant geographic market requires consideration of the products or suppliers which are viewed as viable substitutes from the perspective of customers.

23. In this case, the list of alternative suppliers would depend on several factors: required shelf-life of the product,¹² location of producers' facilities, customer preferences for a country of provenance, seasonality and fito-sanitary or other regulatory conditions ruling on any of the above factors as well as slaughtering, processing, labelling or refrigeration. These vary depending on the refrigerated status of the slaughtered turkey meat (frozen, processed or fresh).
24. **Frozen meats** have longer shelf-life, facilitating longer delivery times and imports. Brazil, Chile and Thailand¹³ have repeatedly been listed by customers and DEFRA as sources of a significant proportion of the turkey meat which is consumed in the UK. This continuing trend corroborates BML's submission that the relevant geographic scope for the supply of frozen and processed turkey meat is wider than just the UK.
25. The geographic scope for **the supply of fresh turkey meat** is narrower and may include the UK, the Republic of Ireland and some EU countries such as France, Germany and Italy. The OFT's investigation has found evidence that some large retailers are already procuring their fresh turkey meat from outside the UK. BML has submitted that the geographic scope should also include countries such as Hungary (where it has an operative subsidiary) and Poland. This was not corroborated by the views of other third parties who contended that the market was only UK wide.
26. This narrowest geographic scope refers in particular to those large customers driven by a 'corporate branding' of procuring 'British-reared' turkey meat only which influences both their 'fresh' and frozen turkey meat supplies.
27. Given the lack of quantitative data presented to the OFT, it has not been possible to conclude on the precise geographic scope, in particular, whether imports of fresh turkey meat are an actual substitute for a significant proportion of UK customers such that market should be seen as wider than just the UK. However, given the outcome of the competition assessment it is not necessary to conclude on this point.

¹² From slaughtering to point of sale.

¹³ See End note 1.

Conclusion on market definition

28. The OFT has not been required to conclude on product scope as its outcome would be similar regardless of the candidate market applied. Consequently, this assessment has taken a cautious approach and consider the effects of this transaction on:

- the supply of primary turkey meat; with the narrowest candidate market being the supply of primary 'British-reared' turkey meat, which can then be segmented further between the supply of frozen and fresh meat
- further segmentations depending on the time of the year when the meat is sold: seasonal (around Christmas) and all-year-round, and
- distinguishing by customer group: retailers, food service providers and food processors.

29. The relevant geographic scope has also been left open in this decision. This assessment has taken a cautious approach and considered that the candidate geographic markets are for the supply of, (and with the above further segmentations):

- 'British reared' turkey meat (UK or GB)- for both frozen and fresh turkey meat
- fresh turkey meat (UK, France, Germany and Italy), and
- frozen turkey meat (wider than for fresh turkey and also includes Brazil, Chile and Thailand¹⁴).

COMPETITIVE ASSESSMENT

Introduction

30. The appropriate counterfactual for this case is the pre-merger market structure, as this is the most plausible alternative against which the OFT should assess this transaction based on the evidence presented to it. No evidence has suggested that it would be appropriate to deviate from this counterfactual.

¹⁴ See End Note 1.

Summary of market shares

31. BML submitted its best estimates of its market shares to provide an overall view of the sector which are summarised below:

Table 1: UK combined shares of supply- Sales in 2009

	BM		Lincs		Combined
Fresh seasonal whole birds & crowns	[15-25] %	£[] m	[0-10] %	£[]m	[25-35] %
Frozen seasonal whole birds & crowns	[55-65] %	£[] m	[0-10] %	£[]m	[55-65]%
Retail fresh portions & primal AYR	[30-40] %	£[] m	[0-10] %	£[]m	[35-45] %
Primary turkey Sales into wholesale, food service, processors & commodity	See separate table 2 below *				

Source: BML estimates based on public and internal information. Based on traded retail values

Table 2: *Primary Turkey Sales into Wholesale, Food Service, Processors and Commodity markets- Sales in 2009

	BML		Lincs	
Wholesale	Unknown	£[]m	Unknown	£[]m
Food service	[10-20]%	£[]m	[15-25] %	£[]m
Processors	[20-30]%	£[]m	[0-10]%	£[]m
Commodity	Unknown	£[]m	Unknown	£[]m

Source: BML estimates based on public and internal information. Based on 'traded values'.

