CMA
Competition & Markets Authority

Pork Farms and Kerry

A report on the completed acquisition by Pork Farms Caspian Limited of the chilled savoury pastry business of Kerry Foods Limited

3 June 2015

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The Competition and Markets Authority has excluded from this published version of the report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets.

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Summary

1. On 5 January 2015, the Competition and Markets Authority (CMA) referred the completed acquisition by Pork Farms Caspian Limited (Caspian) of the chilled savoury pastry (CSP) business of Kerry Foods Limited (Kerry) for an in-depth phase 2 investigation. The CMA is required to address the following questions:

   (a) whether a relevant merger situation has been created; and

   (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.[1]

2. Pork Farms Group Limited (PFGL) produces a range of CSP products through its wholly owned subsidiary Pork Farms Limited (Pork Farms) and Caspian. Caspian was incorporated for the purpose of the Transaction, and to act as the corporate body for the CSP business purchased from Kerry.

3. Kerry operates manufacturing sites across the UK and the Republic of Ireland producing a range of goods including chilled and frozen foods for the UK, Irish and selected EU markets. Its ultimate parent company is Kerry Group plc (Kerry Group plc and its group of companies are referred to as Kerry Group in this report). We refer to Kerry's CSP assets and activities prior to the acquisition by Caspian as Kerry CSP, although this was not a legal identity or a separate part of Kerry.

4. Pork Farms and Kerry CSP (the Parties) overlap in the production of the following product categories:

   (a) cold pies (mainly pork pies);

   (b) hot pies;

   (c) sausage rolls; and

   (d) pasties and slices;

5. These products (both branded and own-label) are sold to a wide range of customers including supermarkets, convenience stores and wholesalers, for retail sale (the Parties do not generally supply the food service sector).

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[1] Enterprise Act 2002 (the Act), section 35.

6. PFGL acquired Kerry CSP through Caspian on 17 August 2014. Pork Farms stated that the acquisition was expected to achieve operational synergies from a reduction in overheads and [✂]. It anticipated production efficiencies, and also potential innovation through the development of the merged business's branded products and the development of new products and variants. Vision Capital, the manager of the funds invested in PFGL, viewed the merger as an opportunity to create a larger, more attractive business with enhanced possibilities for sale of the business.

7. Kerry told us that it had made the decision in August 2013 to exit the CSP market. Pork Farms' proposal represented for Kerry the first step towards a quick and relatively straight forward exit route.

8. We expected that in the absence of the merger, Kerry would in all likelihood have continued to operate at the same or similar competitive level in the UK CSP market as it had done pre-merger, maintaining the business while it sought an alternative purchaser.

9. The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. We have concluded that each product category is a separate product market. However, in our assessment of the competitive effects of the merger we have considered the constraint exercised by supply-side substitution between sausage rolls, and pasties and slices. We did not find separate product markets according to: whether products were branded and own-label products; for quality tiers (value, standard or premium versions) within own-label products; or by type of customer. However, we have where appropriate considered the impact of any segmentation in our competitive assessment. We also concluded that the geographic market for all CSP product categories is UK-wide.

10. Contracts between CSP suppliers and customers are normally relatively loose in that they can be terminated at typically 12 weeks' notice, and volumes are variable. Retailers adopt a variety of approaches to the supply of CSP: some regularly undertake formal tenders; others tender informally or only occasionally; and others rely on close partnership working with existing suppliers. The extent to which they seek alternative suppliers also varies with some only approaching certain suppliers rather than tendering widely among all possible suppliers.

11. We found that retailers mostly concentrate their purchase with a single supplier for each category. On average the largest supplier holds a share of around 80% of the customers' own-label purchases in a category. Some retailers told us they preferred to source all own-label products within a category from a single supplier, at least within a quality tier. However, in

practice many customers multi-source, with different suppliers providing branded products and some own-label products.

12. Our analysis of tendering and switching data (albeit that we only had information on a limited sample of negotiations) shows that the Parties did not often compete head to head for contracts and the extent of switching between the Parties appears to be relatively limited. However, this may be in part due to the tendency of retailers to seek to develop long-term relationships with the supplier base, and they may only invite the existing suppliers to tender, and that retailers may give incumbents the opportunity to respond if rivals come in with better propositions. In our view, the tendering and switching data does not necessarily indicate the extent to which the Parties were exerting a competitive constraint on each other before the merger. In any case when the Parties competed head to head, it was often for large-value contracts with Grocery retailers.

13. We found that there is not a strong consumer loyalty or value attached to brands in CSP products, and none of the brands supplied by the Parties was considered to be a 'must stock'. Switching is relatively more common when branded contracts are put up for tender than with own-label contracts. Also, a number of small suppliers with a significant share in branded products exist either nationally or locally.

14. During the course of the CMA's phase 2 investigation, only two customers expressed concern about the effects of the merger on competition. One retailer told us it believed that the merger would reduce competition, while another noted that the merger would reduce the number of suppliers able to produce own-label sausage rolls in the required volumes to two. Other retailers did not express concern about the effects of the merger on competition. Instead they generally considered that even with a reduced number of large suppliers they would still be able to assure reasonable service and pricing from them. Many told us that their partnerships with suppliers meant that their interests were often aligned. In any case, they appeared to consider that the merger would not curtail their ability to get the best deal, and if necessary they would consider changing their current buying strategies to ensure the merger had no adverse effect on them. Switching could occur even if only in part of their range, and as a disciplining strategy could cover other categories within or separate from CSP products. We found that customers exerted considerable countervailing power in CSP products. We were persuaded by the evidence that retailers have been able in the main to resist price increases (unless these could be demonstrated as attributable to input cost changes), that they have been able at times to demand other concessions from suppliers, that there is evidence of continued buyer power post-merger (as some customers have switched supplier), and that [✂].

15. We considered it highly improbable that customers would acquiesce to an increase in pricing, a decrease in quality, or reduction in the service they receive. These customers have alternative supplier options available. There are also strong incentives on retailers to compete with each other, and we considered that countervailing power was likely to remain after the merger. Aspects such as product quality and service standards are closely specified and policed by the retailers.

16. We found that there are some barriers to entry. These are: costs of entry in investing in production facilities; potentially further costs in meeting retailer technical standards; and entry may need to be at a minimum size sufficient to supply own-label demands. However, we consider that entry and expansion are possible, with the most likely strategy being diversification by existing CSP providers, or expansion through new facilities and lines. We consider that de novo entry is unlikely. Where necessary, if customers considered that post-merger they were suffering detriment from a lack of competition in the provision of CSP products, it would be open to them to encourage or support entry and expansion, for example by providing greater certainty and duration to contracts. We note recent examples of small-scale entry, and some recent and ongoing significant expansion.

Conclusions by product category

17. We looked at the effects of the merger by product category, and noted that:

- certain existing CSP suppliers have expansion plans and spare capacity already exists (to differing extents by product category);
- new entry into the provision of these products is possible (most likely through diversification of existing CSP suppliers into new categories); and
- we found that customers held considerable countervailing power, which they can exercise by credibly threatening to use disciplining strategies including switching some or all of their business, and by encouraging entry and expansion.

Cold pies

18. As a result of the merger the Parties would be the second largest supplier with a share of supply of [30–40]% in the own-label segment, compared with Samworth Brothers Limited (Samworth) ([50–60]%) and Vale of Mowbray Limited (Vale of Mowbray) ([10–20]%).

19. We consider that there was competition between the Parties pre-merger. However, we note that Samworth [✂], and that Vale of Mowbray is currently expanding its production capacity.

20. While other existing CSP suppliers appeared reluctant to enter the cold pie sector, there seem not to be any significant barriers (other than the costs of the equipment), should market prospects be sufficient following a post-merger price rise to justify the investment.

21. Samworth (through its company Walkers) does not currently supply own-label value tier pork pies. Instead, the value tier is supplied by the Parties and Vale of Mowbray alone. Nonetheless, there are no technical obstacles to move across tiers as the production processes are identical, and we note that Samworth's other operating companies do supply value tier products in other CSP categories, implying that there is not a group-wide policy of avoiding this tier. We also note that the size of this tier is relatively small compared with standard tier products, increasing the potential impact of expansion by Vale of Mowbray or by a new entrant within that tier.

22. We do not consider that competition effects will be different in the branded cold pie segment, because: branded sales are of relatively small size; there is close substitutability in both demand and supply with own-label products; and there are alternative (albeit small) suppliers of branded pork pies (Stobart's being the largest).

23. Because of the competition offered to the Parties by Samworth and Vale of Mowbray, the availability of spare capacity, the prospects for expansion, the potential for entry, and countervailing buyer power, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply of cold pies in the UK for retail.

Hot pies

24. We have found that there are a variety of potential suppliers of both branded and own-label hot pies, and there is substantial spare capacity spread across several of them. They could compete for major retailer contracts. There have been recent examples of entry, particularly in regional and premium suppliers.

25. While there was some competition between the Parties pre-merger, given these alternative suppliers, the distribution of market shares between suppliers, the availability of spare capacity, and countervailing buyer power, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply of hot pies in the UK for retail.

Sausage rolls, pasties and slices

26. The Parties combined would be the largest supplier in sausage rolls, with a share in excess of [60–70]%, and a substantial overlap between them. Although a number of alternative suppliers operate in sausage rolls, they have, particularly Samworth, smaller shares compared with other CSP categories. We also noted that relative to the sales currently made by the Parties, the competitors' spare capacity appears to be limited. However, the capacity constraints would be relaxed if some of the capacity currently available to manufacture the pasties and slices was utilised to increase production of sausage rolls, and we have found no barriers to that occurring. In our view, the capacity in pasties and slices could relatively quickly and easily be used to produce sausage rolls if a price increase offered attractive margins to suppliers.

27. In light of the presence of alternative suppliers with a significant share, and particularly the availability of spare capacity, some of it currently in pasties and slices, and countervailing buyer power, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply of sausage rolls in the UK for retail.

28. Pork Farms has very limited sales in the pasties and slices category, so there was no significant pre-merger overlap or competitive constraint between the Parties. Consequently we do not consider that the merger would affect competition in the supply of pasties and slices.

29. In combination, for sausage rolls, pasties and slices, there are several alternative suppliers with a significant share and spare capacity. We also note the existence of expansion plans, and that new entry into the provision of these products is possible given that barriers to entry/expansion are not high.

30. Therefore, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply in the UK for retail of sausage rolls, and/or pasties and slices, whether individually or collectively.

Finding

31. We have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the UK markets for the supply for retail of cold pies; hot pies; and sausage rolls, pasties and slices (whether individually or together).