32. BML submits that the transaction does not lead to a substantial lessening of competition in any segment due to several reasons:

- the parties were not close competitors
- the merger has given rise to limited increments
- independent third party data (including from DEFRA) show that turkey is losing market share to other protein meats
- imports already, and will continue to, constrain BML, and

- that the distinction between frozen and fresh meat is irrelevant in most of the food service customer groups due to new cooking techniques and (according to some third parties) because price in most cases take priority over levels of different quality.

33. However the OFT received concerns from customers (retailers, food service and processor companies) that the merger, of the first and third largest British turkey meat producers, would lead to a lessening of competition primarily in the supply of large volumes of fresh British turkey meat in the UK.

UNILATERAL EFFECTS

34. The OFT will examine the unilateral effects and the competitive constraints placed on the parties in relation to the different segments mentioned in paragraph 28, starting from the narrowest candidate market.

The supply of primary fresh 'British-reared' turkey meat to retailers

35. Three of the eight largest grocery retailers in the UK currently have a British poultry sourcing policy. For them, this merger results in a reduction in the number of suppliers of 'British-reared' fresh turkey meat, arguably, from three to two. The OFT notes that in one of the cases the customer has already been looking for multi sourcing alternatives in the UK (see section on barriers to entry and expansion below) and, as stated above,¹⁵ that the other two of these customers agreed that whilst they have restricted their choice for corporate branding reasons, the market was 'international'.

36. The evidence collected by the OFT suggests that the parties were not particularly close competitors prior to the merger and the merger will therefore not result in a substantial loss of rivalry. Out of the eight largest retailers in the UK (excluding discounters), Lincs supplied to [] of them on an all year round basis, and supplies [] a proportion of [] seasonal requirements. The majority of the other retailers confirmed to the OFT that Lincs has not been an effective competitor and they had not invited them to tender as they did not believe they could adequately meet their supply needs. All retailers consulted by the OFT identified Cranberry Foods, the second largest UK turkey supplier with an annual turnover of around £83 million, as BML's closest competitor and argued that Lincs:

¹⁵ See paragraph 19.

- could not be considered as a substitute to other accredited suppliers because of its smaller production capacity
- []
- was more widely recognised as a 'free-range' grower, and
- would appeal more locally as it did not carry BML's 'mass production' brand and reputation.

37. The increment to BML's market share is limited. As stated above, the largest increment in the supply of primary fresh turkey meat is [0-10] per cent (in the supply of fresh seasonal whole birds and crowns) leading BML to a combined market share of [20-30] per cent.
38. The market investigation has also shown that out of the eight largest retailers, four of them already source or have accredited suppliers from outside the UK suggesting that imports of fresh turkey meat are a real constraint on the parties in this segment of the market and that customers have switched to foreign turkey suppliers if they are unable to achieve their desired price.
39. It is also worth noting that one of the three grocery retailers procuring 'British-reared' turkey meat currently sources other meats from outside of the UK. It was explained that security of supply rather than pricing had led to such decisions and this was not, at present, likely to be replicated in 'poultry' meat, in particular given the strong media influence on consuming 'British-reared' poultry. The OFT notes that similar concerns about security of supply in other meat products have led other grocery retailers to sponsor new entry or expansion¹⁶ this alternative was not rejected by at least another of those three customers of 'British-reared' fresh turkey meat. The third one does not appear to have considered this alternative since it is not concerned about the impact of this merger in the supply of fresh turkey meat because of its existing long-term agreement with one of the two largest British producers.¹⁷
40. In addition, the recent acquisition of O'Kane Poultry by Moy Park, a large European supplier of poultry products, have prompted some grocery retailers currently procuring from other British producers (including Lincs) to contact O'Kane as a possible future supplier with spare capacity in slaughtering and

¹⁶ OFT decision of 9 June 2009 on the anticipated acquisition by Cranswick Country Foods Plc of the Pork processing business of Bowe of Norfolk Limited, paragraph 75.

¹⁷ If the volume related to this third customer was removed from the contestable market, BML's market shares would be lower.

processing for supplies all-year-round. This issue is addressed further in the barriers to entry and expansion section below.

41. An additional (albeit residual) constraint on BML (and other turkey producers) increasing prices may come from other meat or protein products. As stated by DEFRA,¹⁸ the overall UK demand for turkey meat has been in substantial decline in recent years. This might suggest that consumers tastes and preferences change over time, which is not necessarily an indicator of short term substitutability (or competition) or that turkey meat competes (to a greater or lesser) extent with other poultry, meat or protein products. The lack of quantitative evidence on this point presented to the OFT has hindered its opportunity to conclude on this issue.
42. Based on the above factors, the OFT does not believe that this merger create the realistic prospect of a substantial lessening of competition in the supply of 'fresh' 'British-reared' turkey meat to retailers in the UK.

The supply of primary frozen 'British-reared' turkey meat supplied to retailers

43. One customer was concerned about the harmful impact in the supply of frozen whole birds during the seasonal period, a segment in which the merged entity's share of supply is [] (estimated to be around [55-65] per cent following an increment of [0-10] per cent). All (save one) other respondents to the OFT consultation raised no concerns on this particular segment.
44. The competitive constraints that are discussed above in the assessment of fresh 'British-reared' turkey supplied to retailers are also relevant for the supply of 'British-reared' frozen turkey to retailers.
45. Additionally, BML's competitors noted BML's historical strong commercial position in the supply of frozen turkey meat (for seasonal and all-year-round supply) but they also acknowledged that the competitive dynamics had substantially changed with the rapid increase of imports, primarily from South-America which have led to a drastic reduction in any profit margin. DEFRA corroborated this argument and its expectation that this trend will continue in the foreseeable future. []. This suggests that, in this case, past market shares may not reflect the on-going dynamics of these markets.

¹⁸ Annual UK Production and Total Supply of Poultry meat, DEFRA, May 2010.

46. Therefore, given the modest increment and the reducing nature of this sector of the market, the OFT does not believe that this merger create the realistic prospect of a substantial lessening of competition in the supply of 'frozen' 'British-reared' turkey meat to retailers in the UK.

The supply of primary fresh 'British-reared' turkey meat supplied to caterers

47. There are a number of caterers who purchase turkey on a large scale basis throughout the year, one of them has raised concerns that the merger will reduce the number of suppliers able to supply the size of birds they require on an all year round basis from three to two.
48. All caterers customers that the OFT contacted listed Cranberry Foods as BML's main competitor, capable of supplying the required size and volumes of birds. One customer explained to the OFT that they already have a corporate policy of multi sourcing to 'promote competition among its suppliers' and increase its security of supply which suggest that procuring smaller volumes from alternative suppliers is a valid option.
49. As stated above, this assessment is based on the narrowest candidate markets. In this case, the market investigation has shown that there appear to be external constraining factors on this narrowest candidate market as other caterers already cover large proportions of their turkey meat requirements with imported frozen turkey meat. For example a customer has recently switched 50 per cent of their supply to a Brazilian turkey supplier and did not reject the possibility of switching the total or part of its remaining volumes to similar alternative suppliers.
50. Another customer acknowledged that it would be reasonable to assume that if the price for fresh turkey meat were to increase, they would 'probably' procure 'frozen' turkey from abroad. In fact, this customer has just switched a large proportion of its volume also to foreign suppliers. While the OFT did not conclude on the precise market definition, due to the lack of sufficient quantitative data, this customer's statement suggests that 'frozen' turkey is seen as a substitute in case of price increase in fresh turkey in the market for caterers.
51. The evidence collected by the OFT suggests, as in the market for retailers, that the parties were not particularly close competitors pre merger and targeted different customer groups and the merger will therefore not result in a