Findings

1. The reference

1.1 On 5 January 2015, the CMA referred the completed acquisition by Caspian of the CSP business of Kerry for an in-depth phase 2 investigation. In exercise of its duty under section 22(1) of the Act, the CMA made a reference to its chair for the constitution of a group[2] in order to investigate and report on, within a period ending on 21 June 2015, the following questions in accordance with section 35(1) of the Act:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.

1.2 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A.

1.3 This document, together with its appendices, constitutes our findings. Further information, including non-commercially-sensitive versions of Pork Farms' submission and summaries of evidence from third parties can be found on our website.[3]

2. The market

CSP categories overview

2.1 CSP is a broad food area with a number of different categories. These categories include:[4]

(a) cold pies (mainly pork pies);

(b) hot pies containing a variety of cooked fillings (meat and/or vegetables) encased in a savoury pastry. While these are sold chilled, they are typically (re)heated and eaten hot;

(c) sausage rolls (usually a pork meat filling but alternatives are also used);

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[2] Section 22(1) of the Act provides that the group is to be constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
[3] www.gov.uk/cma-cases/pork-farms-caspian-limited-kerry-foods-limited.
[4] Despite not including any pastry, cocktail sausages are sometimes considered as CSP.

(d) pasties with a variety of fillings, and similarly slices with a variety of fillings (meat and/or vegetables);

(e) quiches, flans and tarts; and

(f) savoury eggs (primarily Scotch eggs).

2.2 As the Parties only overlapped in the production of categories (a) to (d), for supply for retail purposes (rather than for the food service sector), our inquiry has investigated just those categories.

2.3 Two of these categories have an associated protected geographical indication (PGI)[5] status: Melton Mowbray pork pies and Cornish pasties.

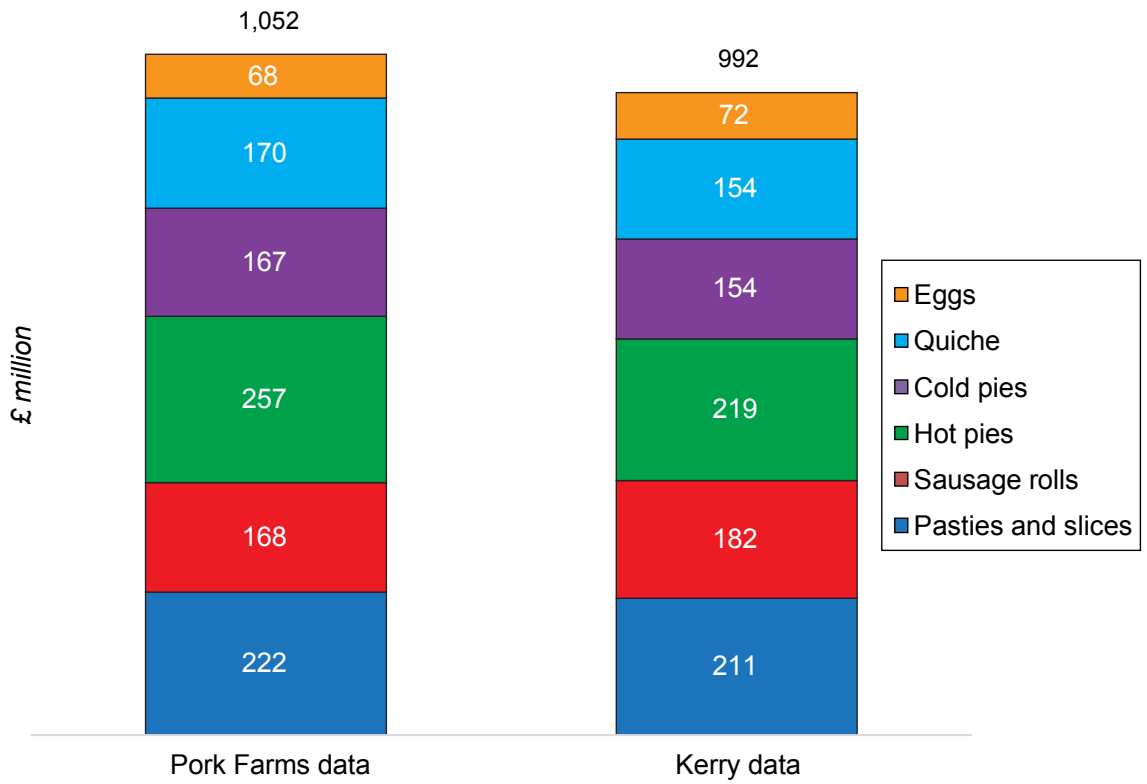
CSP retail market size

2.4 The overall CSP category is well established and with limited innovation, and we were told that overall annual demand is relatively stable.

2.5 Pork Farms provided an estimate of the UK CSP retail market size using a combination of Kantar and Nielsen data. Kerry provided an estimate based on Nielsen Scantrack data. The Parties' estimates for 2014 were similar at around £1 billion (being the revenue generated by retail sale to end consumers). A comparison of the two estimates split by subcategory is shown in Figure 1.

[5] PGI is open to products which must be produced or processed or prepared within the geographical area and have a reputation, features or certain qualities attributable to the area. See Defra, Protected food names: guidance for producers.

Figure 1: Pork Farms and Kerry estimates of UK CSP retail market size by subcategory 2013/14



Source: Pork Farms submission based on Kantar & Nielsen Data; Kerry data.

2.6 There is some seasonal variation in overall demand for CSP products, see Appendix B, paragraphs 9 to 11. Factors include increased outdoor eating over summer, with demand varying depending on the weather, and the Christmas period, eg for party food. Hot pies have greater sales in the winter period than the summer.

2.7 Retail market data is covered in more detail in Appendix B, paragraphs 4 to 8. Over the last three years, there has been a small decline in the volume of CSP sales but a small increase in overall sales value.

UK CSP manufacturers

2.8 Table 1 provides a summary of the main UK CSP manufacturers by revenue (pre-merger) showing whether they produce own-label and/or branded products and the subcategories they produce. The majority of these manufacturers produce in three or more of the relevant CSP categories. Pork Farms, Samworth and Kerry CSP are the only main UK CSP manufacturers that manufacture in each of the relevant CSP categories.[6] There are also a

[6] As noted in paragraph 2.2, we have not considered quiche and savoury eggs; they were not produced by Kerry CSP and so there is no overlap with Pork Farms and hence no increment to supply arising from the merger.

number of manufacturers that manufacture predominantly in one category, for example Pukka Pies (hot pies) and Vale of Mowbray (pork pies).

Table 1: Main UK CSP manufacturers, pre-merger

	Suppliers' CSP revenue £m*	*Branded/ own-label*	*Hot pies*	*Pasties/ slices*	*Sausage rolls*	*Pork pies*
Cranswick Pastry	[✂]	Own-label*	✓	✓	✓	
Farmers Boy	[✂]	Own-label	✓	✓	✓	
Higgidy	[✂]	Both	✓	✓	✓	
Hollands	[✂]	Branded	✓			
Kerry CSP	[✂]	Both	✓	✓	✓	✓
Peter's	[✂]	Both	✓	✓	✓	
Pork Farms	[✂]	Both	✓	✓	✓	✓
Pukka Pies	[✂]	Branded	✓			
Samworth	[✂]	Both	✓	✓	✓	✓
Stobart's	[✂]	Branded			✓	✓
Vale of Mowbray	[✂]	Both				✓
Welsh Pantry	[✂]	Both	✓	✓	✓	
Wrights	[✂]	Branded	✓	✓	✓	

Source: Third party submissions, Kantar sales data, Suppliers' data and annual accounts.
*Revenue from all CSP products for retail, including quiche and savoury eggs. However the table excludes CSP manufacturers whose only CSP products are quiche (eg Greencore) or savoury eggs (eg Tulip).

2.9 A more detailed review of these manufacturers is included in Appendix C, and market shares are set out in Table 3.[7]

Customers

2.10 Retail customers for CSP products can be split into three main groups:

(a) Big 4 retailers (including their small-store estate) – Asda Stores Ltd (Asda), Wm Morrison Supermarkets plc (Morrisons), Sainsbury's Supermarkets Ltd (Sainsbury's) and Tesco Stores Limited (Tesco). These account for between 61 and 72% of CSP sales by category (see Figure 2). However, 'Big 4 retailers' refers to their overall scale as retailers of groceries, but they are not necessarily the largest four CSP retailers – in some categories Marks and Spencer plc (M&S) has more sales than some members of the Big 4 retailers.

(b) National retailers (including their small-store estate) – national grocery retailers outside of the Big 4 retailers who have a large national presence, namely Marks and Spencer plc (M&S), The Co-operative Group Ltd (Co-op), Lidl UK GmbH (Lidl), ALDI Stores Limited (Aldi), Iceland Foods Ltd (Iceland), and John Lewis Partnership (including Waitrose Partnership)

[7] The largest CSP supplier is Samworth, a group of businesses including in CSP products: Walkers (hot and cold pies); Tamar Foods (own-label foods, including hot savoury pastry pies, slices, pasties and rolls); and Ginsters (primarily producing branded pasties, sausage rolls, hot pies, and slices).