substantial loss of rivalry post merger. The parties [] customers in common and other customers in the industry noted that they were not close competitors pre merger. One customer commented that BML was focused on the retail sector whereas Lincs was a key player in the foodservice sector and another customer commented on Lincs providing free range turkeys which were important for their chain. Also the OFT notes that the concerned caterer did not seem to have taken into account the expansion plans of two established British producers as well as the potential of securing contracts with seasonal suppliers who may be thinking about expanding its supplies to all year round.

52. Based on the above factors, the OFT does not believe that this merger creates a realistic prospect of a substantial lessening of competition in the supply of 'fresh' 'British-reared' turkey meat to caterers in the UK.

The supply of primary frozen 'British-reared' turkey meat supplied to caterers

53. No customers in this group had any complaints concerning the supply of frozen turkey meat. In particular, some viewed it as being a substitute for fresh and as such the competitive constraints which have been assessed above for the supply of 'fresh' British-reared turkey meat similarly apply.¹⁹

The supply of fresh and frozen 'British-reared' turkey meat to food processors

54. For most of the customers in this group, the distinction between British-reared as opposed to other provenance and also the difference between 'fresh' and 'frozen' turkey meat are not significant. Therefore, this section assesses the overall impact of the transaction to this customer group, regardless of the provenance and refrigerated status of the meat, except in the individual case when these distinctions become relevant (see paragraph 56 below).
55. The majority of food processing customers the OFT contacted were unconcerned about the merger as they view the market as a commodity market and, as such, spot purchase volumes of poultry, including turkey, via pricing submission to UK/EU/Global poultry suppliers.
56. The exception to the above related to a customer in the food processing sector using 'fresh' British-reared' turkey meat at the request of their own 'premium'

¹⁹ See paragraphs 47 to 52.

clients. It acknowledged the existence of other British suppliers, although raised concerns about some past quality issues and potential cost increase in switching supplier. The OFT notes that the quality issues that this customer raised referred to 'past experiences' and do not necessarily reflect the undergoing investments by different suppliers to accommodate the implementation of new EU legislation.²⁰

57. The OFT notes the lack of third party concerns in this sector which reflect the small increment arising from the merger. The OFT believes that the merger does not lead to the realistic prospect of a substantial lessening of competition in either of these segments, the supply of 'fresh' and/or, the supply of frozen turkey meat to food processors.

Other possible candidate markets

58. As the OFT does not believe that this merger creates the realistic prospect of a substantial lessening of competition in the narrowest candidate markets this would be expected to also hold true for any wider candidate markets in this case because each candidate market would include additional constraints corroborated by the market definition: from European suppliers in the case of 'fresh' turkey meat and from South-American producers in the case of frozen turkey meat.

Conclusion on unilateral effects

59. In summary, the OFT believes that while this merger removes one domestic turkey producer, the limited rivalry between the merged parties prior to the merger which will be lost, the possibility of expansion of some smaller British producers, the increasing volume of imports of both fresh and frozen turkey meat do not support the concerns third parties have raised in this case.

COORDINATED EFFECTS

60. Given the level of concentration in the market for the rearing, slaughtering and supplying fresh turkey meat in the UK, the OFT also considered whether the merger may encourage coordination to take place. One customer was concerned about the possibility of coordination on pricing between the two largest British suppliers.

²⁰ See footnote 6 above.

61. The OFT considers that three conditions must all be satisfied for coordination to be possible. First, firms need to be able to reach and maintain the terms of coordination. Second, coordination needs to be internally sustainable. And third, coordination needs to be externally sustainable.

Reaching and monitoring the terms of coordination

62. For coordinated behaviour to take place there needs to be a high degree of transparency in the market. Some characteristics of the markets analysed above, such as the relatively limited number of main suppliers in these markets and the homogeneity of the product supplied, could indicate that the market is susceptible to coordination. In terms of pricing, however, while prices appear to be related, to some extent, to common costs borne by all producers, there is significant direct price negotiation with customers which can be expected to make transparency, and therefore coordination, more difficult.

Internal sustainability

63. For coordinated behaviour to persist, firms must have sufficient incentives not to deviate from the coordinated outcome. Symmetry of market shares can assist internal stability. The merger does not increase the symmetry between the three largest remaining competitors (BML, Cranberry and O'Kane –with Gressingham remaining as a well-placed fourth player). The incentive for BML's competitors to seek to increase their market shares remain and may be encouraged by customers seeking to transfer Lincs' previous contracts.
64. The OFT received no evidence that individual firms have the incentive to adhere to a coordinated outcome. 'Capacity utilisation' for seasonal fresh turkeys is high and output either at seasonal or all-year-round cannot be increased rapidly—to punish deviators—because contract growers are scarce and it takes some 16 weeks to 'grow' turkeys to maturity. This leads the OFT to believe that deterrence is difficult to achieve in these markets.
65. Similarly, costs of slaughtering and processing facilities are largely fixed so that firms have the incentive to maximise revenue to cover these fixed costs all-year-round, in order to maximise profit. And market demand appears relatively elastic - as evidenced by the fact that the consumption of turkey meat has been in decline and turkey producers have been forced to engage in a substantial marketing campaign to promote the overall consumption of turkey

meat all-year round. This would make deviation less costly and therefore more likely.²¹

External sustainability

66. For coordinated behaviour to take place there must be insufficient external constraints to prevent it. Principal amongst these are barriers to entry and buyer power. As stated above, barriers to expansion with regard to the supply of primary frozen and fresh²² turkey meat – outside of the Christmas 'peak' period - are low, taking into account the increasing imports. In addition, third parties consistently noticed that countervailing buyer power²³ is significant which could make external stability for coordination unsustainable.

Effect of the merger

67. For coordinated behaviour to take place as a result of the merger, the merger must strengthen pre-existing coordination or make coordination more likely. The OFT has received no evidence of pre-existing coordination and, as stated above, the market investigation has not revealed any factors which could suggest that this merger would make coordination more likely. Based on this, therefore, the OFT does not consider that this merger is likely to create or strengthen coordinated behaviour.

VERTICAL ISSUES

68. A customer in the food processing sector was concerned about procuring relatively small quantities of 'British-reared' meat to serve its premium end-customers given that it competes with BML and Cranberry in the food processing sector. Prompted by the OFT questions, it raised some quality concerns about other possible suppliers which were not corroborated by other customers. Moreover, BML is not acquiring Lincs turkey meat processing business (see paragraph 8 above) and so the merger does not, in itself, lead to a structural change to the processing sector.

²¹ To see why, consider the situation where market demand is inelastic instead of elastic. If demand is inelastic, then the quantity demanded will not increase much even if all coordinating firms lower their prices. In this situation, deviation will be costly, and therefore less likely, because punishment will lead to a large reduction in profits.

²² Excluding the hypothetical candidate market for British-reared primary turkey meat

²³ See paragraphs 69 and 72 below.

BUYER POWER

69. BML and some other competitors submitted that purchasers, particularly supermarkets and major food industry caterers and processors are sophisticated buyers with some significant buyer power. None is locked in to long-term supply deals and can switch supplier with ease. In addition, purchasers multisource and examples were provided of customers switching supplier.
70. The OFT has reviewed internal documentation and communications with customers which show some level of customers' bargaining power as they have insisted on their terms and conditions to be met and switching substantial volume to alternative foreign suppliers, in one case, when this was not achieved.
71. No large retail customers thought that their buyer power would be affected due to the merger and they demonstrated, in our discussions with them, a sophisticated knowledge of their supplier's cost structure. In the non-retail sector, one large customer was concerned that this merger would remove the 'bargaining power' it might have enjoyed since this merger leaves only one effective competitor to BML, Cranberry.
72. While the above arguments are not fanciful, the OFT has not received robust evidence to undeniably accept that buyer power could countervail any substantial strengthening in BML's market position. However, the OFT does not need to conclude on whether countervailing buyer power exists in this case as it has not found a realistic prospect of a substantial lessening of competition.