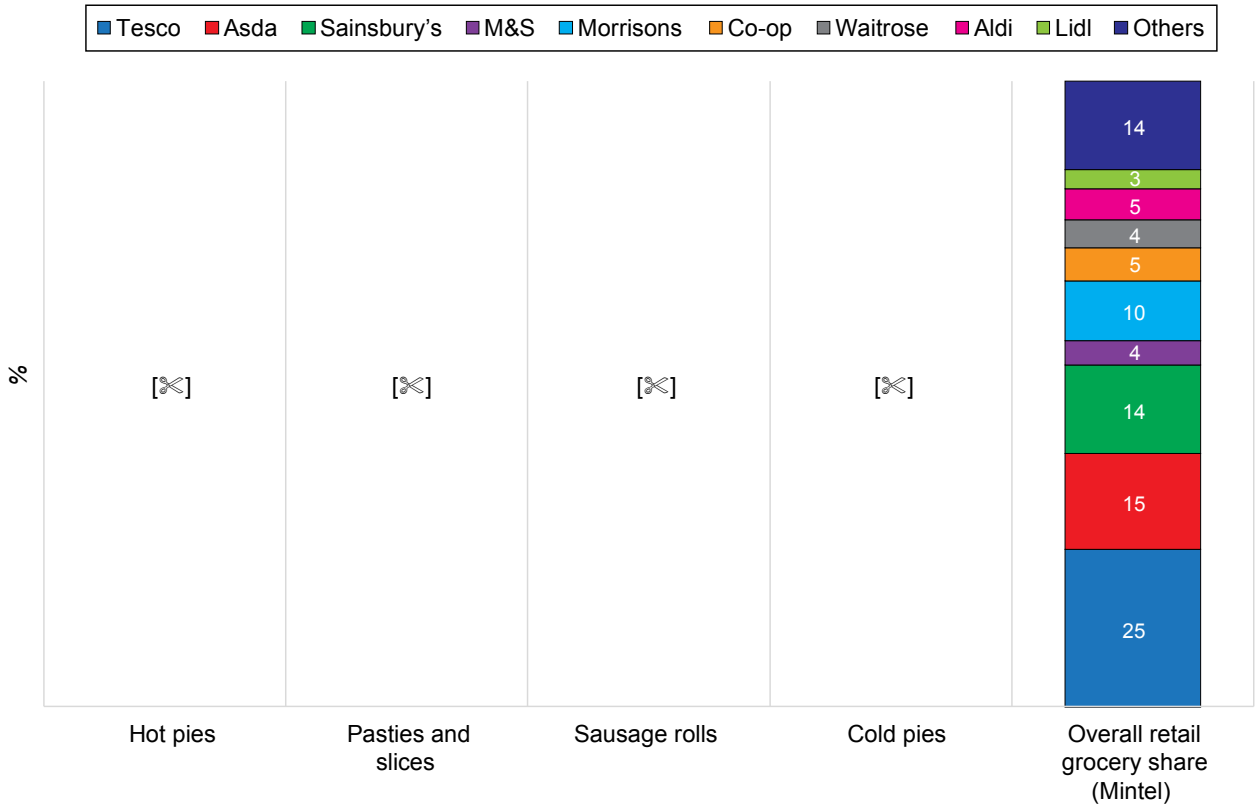
('Waitrose'). These together account for between 24 and 35% of CSP sales by category (see Figure 2);

(c) Convenience retailers: we use this term to describe all retailers, regardless of the size of their stores, that provide grocery retail outlets outside of those provided by the Grocery retailers, ie for the purposes of this report the Big 4 retailers and National retailers. This includes regional grocery retailers, including supermarkets (eg Booths), symbol group retailers[8] and non-affiliated independent convenience store operators.[9] These are usually supplied through wholesalers (eg Booker) and/or distributors (eg Palmer & Harvey), or through van sale operations. In these cases the wholesalers and distributors are the direct customers of the CSP manufacturers. These together account for between 4 and 6% of CSP sales by category (see Figure 2).

2.11 Kerry provided Kantar data for the 52 weeks ended 2 March 2014 showing the split of the CSP subcategory sales by grocery retailer. This data set out in Figure 2 shows that the Big 4 retailers account for the bulk of CSP sales, with M&S and the Co-op also having market shares of over 5%. The percentage share of retail sales for each grocery retailer differs according to the relevant subcategories of CSP. For example, M&S and Waitrose have a relatively high share in hot pies while Aldi and Lidl have relatively small CSP presence with both having significantly lower market shares in CSP than in the retail grocery market in total. We also present for comparison overall grocery retail market share estimates drawn from Mintel.[10] It is particularly apparent that M&S is of relatively greater significance in CSP retail, while other stores (ie the convenience category) are of lesser relevance, albeit that there might be differences in the coverage of such retailers between the Mintel and Kantar sources.

[8] Symbol groups – a group of convenience stores, some of which may operate under a franchise arrangement, and trade under a common fascia (symbol) (eg SPAR, Costcutter).
[9] Non-affiliated independent – convenience stores that are independent (ie are not owned by a supermarket chain and do not belong to a symbol group).
[10] Mintel states that these numbers exclude 'non-retail' revenue such as automotive fuel, in-store cafés/ restaurants, NHS prescriptions and National Lottery ticket purchases.

Figure 2: Share of CSP retail sales, 2013/14 and overall grocery retail market shares from Mintel 2014



Sources: Kerry Foods Limited Pastry report 2014 using Kantar data, and Mintel Group Ltd, *Supermarkets: More than just food retailing*, November 2014.

2.12 CSP products can be either:

(a) own-label products: products that are manufactured by a supplier but marketed under the brand name of the retailer; or

(b) branded products: products that are manufactured by a supplier under their own brands or under brands licensed to them.

2.13 Grocery retailers typically align their own-label products into three tiers: value; standard; and premium, but this is not a systematic differentiation across all retailers. Where tiers are offered, demand for the standard tier is usually significantly larger than the other tiers. Based on the sales of the Big 4 retailers, we estimate that the standard tier accounts for approximately 80 to 90% of the Grocery retailers' own-label sales for these categories.

2.14 Own-label products make up around two-thirds of the total CSP market value, although the percentage of branded and own-label differs significantly

between categories, see Appendix B, Table 4.[11] Within Convenience retailers, branded sales are far more important with [90–100]% of sales in this channel being branded.[12]

Manufacturing process

2.15 CSP production is broadly similar across all CSP categories. Appendix B, Figure 3 shows the various stages of manufacture. The main differences between CSP categories are:

(a) Pasties, slices and sausage rolls are made in a continuous line, with the filling being extruded (sausage rolls) or deposited (pasties and slices) on to pastry before being folded over, segmented into portions and cooked. While some equipment is specialised for each type of product, the lines for these may have several different items of depositing, folding and slicing equipment which are adjustable and interchangeable depending on the specification for the particular product.[13]

(b) Hot pies require different size tins into which pastry is inserted and then formed before the filling and the pie top are added.

(c) Different equipment is required for cold pies compared with hot pies. Cold pies require a hot water pastry facility, jellying equipment and tins, or hoops for the pies themselves.

(d) Hot pie production (and other CSP products containing a cooked filling, usually pasties and slices) will also require pre-bake cooking facilities to cook the fillings before they go into the pastry.

2.16 All CSP production can be undertaken either through in-line or batch processing. In-line allows for manufacture in a continuous linear process using in-line forming, baking and chilling (the product moves through all these stages on a conveyor belt) whereas the production stages in batch processing are not necessarily continuous as batch ovens (static ovens) and refrigerators are used.

2.17 The ingredients used for all types of CSP were broadly similar, being flour, protein (mainly pork, but many other fillings are also used), water, vegetable oil and seasoning. However, each product will have an individual recipe which will meet the specifications of the retailer for own-label products, or have been made to the manufacturer's recipe for branded products. We understand that

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[11] We have included deli counter sales in the own-label category.
[12] See Appendix G, Table 2.
[13] See the discussion of the implications of supply-side substitution on market definition in paragraphs 6.7–6.9.

suppliers typically develop new products which they then propose to retailers and which may be adopted as own-label products.

2.18 Suppliers have to plan their manufacturing to maximise efficiency. There is great variability in the demand for different stock-keeping units (SKUs) (see Appendix G, paragraph 50 and Figure 1) and there is a challenge in organising the production so as to minimise the impact of any disruptive changeovers between products and product types. Even so, daily production may be variable as customers typically notify requirements on a daily basis, and demand may vary (eg according to the weather), and promotions and seasonality also have a significant impact on demand.

3. The companies

3.1 The Parties to the merger are described in detail in Appendix C.

Pork Farms Group Limited

3.2 PFGL is a private limited company. It produces a range of CSP products through its wholly owned subsidiaries, Pork Farms and Caspian. Prior to the Transaction, Vision Capital Partners (Vision Capital), a private equity firm, acting as manager for the Vision Funds,[14] owned 100% of PFGL. Following the Transaction, Vision Capital's shareholding of PFGL reduced to [>50]% (see Appendix D, Figure 1). Caspian was incorporated for the purpose of the Transaction, and to act as the corporate body for the CSP business purchased from Kerry.

Pork Farms Limited

3.3 Pork Farms manufactures a range of CSP products for supply into the grocery retail sector, under both own and licensed brands and retailers' own-labels.

3.4 Pork Farms' CSP product range covers the full range of CSP categories listed in paragraph 2.1.

3.5 These products (both branded and own-label) are sold to a wide range of retailers including Grocery retailers, Convenience retailers and wholesalers.

3.6 Pork Farms owns the following brands: Pork Farms (pork pies, Scotch eggs, sausage rolls, pasties and slices); Scrummy Eggs (Scotch eggs); Bowyers (pork pies, Scotch eggs, quiche, sausage rolls and slices); and NoG (a range of gluten-free CSP products). It also produces under licence CSP products

[14] These were two private equity funds, Vision Capital Partners VI L.P. and Vision Capital Partners VI E L.P.

under the Branston (pork pies, sausage rolls) and Happy Egg (Scotch eggs, quiche) brands.

3.7 Branded product sales in 2014 were £[✂], around [✂]% of Pork Farms revenue. Total sales of own-label for Pork Farms was £[✂] in 2014 with three retailers ([✂]) making up [✂]% of sales by revenue (see Appendix C, Figure 1).

3.8 Pork Farms has four manufacturing sites,[15] its operational model being that each specialises (described as 'centres of excellence') in a particular CSP product category or categories:

(a) Palethorpes in Shropshire (producing sausage rolls, hot pies, pasties and slices);

(b) Riverside in Nottingham (producing quiches);

(c) Shaftesbury in Dorset (producing savoury egg products and cooked cocktail sausages); and

(d) Queens Drive in Nottingham (producing pork pies), which also provides Pork Farms' central functions. Queens Drive is within the Melton Mowbray PGI area.

Kerry Group plc

3.9 Kerry's ultimate parent company is Kerry Group plc. Kerry Group plc is an international food corporation listed on the Irish and London Stock Exchanges, generating around €5.9 billion of revenue in 2014.

Kerry Foods Limited

3.10 Kerry operates 13 manufacturing sites across the UK and the Republic of Ireland producing a range of chilled and frozen foods for the UK, Irish and selected EU markets. PFGL acquired the UK CSP business of Kerry. We refer to these assets and activities prior to the acquisition by Caspian as Kerry CSP, although this was not a legal identity or a separate part of Kerry.

3.11 Following the Transaction Kerry retains no CSP production capability in the UK.

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[15] See Appendix C, Table 1.

Kerry CSP/Caspian

3.12 Caspian manufactures a range of CSP products for supply into the grocery retail sector, under both licensed brands and retailers' own-labels. It produces sausage rolls, pasties and slices, and pork pies under the Wall's brand (licensed from [✂]). In addition, it also manufactures a tertiary brand ('Millers') in cold pies, pasties and slices, and sausage rolls.[16] Caspian's range of CSP products consist of:

(a) cold pies (mainly pork pies);

(b) sausage rolls;

(c) pasties and slices; and

(d) hot pies.[17]

3.13 These products (both branded and own-label) are sold to a wide range of customers including Grocery retailers, Convenience retailers and wholesalers. As shown in Appendix C, Figure 4, branded products make up around [✂]% of Caspian's revenue. Kerry CSP's total sales were £[✂] million in FY2013. Its three largest customers for own-label in FY2014 were [✂], making up [✂]% of own-label sales.

3.14 Caspian operates from two manufacturing sites in the UK:[18] Poole, producing sausage rolls, cold pies, hot pies and slices; and Spalding, producing sausage rolls and pasties. Prior to the Transaction, the sites were run as separate trading operations within the broader Kerry company, although many functions had been centralised (including sales and accounts).

3.15 Following the acquisition, Pork Farms introduced management to perform the roles that had previously been undertaken for Kerry CSP's operations by Kerry. The CMA made an initial enforcement order[19] on 21 August 2014 in order to prevent further integration of the businesses or any actions which might impair the ability of the businesses to compete independently in any of the markets affected by the Transaction.[20]

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[16] It also manufactures two customer-commissioned labels: [✂], and [✂].
[17] ie it did not produce quiches and savoury eggs.
[18] See Appendix C, Table 6.
[19] Pursuant to section 72(2) of the Act.
[20] See Appendix A and the case page.

4. The completed merger and the relevant merger situation

Outline of the merger

4.1 In November 2013 Vision Capital approached Kerry about the potential acquisition of Kerry CSP or a combination of Kerry CSP with Pork Farms. Kerry conducted an exclusive negotiation with Pork Farms. The merger was completed on 17 August 2014.

4.2 The Transaction (described in Appendix D) resulted in PFGL acquiring Kerry CSP through Caspian. As part of the Transaction Kerry acquired [<25]% of the ordinary share capital of PFGL and [✂] preference shares. Details of the post-merger shareholdings in PFGL are set out in Appendix D, paragraphs 22 to 25.

4.3 The Transaction comprised the transfer of the following key elements from Kerry to Caspian:

(a) Two freehold manufacturing sites (located at Poole and Spalding), including all machinery, vehicles and employees.

(b) The transfer (where possible) of existing contracts with customers and suppliers including all obligations to produce and supply CSP products for Kerry's existing CSP customers.

(c) The use of the Wall's brand and recipe in the production of sausage rolls.

(d) The remaining cash, stock, goodwill, records, know-how and business intellectual property including all recipes, technical knowledge and new product development.

4.4 The transfer excluded support functions previously provided by Kerry and Kerry Group such as central finance function, IT platforms etc.

4.5 Following the Transaction Vision Capital has the right to appoint up to three directors to PFGL's board as well as choose its chairman and Kerry has the right to appoint up to two directors out of nine to PFGL's board of directors. The remaining directors are executive management.

The rationale for the merger

4.6 Pork Farms and Vision Capital stated that the merger had two overarching rationales: first, efficiencies and innovation; and second, improved exit opportunities.

4.7 Pork Farms stated that to remain price competitive and maintain margins it saw the merger with Kerry CSP as an opportunity to combine the strength of the two businesses to give a secure, efficient, low-cost offering. In addition, Pork Farms believed that [✂] and there was potential to realise efficiencies and [✂] and by it adopting the Pork Farms' model of 'centres of excellence'.

4.8 Pork Farms identified in its initial submission[21] three areas of benefit which it said would result from the Transaction:

(a) Operational synergies from:

(i) reduction in overheads; and

(ii) [✂][22]

(b) Production efficiencies of scale improving efficiency, speed, and unit costs of production.

(c) Innovation through the development of the merged business's branded products and the development of new products and variants.

4.9 Vision Capital viewed the merger as an opportunity to create a larger, more attractive business with enhanced exit possibilities in both the short and long term. Vision Capital believed that the merger would lead to PFGL revenue increasing to around £[✂] with EBITDA of around £[✂] and significantly enhanced cash generation achieved through exploiting efficiencies, cost savings and innovation opportunities.

4.10 Kerry told us that it had made the decision in August 2013 to exit the CSP sector. Kerry viewed the merger as a first step to exit from an under-performing business. Pork Farms' proposal represented for Kerry a quick and relatively straightforward exit route. It considered that although improvements could be made to the performance of Kerry CSP these would be insufficient to deliver Kerry Group's required revenue and margin targets. As a result Kerry acquired a holding in PFGL as part of the merger to enable it to realise value for Kerry CSP when the enlarged PFGL is sold.

Jurisdiction

4.11 Under section 35 of the Act, and pursuant to our terms of reference (see Appendix A), we are required to investigate and report on certain statutory questions, the first being whether a relevant merger situation has been

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[21] Pork Farms initial submission, paragraphs 2.11–2.13.
[22] [✂].

created. Section 23 of the Act provides that a relevant merger situation has been created if two or more enterprises have ceased to be distinct within the statutory period for reference and either the turnover test or the share of supply test (or both) specified in the Act is satisfied.

4.12 Our assessment of jurisdiction is set out in Appendix E. We consider that PFGL has acquired from Kerry an enterprise (namely, Kerry CSP) since it has acquired a business (albeit not a stand-alone business) as a going concern with the necessary assets, employees, goodwill and customer contracts to support its activities in the supply of CSP goods otherwise than free of charge.[23]

4.13 PFGL has a controlling interest in Pork Farms and a controlling interest in Caspian, which, in turn, has acquired outright ownership of Kerry CSP. Accordingly, we consider that PFGL, Pork Farms, Caspian and Kerry CSP are under common ownership and control, and that as a result of the Transaction, PFGL and Kerry CSP ceased to be distinct enterprises.[24] We also consider that they ceased to be distinct within the statutory period for reference.[25]

4.14 Since Kerry CSP's turnover exceeds £70 million (which is the turnover test in section 23(1)(b) of the Act), we consider that the statutory turnover test is satisfied. In those circumstances, it is not necessary for us to decide whether the statutory share of supply test is also satisfied.

4.15 In view of the foregoing, we consider that PFGL's acquisition of Kerry CSP has created a relevant merger situation.

5. The counterfactual

5.1 The SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'. The counterfactual takes events and circumstances and their consequences into account to the extent that they are foreseeable.[26]

5.2 Our assessment of the appropriate counterfactual is set out in Appendix F.

5.3 Pork Farms expressed concerns relating to its expectations of the ongoing competitive strength of Kerry CSP in the absence of the merger. Pork Farms said it had become increasingly apparent to it that [✂].

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[23] See Appendix E, paragraphs 8–14.
[24] See Appendix E, paragraphs 15–17.
[25] See Appendix E, paragraphs 18–20.
[26] *Merger Assessment Guidelines* (CC2/OFT1254), paragraphs 4.3.1 & 4.3.2.

5.4 Kerry told us that, although it had been decided that it would exit the UK CSP market, absent the Transaction it would have continued to run Kerry CSP and would have looked to maintain the competitiveness of the business (business as usual) and would not have looked to run it down or close it. Kerry told us that it would continue to make capital available to fulfil health and safety and customer requirements in Poole and Spalding. Kerry stated that it had no set timetable to exit.

5.5 We consider that there is no indication that Kerry CSP was likely to lose market share and/or become less competitive in the foreseeable future. The balance of Kerry CSP's business wins and losses in recent years did not suggest that its market share was in any systematic decline (see Appendix F, paragraph 13). Kerry gave no indication that it was considering a change of strategy. We could expect Kerry CSP to have continued competing for business in the same way as before. We consider that Kerry had both the ability and the incentive to maintain Kerry CSP to ensure that it was an attractive saleable business to facilitate the exit. Absent the merger it would in all likelihood have continued to operate at the same or a similar competitive level in the UK CSP market as it had done pre-merger.[27]

5.6 We conclude the relevant counterfactual is that, absent the Transaction, Kerry CSP would have continued to operate in the supply of CSP at a similar scale, and to compete in the same way as it had immediately before the acquisition.

6. Market definition

6.1 Our *Merger Assessment Guidelines* (the Guidelines)[28] state that the purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.

6.2 The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[29]

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[27] See Appendix F, paragraphs 15–19.
[28] The Guidelines, paragraph 5.2.1.
[29] The Guidelines, paragraph 5.2.2.

6.3 In this section, we set out the relevant market in which we have assessed the effects of the merger. We first define the product market. Then we define the appropriate geographic market.

Product markets and segmentation

6.4 The Parties overlap in the supply (for retail purposes) of the following CSP categories: cold pies, hot pies, pasties and slices and sausage rolls. We have considered whether these categories comprise separate markets, and also whether there is further segmentation of product markets by:

- branded and own-label products;
- quality tiers within own-label products; and
- type of customer.

Different CSP product categories

6.5 Pork Farms submitted that while it did not have strong views on market definition, consumer switching between different CSP product types was easy: it said these were essentially similar products sold at similar prices, in respect of which the pattern of consumption was also broadly similar.

6.6 We considered the views of a number of third parties (competitors and customers) about the extent of consumer switching between categories. The views in relation to the extent of demand-side substitution between CSP categories were mixed. We note that quantified evidence in respect of small changes in relative prices is difficult to obtain: we received some evidence that relates to behaviour in respect of promotions, which involve substantial temporary changes in relative prices, but little to suggest that consumers are likely to switch away from a category in significant numbers in response to small and permanent changes in relative prices. However, there were indications that pasties and slices and sausage rolls (and, to a lesser extent, hot pies and pasties and slices) are demand substitutes for each other.[30] The response of final consumers to a retail price change may differ substantially from the response of customers (eg retailers) to a supply price change, and it is uncertain how supply price changes would be reflected in retail prices. We have not received evidence on how or whether customers would substitute

[30] The CMA asked five competitors and ten customers to provide their view about whether consumers see different product categories as substitutes. All five of the competitors and seven out of ten customers indicated that sausage rolls and pasties and slices are substitutes from a consumer perspective. Note that this question did not directly address the extent of responses to changes in relative prices.

their demand between categories in response to a supply price increase for a given CSP category.

6.7 We next considered the scope for supply-side substitution between product categories.[31] We were told that cold pies required bespoke equipment that is not shared with other categories.[32] The same applied to hot pies although to a lesser extent. Sausage rolls, pasties and slices had, instead, a high degree of shared equipment and they are sometime manufactured on the same flat-bed lines, with easy conversion requiring just the changing of some extruding and cutting equipment. This is possible because they are very similar, being manufactured as a pastry wrapped around a filling.[33]

6.8 Given the evidence, particularly the lack of direct evidence on demand-side responses to supply price changes, we have taken a cautious approach and so we considered it appropriate to treat each category as a separate product market.

6.9 We have, however, taken account of the constraint exercised by supply-side substitution between, in particular, sausage rolls, and pasties and slices. In our assessment of the competitive effects of the merger, we have considered these categories both individually and in combination.