BARRIERS TO ENTRY AND EXPANSION

73. Given that the OFT has not found competition concerns in this case, it does not need to conclude on the issue of barriers to entry but notes the recent entry in the UK market of Moy Park by way of the acquisition of O'Kane Poultry Limited. The possibility of expansion of existing competitors, including O'Kane Poultry and Gressingham, as well as an increase in the volumes of imports has been addressed above.

THIRD PARTY VIEWS

74. As stated above, a number of third parties, from all customer groups, raised concerns about the potential for the merger to give rise to a reduction in competition in some sectors of the turkey 'market'. Most relevant third party views are referred to above where appropriate.
75. Also, one third party was concerned that the price of another poultry meat could increase as a result of the merger if retailers, currently being supplied with a bundle of poultry products, decided to procure their turkey meat directly from BML. The argument being that the loss of the revenues from the sale of turkey would have to be recouped by increasing the price of the other poultry products. The OFT would expect that all suppliers attempt to profit maximise their sales in all different markets they are active and therefore it does not consider that this concern is based on established economic principles.

ASSESSMENT

76. Prior to the merger, BML and Lincs overlapped in the rearing, slaughtering and processing of turkeys in the UK. This includes the supply of turkey meat through different distribution channels to three main customer groups (retail, food service and processing companies) which in turn sell to end-consumers.
77. Contrary to BML's submission, there was consensus between third parties that the supply of turkey meat forms a separate market from other proteins and poultry products. Given the lack of competition concerns under the different narrow candidate markets, this decision has not needed to conclude on the specific product market definition but has assessed the impact of this merger on all different hypothetical credible narrowest frames of reference.
78. The relevant geographic scope has also been left open in this decision. This assessment has taken a cautious approach and considered that the candidate geographic markets are for the supply of, (and with the above further segmentations):
- 'British reared' turkey meat (UK or GB)- for both frozen and fresh turkey meat
 - fresh turkey meat (UK, France, Germany and Italy), and

- frozen turkey meat (wider than for fresh turkey and also includes Brazil, Chile and Thailand).

79. The two main categories of concerns third parties raised related to:

- unilateral effects — that, post-merger, BML will face less direct competition, giving it the ability to increase prices
- coordinated effects —that, post merger, the incentive and opportunity to tacitly co-ordinate the behaviour of the remaining British turkey suppliers will be strengthened and this would lead to price increases higher than absent the merger.

80. In summary, the OFT believes that while this merger removes one domestic turkey producer, the limited rivalry between the merged parties prior to the merger which will be lost, the possibility of expansion of some smaller British producers, the increasing volume of imports of both fresh and frozen turkey meat, in markets with declining demand do not support the concerns third parties have raised in this case.

81. For coordinated behaviour to take place as a result of the merger, the merger must strengthen pre-existing coordination or make coordination more likely. The OFT has received no evidence of pre-existing co-ordination and, as stated above, the market investigation has not revealed any factors which could suggest that this merger would make co-ordination more likely. Based on this, therefore, the OFT does not consider that this merger is likely to create or strengthen co-ordinated behaviour.

82. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom

DECISION

83. This merger will therefore not be referred to the Competition Commission under section 22(1) of the Act.

End note 1. Following the announcement of this decision, Bernard Matthews has informed the OFT that while it is aware that third parties procure other poultry meat from Thailand, this is not the case regarding frozen turkey meat as stated in paragraphs 24 and 29 of this decision. The OFT notes that this information comes from other third parties and, in any case, it does not change the outcome of this decision. The list of countries referred to in those paragraphs was not intending to be comprehensive. The principle that the geographic scope for the supply of frozen turkey meat is wider than for the supply of 'British-reared' and fresh turkey meat remains valid.