Own-label and branded products

6.10 It is technically easy to shift production between branded and own-label manufacturing, as there is no difference in the manufacturing process. However, despite the absence of any technical difficulties in shifting production from branded products to own-label, the supplier may need approval of its facilities and processes from the retailer for own-label production. In addition, manufacturing own-label products may require considerably larger capacity than producing branded products (due to the scale of the larger retailers' demand, at least for the highest selling SKUs or across a range of products – see Appendix G, paragraph 50). This indicates that some of the smaller suppliers of branded products may lack the scale required by some larger own-label customers, at least for some products or to supply an extensive range within a category.

6.11 We also considered whether suppliers would face any obstacles in switching from own-label to branded manufacturing. Even though consumers do not attach much weight to brands in this market (see paragraph 7.20), some

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[31] See the Guidelines, paragraph 5.2.17.
[32] See Appendix J, paragraph 8.
[33] See Appendix J, paragraphs 6–12 for discussion of the substitutability of production equipment for different categories.

investment in branding may be necessary, especially when launching a new brand. However, we noted that the vast majority of CSP suppliers already have their own brand.

6.12 Overall we considered that it is appropriate to treat branded and own-label products as belonging to the same market. Nonetheless we have where appropriate considered the impact of any market segmentation as part of our assessment of the competitive effects of the merger, such as whether current brand producers can supply own-label products.

Own-label quality tiers

6.13 Pork Farms told us that most of the Grocery retailers employed a good/better/best (ie value, standard, premium) approach to differentiate the quality between types of own-label CSP products. Pork Farms and Kerry said that the differences in quality between the various types of own-label products were determined by the retailer in question and not the CSP manufacturer.[34]

6.14 We received evidence that there are no technical obstacles in manufacturing different quality tiers, nor do any of the tiers require specific additional investments in equipment or facilities. In most cases the only differences are in the type, origin and proportions of ingredients used, and they are all manufactured on the same machinery. However, some suppliers tend to (or may be perceived to) specialise in specific tiers within categories (see paragraph 7.32).

6.15 Our view is that different quality tiers can be aggregated into a single relevant product market. We have taken differences in the suppliers' strategy to compete for different quality tiers into account in the assessment of the competitive effects of the merger.

Segmentation by customer (retailer) type

6.16 We also considered whether the relevant market should be segmented by customer type. The Parties serve different types/groups of customers, including Grocery retailers, Convenience retailers, and wholesalers/distributors.

6.17 We considered whether distribution requirements differ by the type of customer. The Grocery retailers typically have regional depots, while for

[34] Pork Farms told us that quality tiering primarily reflected the proportion of filling/meat content to pastry, as well as the provenance of protein; pastry make-up (ie inclusion of butter); named ingredients (eg West Country beef); unique process (eg PGI Melton Mowbray, where the allowable ingredients and method of manufacture are specified); and packaging quality and format.

Convenience retailers, small convenience stores are often served via van sales operations. Suppliers either rely on their own vehicles or on third party vehicles to deliver products. We found no evidence suggesting that access to distribution methods may constitute an obstacle to serve certain types of customers. We also noted that suppliers typically do not focus on one specific distribution channel and serve different types of customers.[35]

6.18 Our view is that customer types are not separate relevant markets. However, customers may have different volume requirements (depending on their own size, and their willingness to break down their requirements and multi-source within a category) and from a customer perspective the set of potential suppliers may therefore vary depending on the capacity available to the suppliers. This is addressed in our assessment of the competitive effects of the merger.

Geographic markets

6.19 The Parties considered the relevant geographic market for the manufacture and wholesale supply of CSP products to be UK-wide. We received no submissions arguing against a national market.

6.20 Although some brands tend to be bought on a regional basis,[36] contracts are to a large extent negotiated nationally. We therefore concluded that the geographic markets for all CSP product categories are UK-wide.

7. Pre-merger competition

7.1 As a guide to assessing how competition may develop after the merger, we first analysed the nature of competition in the CSP market and the way suppliers competed before the merger

Negotiation with retailers and form of supply agreement

7.2 CSP manufacturers compete to supply customers (retailers and wholesalers) which then sell to final consumers. The price paid to CSP manufacturers is determined by negotiations between customers and suppliers. We were told[37] there are essentially four broad approaches to CSP purchasing adopted by

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[35] Of the major suppliers that provided us with detailed information on their sales by customer the vast majority made sales to National retailers and convenience stores.
[36] We were told that certain brands had a strong local affiliation. For example, Tesco told us it sourced branded hot pie products from 18 different local suppliers (see Appendix G, paragraph 49). As there is usually only limited advertising and marketing for brands, demand may reflect regional affiliations and local familiarity.
[37] See Appendix G, paragraphs 2–9.

retailers (and they are not related to the size of the customer or the distribution channel): routine new product development;[38] informal tendering;[39] formal tendering; and joint business plans (see paragraph 7.4). The use of formal tendering varies between retailers and may change over time: some hold formal tenders at regular intervals; most retailers use a combination of tenders and direct negotiations; but some rely entirely on direct negotiations.

7.3 The extent to which customers consider different alternatives when renegotiating their contract also varies significantly (see Appendix G, paragraph 7). Some retailers approach a wide range of potential suppliers but others seek to develop a longer-term relationship with their suppliers and in the main consider (or invite to submit offers) only their existing suppliers where renegotiating. We note that other suppliers are unlikely to have visibility of such 'tendering', and so access at that point is controlled by the retailer, albeit suppliers can approach retailers with proposals at any time.

7.4 Pork Farms and Kerry told us the most common form of supply agreement between retailers and suppliers was based on a course of dealing that was governed by the retailers' standard terms and conditions of supply, as supplemented by a one-year joint business plan. Actual volume requirements were variable and generally notified daily. They said that notwithstanding any written agreement, a retailer could at any time give 12 weeks' notice to terminate, and there could also be shorter notice periods for individual SKUs.

7.5 The price structure of the contracts often entails various forms of discounts and promotional payments. This means that pricing structures usually comprise a two-part tariff with unit payments plus volume-dependent or fixed payments.

7.6 We were told that the most common commitments used in the industry were overrider discounts and promotional/marketing funding. Other types of commitments include: 'loss of profit' provisions, fines or penalties in the event of products' withdrawal from the retailers' shelves, exclusivity commitments to several retailers in respect of specific products for a specified time period, margin underwriting, support to fund a proportion of customers' wastage, etc. (see Appendix G, paragraph 9).[40] Overriders may span an extended period and may apply across a range of products, possibly across several or all

[38] Annual or six-monthly category reviews where new ideas are presented that may gain SKUs at a competitor's expense.
[39] Where customers ask suppliers to submit an indicative price for a range of CSP products, and then they may move to a formal tender if they think there are issues in terms of either quality service or price.
[40] For example, one supplier ([✂]) told us of arrangements where suppliers expect a payment when sales margin and margin percentages pass hurdles, or where payments as a percentage escalates as turnover increases.

categories. We were told that sometimes these were requested by customers but were sometimes offered by suppliers as a competitive tool.

Multi-sourcing of own-label requirements

7.7 Customers typically source their own-label requirements from multiple suppliers. Table 2 shows the existing supplier(s) of own-label products for Grocery retailers (based on 2014 sales).

Table 2: Suppliers of own-label product by grocery retailer

	Cold pies	*Hot pies*	*Sausage rolls*	*Pasties and slices*
Aldi	[✂]	[✂]	[✂]	[✂]
Asda	[✂]	[✂]	[✂]	[✂]
Co-op	[✂]	[✂]	[✂]	[✂]
Iceland	[✂]	[✂]	[✂]	[✂]
Lidl	[✂]	[✂]	[✂]	[✂]
M&S	[✂]	[✂]	[✂]	[✂]
Morrisons*	[✂]	[✂]	[✂]	[✂]
Sainsbury's	[✂]	[✂]	[✂]	[✂]
Tesco	[✂]	[✂]	[✂]	[✂]
Waitrose	[✂]	[✂]	[✂]	[✂]

Source: CMA based on retailer and supplier responses. Some responses were inconsistent between retailers and suppliers, in which case we report the supplier's response.
*Morrisons also uses its in-house supplier (Farmers Boy) for hot pies, sausage rolls, and pasties and slices.

7.8 Despite the use of a number of suppliers, retailers mostly concentrate their purchase with a single supplier for each category. On average the largest supplier holds a share of around 80% of the customers' purchases in a category.[41] Some retailers told us they preferred to source all own-label products within a category from a single supplier, at least within a quality tier.[42] One reason given was that this could help assure product consistency across the range. We also heard that customers would change their policy on multi-sourcing from time to time, possibly reflecting the views of individual buyers.

7.9 As detailed in Appendix G, Annex 1, different retailers have different approaches to sourcing own-label; often retailers have multiple own-label suppliers. With the exception of cold pies, the Big 4 retailers use typically three or four different suppliers and National retailers rely on at least two suppliers within each category (except for one retailer ([✂]) which single-sources two own-label ranges (hot pies and sausage rolls) from [✂], and

[41] See Appendix G, paragraph 19.
[42] See Appendix G, paragraph 21.

another ([✂]) which single-sources all its requirements in these categories from [✂]). We found that one retailer had even multi-sourced the supply of some individual products. In cold pies the Big 4 retailers source from two suppliers, one supplying either the premium or the value tier, and the other supplying the standard and the other remaining (value or premium) tier. The National retailers mostly single-source.

Shares of supply

7.10 We now look at shares of supply. Shares of supply by category only provides a starting point for the assessment of the competition before the merger. However, given that brands play a limited role (see paragraph 7.20) and that there is limited differentiation (see paragraph 7.23)[43] between suppliers in terms of own-label products (as retailers own the recipe or product specification), we consider that shares of supply may provide a prima facie indication of the relative strength of the suppliers operating in each category.

7.11 To calculate the shares we have used information on the sales made by the major suppliers in the industry.[44,45] These calculated market shares are set out in Table 3. This table excludes smaller suppliers, such as some regional producers and specialist producers that supply products for retail but at a smaller scale. Further detail is set out in Appendix G, paragraphs 27 to 43, and the suppliers are described in Appendix C.

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[43] The Guidelines, paragraph 5.3.2.
[44] We were told there were weaknesses in the coverage of all data sources when applied for our purposes. We have therefore produced our own estimates drawing on a variety of sources, and which we acknowledge is incomplete (especially in coverage of the very smallest producers). These numbers are therefore indicative but they do accord closely with the estimates we were provided by various parties.
[45] Our data as reported in Table 3 does not capture the sales of the smaller suppliers. Elsewhere, in order to understand the importance of small suppliers, we have considered Kantar and Nielsen data (which is based on the retail sales) to complement qualitatively our analysis of the suppliers operating in the industry. Retail sales can still provide a useful indication of the relative size of the suppliers and also those not captured in our shares of supply (the share of such suppliers appears to be very small, all less than those we have identified). We also acknowledge that our data may include some minor volumes related to frozen CSP sales or sales to the food service sector which we were not able to exclude from the data (and may exclude some relevant sales through deli-counters). However, these sales are unlikely to have any material impact on the estimated shares of supply.
[46] Farmers Boy also produces hot pies but it is Morrisons' in-house supplier and does not sell to any other national retailer.

Table 3: Suppliers' percentage share of sales in CSP for retail by category, branded, own-label, 2014

%

	Cold pies			*Hot pies*			*Sausage rolls*			*Pasties and slices*		
	Brand	*Own-label*	*Total*	*Brand*	*Own-label*	*Total*	*Brand*	*Own-label*	*Total*	*Brand*	*Own-label*	*Total*
Cranswick				[✂]	[5–10]	[0–5]	[✂]	[5–10]	[5–10]	[✂]	[0–5]	[0–5]
Farmers Boy				[✂]	[5–10]	[0–5]	[✂]	[5–10]	[0–5]	[✂]	[0–5]	[0–5]
Higgidy				[10–20]	[0–5]	[0–5]	[0–5]	[✂]	[0–5]	[✂]	[✂]	[✂]
Kerry CSP	[10–20]	[10–20]	[10–20]	[0–5]	[10–20]	[10–20]	[30–40]	[30–40]	[30–40]	[10–20]	[10–20]	[10–20]
Peter's				[5–10]	[5–10]	[5–10]	[10–20]	[5–10]	[10–20]	[5–10]	[10–20]	[10–20]
Pork Farms	[30–40]	[10–20]	[20–30]	[0–5]	[20–30]	[10–20]	[5–10]	[20–30]	[10–20]	[0–5]	[0–5]	[0–5]
Pukka Pies				[60–70]	[✂]	[10–20]						
Samworth	[30–40]	[50–60]	[40–50]	[5–10]	[30–40]	[30–40]	[40–50]	[10–20]	[20–30]	[70–80]	[50–60]	[60–70]
Stobart's	[10–20]	[✂]	[0–5]				[0–5]	[✂]	[0–5]			
Vale of Mowbray	[10–20]	[10–20]	[10–20]									
Welsh Pantry				[0–5]	[5–10]	[5–10]	[0–5]	[✂]	[0–5]	[0–5]	[0–5]	[0-5]

Source: CMA calculations based on supplier data.

7.12 There are currently four cold pie suppliers with a significant share. There are a fringe of smaller suppliers, most notably Stobart's, and other small local and craft suppliers (who do not have significant production capacity). Samworth (Walkers) is the largest supplier in cold pies with a share of [40–50]%. The Parties were the second and third largest supplier with a share of, respectively, [20–30]% (Pork Farms) and [10–20]% (Kerry). Vale of Mowbray is the fourth player in the category with a share of [10–20]%.

7.13 For own-label cold pies, Samworth (Walkers) has no sales in the value tier and does not supply discount retailers. Walkers told us that it sought to avoid the value tier, as it currently had a rigid philosophy about maintaining quality parameters and sourcing wherever it could from within the UK. This suggests that it might be unwilling to meet customer specifications of raw materials in some cases.

7.14 In contrast, in hot pies, there are substantially more producers. In addition to the Parties, these include Samworth, Peter's, Welsh Pantry and Higgidy. The Parties had a share of, respectively, [10–20]% (Pork Farms) and [10–20]% (Kerry). Pukka Pies only supplies branded hot pies, and Cranswick only own-label hot pies.[46] Other suppliers operating in the segment include Wrights, Hollands and Pieminister, which sell mostly branded products and have a share of around [0–5]% each.[47] There are substantial differences between shares in branded and own-label. Samworth and Pork Farms supply premium and standard tier own-label products but neither currently produces value tier pies.

[46] Farmers Boy also produces hot pies but it is Morrisons' in-house supplier and does not sell to any other national retailer.
[47] According to the Parties' estimates based on Kantar and Nielsen data.

7.15 We note that the distribution of shares in Table 3 differs substantially between sausage rolls and pasties and slices.

7.16 Apart from the Parties, there are two significant producers of sausage rolls but a number of suppliers with small shares. Pork Farms and Kerry CSP have a [60–70]% share of own-label production in sausage rolls ([20–30]% for Pork Farms and [30–40]% for Kerry). Samworth is a significant competitor, as is Peter's, but they are both stronger in branded sales where Samworth (Ginsters) has the highest market share, but Pork Farms' share is small ([5–10]%).

7.17 Pasties and slices are driven by branded sales to a much greater extent than cold pies, hot pies and sausage rolls. Samworth has by far the largest presence in the market, in part due to branded sales of Ginsters products. It partly benefits from being the only large-scale CSP supplier with production facilities in Cornwall and can thus supply Cornish pasties. Kerry CSP and Peter's are also significant, more so in own-label. Pork Farms' share is only [0–5]%.

Nature of competition

Competitive tactics

7.18 Pork Farms told us that customers were primarily focused on price and quality. Service levels also played a role, but were essentially a gating requirement (ie one all suppliers had to meet as a minimum requirement to be considered) with little impact on the dimensions of competition. The quality of product was determined by the retailers' specification.[48] It said that competition was mainly in relation to the commercial deal including price,[49] promotional support, and terms. It said that other factors which retailers used to choose between suppliers included: product development – including potential exclusivity agreements; and category knowledge and category strategy.

7.19 We were told that suppliers took account of a wide variety of factors when bidding/negotiating for a new supply agreement. Factors that Pork Farms considered included:

- the price that is likely to be required to win the business;

[48] Either in the form of detailed specification for own-label products or its quality requirements for branded products.
[49] We note that the effective price will take account of all payments, eg including overriders.

- the product volumes concerned and how they would be likely to break out across different sites and/or across different lines within sites;
- existing spare capacity, readily available capacity and the ability to expand capacity for the lines and processes in question;
- the potential for gross margin based on the above factors including taking into account the extent to which volumes can be allocated to the most efficient lines and the possible impact on existing production (eg moving other product from one line to another);
- product mix, product complexity, SKU volumes and likely run times and the extent to which these also impact on gross margin and profitability;
- the possible impact of supply sensitivities, eg in respect of any exclusivity committed to other customers;
- the potential for volume growth and the development of the retailer relationship; and
- the location and number of delivery points involved and service expectations.

Competition for branded products

7.20 Brands appear to be of relatively limited importance in this sector, see Appendix G, paragraphs 44 to 49. Although Convenience retailers may need to stock brands, consumers have little loyalty to particular brands and attach little value to a brand name. This view was shared by most third parties and supported by other evidence, such as consumer research indicating that consumers tend to attach relatively little weight to brands in the CSP industry and limited advertising spend. We also found that *(a)* the Grocery retailers tend to concentrate their branded purchases within a category around a single brand; *(b)* they buy branded products through tenders or by approaching multiple suppliers; and *(c)* they relatively often switch between suppliers when they put up the branded contracts for tender. This overall suggests that there is no strong brand loyalty in the CSP industry.

7.21 Demand for branded products is typically quite fragmented, ie shared across a large number of retailers, although in aggregate production volumes for a popular SKU for a national brand may be significant. However, capacity requirements on suppliers are typically less onerous than for the production of own-label products for Grocery retailers (see Appendix G, paragraph 47).

7.22 We noted that in some categories there are regional suppliers that have relatively strong brands at local level. Some suppliers, despite being overall relatively small players in the CSP industry as a whole, have gained substantial share of the branded demand in some categories (eg Pukka Pies and Higgidy in hot pies or Stobart's in cold pies).

Competition for own-label products

7.23 There is limited differentiation between suppliers in terms of own-label products as retailers ultimately determine the specification and can easily transfer such recipes between suppliers. However, there are fewer potential customers for own-label products (smaller retailers will not commission their own own-label products) than for branded products and production volumes can be larger, thereby requiring substantially more capacity.[50]

7.24 We found that retailers tend to concentrate the majority of their purchases in a category on a single supplier although they typically source from more than one supplier (see paragraphs 7.7 to 7.9 and Appendix G, Annex 1).

7.25 While less common than with branded products we observed instances of switching (see paragraphs 7.37 to 7.39). Retailers rarely switched all or most of their requirements in a category but they nonetheless moved volumes between suppliers and showed some flexibility in their multi-sourcing policy (ie they increased/decreased the number of suppliers from which they sourced over time, see Appendix G, Annex 1).

Pre-merger competition between the Parties

7.26 We now consider the extent of competition between Pork Farms and Kerry CSP pre-merger.

7.27 Pork Farms acknowledged that Kerry CSP would be expected to be a direct competitor in several areas, including due to its product range. However, it noted that in practice, they frequently did not directly compete within a tender.[51] This appears to have depended on their relationship with the retailer and who was invited to bid, and whether they each felt there was any

[50] See Appendix G, paragraphs 50–54.
[51] Pork Farms agreed in its hearing with the proposition: '… you each had [10–20]% to [20–30]% share of the CSP market, present in all categories, you had spare capacity in all areas. I would regard that as that you were very close competitors; would that be a fair statement?'. It replied 'I agree with that'. It also said in the hearing '…were we direct competitors with Kerry? Yes? In all cases? No, because occasionally the customer will decide who they are going to ask to bid, and I believe we were not asked to bid on a number of occasions'.

likelihood of winning a contract in each case (ie they might not bid if they felt they were just being used as a stalking horse).

7.28 There were mixed views from retailers on the extent of competition between the Parties for different own-label CSP categories. Some did not consider them to compete in categories whereas other retailers considered them to be close competitors.

7.29 In relation to branded products, while it was acknowledged the Parties' brands were in competition, retailers did not generally consider them to be strong or 'must-stock' brands. Only one customer said that the Parties had a competitive advantage over the rivals (with the exception of Ginsters) as they both had nationally recognised brands in Wall's and Pork Farms.[52]

7.30 Other retailers did not suggest that the Parties had particular competitive advantages over their rivals although two retailers suggested that their size may give them economies of scale.[53] Pork Farms, however, said that it did not expect the merger to generate economies of scale.[54] It said that available economies were already achieved with the scale of runs already produced, [✂]. It pointed to recent changes in market share where the larger suppliers' shares had declined while medium and small producers' shares had increased. It also pointed to the larger overall scale (across all food products) of suppliers like Greencore and Cranswick, where it said that although their scale did not necessarily give them an advantage in the supply of CSP products over smaller manufacturers, it may assist in terms of entry or expansion as relevant infrastructure would already be in place given their existing activities in the food manufacturing sector. We did not find any evidence showing that economies of scale were of great significance in the supply of CSP products; of much greater relevance was how effectively capacity was utilised (see paragraph 8.38).

7.31 Several suppliers (Samworth, Kerry and Peter's) said that generally Pork Farms and Kerry, along with the likes of Samworth, Peter's and sometimes Welsh Pantry, would be competing for the same business. However, we heard of examples where for specific retailers competition was among a more limited set of suppliers, apparently reflecting the retailers' views of the

[52] See Appendix G, paragraph 55.
[53] See Appendix G, paragraph 57.
[54] We note that this contrasts with the rationale for the merger outlined in its initial submission, see paragraph 4.8.

suppliers it wished to consider rather than any clear differentiation by product type or size of contract.[55]

7.32 Some third parties indicated that the extent of competition they perceived between the Parties, and between the Parties and other competitors, varied depending on the quality tier within the own-label segment.[56] The views we received indicated that the Parties were more likely to be competing with each other within the same range of tiers than they were with the largest supplier, Samworth. Samworth said that in hot pies there was little direct competition with Pork Farms and Kerry as it primarily operated in the premium tier while the Parties primarily operated in the standard tier. One retailer told us that the Parties mainly competed within the 'value' end of the sausage rolls category.[57] Similarly another retailer told us [✂]. We note that the overall shares of supply by producers are not always consistent with individual retailer perceptions of where each competes.[58] This may reflect a retailer's recent experience of dealing with particular suppliers and its long-term relationships with them.

7.33 Pork Farms told us it was just as concerned about competition from new entrants and smaller companies with expansion plans. It said that it saw significant new entrants entering this market with critical mass as credible competitors. For example it [✂]. Over the last three years Welsh Pantry had grown substantially and won business off a number of CSP suppliers, including the Parties. In the light of this experience Pork Farms was taking the threat posed from even an ostensibly small competitor, such as Stobart's, much more seriously. In particular, Pork Farms was aware of the additional threat posed by Cranswick because, even though its presence in the CSP market was small, it was part of a much wider, vertically integrated group and so could [✂] expand and diversify.

Tender data

7.34 We analysed the evidence on a sample of (60) tender/negotiation processes that a number of customers had run over the last five years, see Appendix H. The sample includes various types of negotiation ranging from formal tenders to informal negotiations/range reviews. We acknowledge that this data set covers just a part of all negotiations over this period, but reflects where we were able to obtain sufficient details. We expect that informal negotiations and

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[55] See paragraphs 7.3 & 7.27, and Appendix G, paragraph 7.
[56] No reasons were offered as to why the various suppliers were more competitive in different tiers when we were told that the different tiers were usually all produced on the same equipment.
[57] See Appendix G, paragraph 58.
[58] ie some customers told us that they did not consider one or both of the Parties as suppliers of particular types or tiers of product, but in fact we found they do have considerable sales of such items to other customers.

benchmarking, by which competitive pressure could be brought on to incumbent suppliers, are likely to be under-represented. In what follows, for the sake of simplicity, we will refer to all the negotiation episodes as tenders. As we were not able to establish the extent to which the sample of tenders for which we have data is representative of the market as a whole, we have been cautious in drawing conclusions from this analysis.

7.35 This analysis[59] showed that the Parties competed head to head to supply retailers in a limited number of cases (11)[60] and in only one case the Parties were the sole participants to the tender. The competitors that Pork Farms and Kerry CSP faced most commonly were Peter's and Samworth.

7.36 Pork Farms told us that the limited number of tenders in which the Parties competed directly suggests that competition between Pork Farms and Kerry for the same business was limited. Based on various evidence from retailers, this appears to be because retailers often did not view them as close alternatives to each other, or retailers preferred to deal with only certain suppliers in each CSP category, such as those where they had an existing supply relationship, which might not include both Parties. However, we noted that the tenders in which the Parties competed head to head were often related to large-value contracts with Grocery retailers, accounting together for approximately 40% of the total value of the tenders covered in the sample.

Switching

7.37 As detailed in Appendix H, paragraphs 29 to 33, we reviewed the outcome of a sample of 60 tender/negotiation processes. We observed eight[61] instances of switching between the Parties. The value associated with these tenders accounted for 12% of the total value of sales in the data set. Pork Farms was in general more successful in retaining business than Kerry CSP. Contracts lost by Kerry CSP were mostly to suppliers other than Pork Farms while contracts lost by Pork Farms were equally split between Kerry CSP and other suppliers.

7.38 Retailers and suppliers confirmed that incumbent suppliers were usually given an opportunity to respond in the event that a rival made a better offer to a retailer. This indicates a degree of competitive pressure even where switching did not result.

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[59] See Appendix H, paragraphs 16 & 17.
[60] Of the 60 tenders in the data set, we have complete information on the identity of suppliers participating for 47 tenders. In 11 of the 47 tenders, the Parties competed head to head.
[61] Of the 60 tenders in the data set, we have complete information on the identity of the incumbent supplier(s) and winner(s) for 53 tenders. In 8 of the 53 tenders, we observed switching between the Parties.

7.39 We considered retailers' views on the costs and risks of switching suppliers (see Appendix G, paragraph 63). Some retailers said there were risks and costs in relation to quality, service levels, in developing packaging, and so on, but other retailers indicated that switching did not entail any significant costs.

7.40 Overall we consider that retailers do not face substantial barriers to switching supplier, as evidenced by the fact it occurs, and we consider that the threat of switching is used directly or implicitly by retailers as a credible threat to incumbent suppliers to help modify their competitive offering.

Pre-merger countervailing buyer power

7.41 In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices.[62] The CMA's general approach to the assessment of buyer power and whether it would be a factor in making an SLC less likely is set out in section 5.9 of our Guidelines.[63]

7.42 Pork Farms and Kerry told us that retailers wielded significant buyer power that 'effectively militates against any possibility of the merged business enjoying or exercising market power.'[64] Pork Farms said:

> The buying power sits with the retailer … you cannot execute any competitive advantage, because the marketplace is dominated by the retailer decision. They make the decision on selling products, and they make the decision on the margin, and effectively, they will work backwards to make the countervailing pressure on the supplier to give them the margin they require.

7.43 Levers used by customers to negotiate take various forms. In addition to delisting, or moving to another supplier (or in-house in the case of Morrisons), one customer ([✂]) told us that it listed a branded product of a particular supplier in order to negotiate better prices for the own-label supply. Another customer ([✂]) told us that to resist a price increase it would try to increase distribution and/or promotional activity for the product so as to compensate the supplier through larger sales.

7.44 Pork Farms submitted some examples of attempts to increase the price of various CSP categories in the last three years in order to pass on input cost inflation (see Appendix G, paragraphs 65 to 68). This shows that the extent to

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[62] The Guidelines, paragraph 5.9.1.
[63] ibid, section 5.9.
[64] See Pork Farms initial submission, paragraph 6.34.

which Pork Farms had been successful in increasing prices varied significantly by customer and product category. However, it is unclear to what extent Pork Farms had to absorb any cost inflation (ie to what extent the initial request only reflected the cost increase of input). Other suppliers also told us of cases where they had tried to get retailers to agree to price changes because of input cost inflations with varying degrees of success.

7.45 We have also heard examples of retailers in the past requiring suppliers to make special and one-off payments in order to retain business. Pork Farms told us that [✂].

7.46 The prime source of power relative to a supplier is the ability to switch. We consider that this is relatively easy for the reasons summarised below, even though some (but not all) retailers saw a degree of cost or risk in changing supplier (see Appendix G, paragraph 63). In the case of branded products, brands are not strong and retailers have the opportunity to move easily between them (see paragraphs 7.20 to 7.22). For own-label, where capacity is available, switching is also relatively easy because CSP products tend to have relatively little differentiation/innovation.

7.47 We heard that where suppliers attempted to increase prices, this could provoke customers to issue a tender, or threaten to move some or all of their volume to a rival supplier. Some suppliers, for example [✂], said that they would in general expect customers to tender the products if they tried to increase the price (and they have experienced this reaction in the past).

7.48 Apart from complete retendering or switching, customers have various potential strategies to apply pressure on suppliers (see Appendix G, paragraphs 70 to 78), including the threat of splitting volumes between suppliers and multi-sourcing, or they can drive volume from one supplier to another through how they use promotions. In addition, they could threaten to switch volume away from a supplier in other categories. Of course, suppliers will not have full visibility of the range of the retailer's options, meaning they will have to take a view on whether there is any additional element of bluff in the retailer's negotiations.

7.49 We have found that customers are generally sophisticated, in that they monitor supplier costs, will at times run range reviews and/or tenders, and they will require suppliers to back up requests for price increases with evidence of an increase in raw material prices etc. Most of the customers told us that if the request appeared to be unjustified and the supplier did not retract the request they would consider delisting and switching to alternative suppliers. We also heard of cases, outside of any tendering process, where

retailers had been talking to other suppliers and received a better offer which they required the supplier to then match or else lose the business.

7.50 Our consideration of alternative suppliers and their capacity is set out in Appendix I. From what we have been told and our analysis, it would appear that pre-merger, there was significant buyer power with customers credibly threatening to delist and substitute a supplier.

Findings on pre-existing competition

7.51 We consider that the Parties competed on branded products. Retailers tend to concentrate purchases on a limited number of brands (and usually most of these branded purchases are from a single supplier), and typically purchase branded products through tenders or by approaching multiple suppliers. Switching is relatively more common when branded contracts are put up for tender than with own-label contracts. None of the Parties brands are considered to be a 'must stock', Also, a number of small suppliers with a significant share exist either nationally or locally.

7.52 Regarding the own-label segment, the evidence we reviewed indicates that the Parties did not often compete head to head for contracts (see Appendix H, paragraphs 15 to 20) and the extent of switching between the Parties appears to be relatively limited. However, this may be in part due to the tendency for customers to seek to develop long-term relationships with the supplier base, and so customers may only invite the existing suppliers to tender, and that they may give incumbents the opportunity to respond if rivals came in with better propositions (see paragraphs 7.35 to 7.38). In our view, the bidding and switching data does not necessarily indicate that the Parties were not close competitors or that they did not exert a potential constraint on each other. Instead we note the similarity in the products they produced, their capacity, and their experience in serving large retailers. They were perceived to be competing most closely with each other in the same quality tiers (even though they could and did supply a full range of products). In any case we noted that when the Parties competed directly, it was often for large-value contracts with Grocery retailers. We acknowledge that other suppliers were also competitors and there is evidence of competition in cases from smaller suppliers, for all or part of a customer's requirements (see Appendix H, Table 3). However, we consider that the Parties provided a considerable degree of actual or potential competition to each other.

8. Assessment of the competitive effects of the merger

8.1 We now assess the effects of the merger on competition in the supply of CSP products. The effect on competition will depend on:

(a) the extent of competition between the Parties prior to the merger (see Section 7);

(b) the competitive constraint imposed by existing competitors;

(c) the competitive constraint imposed by a new entrant (including diversification of an existing CSP supplier into new product categories); and

(d) the countervailing buyer power of customers.

8.2 We first summarise the evidence from retailers and competitors on their expectations for the competitive effects of the merger.

Third party views

8.3 During the course of the CMA's phase 2 investigation, most retailers did not express concern about the effects of the merger on competition. This appeared to be because the retailers either did not regard Pork Farms and Kerry CSP as direct competitors in supplying them, because they considered there were alternative credible suppliers, or because they considered that their relationships with their suppliers would assure them of satisfactory supply. Two retailers did express concerns. One retailer, (Waitrose), told us it believed that the merger would reduce competition. Another (Co-op) noted that the merger would reduce the number of suppliers able to produce own-label sausage rolls in the required volumes to two.[65]

8.4 There was a mixed response from competitors. A few competitors expressed concern about the merger although these appear to be largely about the effect of changes in competition on them rather than on market outcomes for customers and consumers. One competitor was concerned that the merged entity would have increased purchasing power, which might increase competition for or mean less availability of ingredients, for example premium or welfare-approved meat. Another noted the impact of competing against a larger entity. For example, there were concerns over the ability and incentive of the Parties to offer bundled and cross-category deals that would not be replicable by smaller suppliers (we heard that some large suppliers agreed cross-category overrider deals). Another competitor was concerned that the merged Parties might seek to concentrate production on a narrower range of products to achieve economies of scale; it feared that if the Parties were not going to provide a broad range of products this might 'commoditise' the core

[65] A third retailer initially told us that in its opinion, there would likely be a reduction in competition in sausage rolls, hot pies and pork pies, but it told us it was not concerned about the effects of the merger.

high-volume lines and so stifle competition and innovation across the full range of products.

The competitive constraint imposed by existing competitors

8.5 We now address the competitive constraint applying from existing competitors in the market. As own-label sales are more significant than branded, we have concentrated on own-label issues (but see paragraphs 8.21 and 8.22). The strength of the constraint from competitors depends on their ability to profitably compete for contracts, which in turn depends on the availability of spare capacity, and/or their ability to quickly and easily expand production. In Appendix I we set out our analysis of whether competitors would have sufficient capacity to absorb the additional volumes coming from customers who would switch away from the Parties in response to a price increase. Our analysis provides a prima facie indication of the other suppliers' ability to compete for contracts, although there are a number of caveats that apply to this analysis (see Appendix I, paragraphs 9 to 13 for further details). We note that while the availability of competitors' capacity could act as a constraint, the extent to which this is effective depends on whether customers are willing and able to switch, and also whether competitors would tend to modify their behaviour in response to changing competitive conditions (ie competing less hard and trying to increase prices in response to a reduction in competitive intensity in the market, rather than competing for additional business).This is discussed further in Appendix I (see paragraph 12).[66]

Own-label cold pies

8.6 As a result of the merger the Parties would be the second largest supplier with a share of [30–40]% in the own-label segment, compared with Samworth ([50–60]%) and Vale of Mowbray ([10–20]%).

8.7 Samworth told us that it had not faced any capacity constraints in the past which had limited its ability to tender/compete for particular contracts. It told us that [✂]. Samworth noted that it, and other cold pie manufacturers, could address capacity limits at peak times to some extent by freezing production.

8.8 Vale of Mowbray told us [✂]. We note, however, that Vale of Mowbray has plans to expand its capacity [✂].

8.9 Our analysis (see Appendix I, paragraphs 23 and 24 and Table 6) suggests that [✂] spare capacity could be sufficient to accommodate a significant

[66] We did not receive any information indicating that suppliers would not compete for additional business. We have not undertaken an evaluation of a coordinated effects theory of harm.

proportion of the sales diverting away from the Parties in response to a price increase.

8.10 However, as noted in paragraph 7.13, Samworth does not currently supply own-label value tier pork pies. Instead, this segment is supplied by the Parties and Vale of Mowbray.

8.11 We note that the merger does not change the number of competitors for Melton Mowbray pork pies as Kerry CSP did not produce them being outside the PGI area.

Own-label hot pies

8.12 Following the merger, the Parties would be the second largest supplier in the category with a share of over [30–40]%.

8.13 There are a number of other suppliers operating in this category. The CMA received comments from four suppliers (Samworth, Peter's, Welsh Pantry and Higgidy):

(a) All four told the CMA that they had spare capacity to produce additional own-label hot pies, with at least one of these suppliers ([✂]) submitting that they had substantial spare capacity.

(b) Three of the suppliers ([✂]) told the CMA that they had the ability to increase capacity by adding additional shifts.

(c) Two of the suppliers ([✂]) mentioned that they could, like other suppliers, freeze stock to meet peak demand.

(d) Three of the suppliers mentioned that they were considering plans to expand. One ([✂]) had plans to expand in place; another ([✂]) said that it had no plans to expand but would consider doing so should significant opportunities emerge. The third ([✂]) said that it was looking to increase the capacity in the future by moving into a new site. But it said that it was not set up for high-volume low-value production as it did not have a sufficiently automated plant, and it aimed to keep production largely in the branded segment.

(e) Cranswick said that [✂].

8.14 Our analysis of capacity (see Appendix I, Table 6) suggests that there is sufficient unutilised capacity spread across competitors' hands to absorb even large volumes of business. This suggests that customers would potentially

have a number of alternatives available post-merger should they want to switch away from the Parties.

Own-label sausage rolls

8.15 The Parties' combined share in sausage rolls is the highest across all categories where the Parties overlapped ([60–70]%). There are a number of other suppliers operating in this category. The CMA received comments from three suppliers (Samworth, Peter's and Welsh Pantry):

(a) All three told the CMA that they had spare capacity to produce additional own-label sausage rolls, with at least one of these suppliers ([✂]) submitting that it had substantial spare capacity.

(b) All three of the suppliers told the CMA that they had the ability to increase capacity by adding additional shifts.

(c) Two of the suppliers ([✂]) mentioned that they could, like other suppliers, freeze stock to meet peak demand.

(d) One of the suppliers mentioned it was were considering plans to expand. It ([✂]) said it would consider plans for expansion – conditional to new business opportunities arising.

(e) Samworth told us that it had never had, at least so far, to decline a business opportunity because of capacity constraints.

8.16 Other potential suppliers include Higgidy and Cranswick. However, [✂]. We note that Peter's told us that [✂]. A constraint would still apply where customers are willing to split large volumes across more than a single existing supplier, or if retailers switched part of their demand.

8.17 Our analysis in Appendix I, Table 6, indicates that the availability of spare capacity currently dedicated to sausage rolls is limited. However, this does not take account of the extent to which capacity available for the production of pasties and slices can be easily shifted to produce sausage rolls. Competitors told us that switching flat-bed lines between sausage rolls and pasties/slices would be relatively easy. Across pasties, slices and sausage rolls, competitors have sufficient capacity across the two categories to cope with significant additional volume, and this would be sufficient if so used to accommodate the amount of the volume that could make it unprofitable for the Parties to increase their prices.

Own-label pasties and slices

8.18 The merger has a small effect on concentration in this category, as Pork Farms has only a minor share of sales ([0–5]%). Neither party produced Cornish pasties as they did not have facilities in the PGI area.

8.19 Three other suppliers, Samworth, Peter's and Welsh Pantry, have all indicated that they have spare capacity. At least one of these suppliers told the CMA that it had plans for expansion that could enhance its capability in relation to pasties and slices.

8.20 Our analysis of spare capacity (Appendix I, Table 6) also suggests that the amount of competitors' spare capacity would be sufficient to accommodate significant volumes of business currently supplied by the Parties.

Branded products

8.21 Looking at branded products, the combined Parties' share is limited in pasties and slices and, particularly, in hot pies. In both categories Pork Farms' share is very small ([0–5]%) and therefore the increment in concentration caused by the merger would be minimal. In addition we note that in hot pies there are several other suppliers with a substantially higher share, and customers often switched supplier of branded products following a negotiation/tender.

8.22 In cold pies and sausage rolls the Parties' combined share is significant. However, neither Party's brands are considered to be particularly strong, 'must-stock' items. Production volumes can be relatively small compared with own-label (if supplying the most popular SKUs or a large part of a large retailer's range) and no suppliers identified capacity as a possible constraint to operate in the branded segment. Our analysis of the evidence (see Appendix I, Table 6) showed the existence of spare capacity which could be deployed into the production of branded products. Therefore, expansion from own-label into branded, or expanding branded output, appears to be feasible. An example of recent expansion into branded products is when Peter's lost some [✂] own-label business, it saw this as an opportunity for it to introduce Heinz-branded products.

New entry and expansion

8.23 Any analysis of a possible SLC includes consideration of the responses of others (eg rivals, potential rivals and customers) to the merger, and in the longer term competition in the market may also be affected as new firms

enter, or the merged firms' rivals take actions enhancing their ability to compete against the merged firm.[67]

8.24 We now consider the competitive constraint that would be offered following the merger by the potential for new entry (including expansion by existing CSP providers into new categories) or by expansion by purchasing new lines/production facilities. The competitive constraint offered by existing spare capacity is considered above.

8.25 Pork Farms told us that the barriers to entry and expansion for CSP products generally are relatively low and would not deter entry/expansion in practice, imposing a meaningful competitive constraint on the merged business.[68] It stated that:

(a) financial costs of entry may appear substantial but so are the costs of investment to maintain a material market presence;

(b) a new entrant would have modern and well invested facilities;

(c) costs and lead times of new manufacturing equipment are relatively low;

(d) compliance with technical standards is straightforward; and

(e) there are few or no branding or advertising costs.

Costs of switching and/or expansion

Equipment costs

8.26 We first look at the costs of, and the time to, acquire and install equipment. These costs needs to be judged relative to the scale of business that can be secured. We note there are going to be risks perceived given that typically supply agreements provide no guarantees of volumes and can be terminated by the retailer at 12 weeks' notice.

8.27 For an existing CSP manufacturer diversifying into different categories, the majority of respondents (see Appendix J, paragraphs 6 to 12) told us that there were sufficient similarities between CSP processes to mean that much of the existing equipment could be used for different categories with some modification. However, there were specific differences such as equipment for

[67] The Guidelines, paragraph 5.8.1. See also the remainder of section 5.8 for further details on the approach to barriers to entry and expansion.
[68] Pork Farms initial submission, paragraph 4.1.

preparing and cooking hot-filling products, or hot water pastry preparation and jellying equipment for cold pies.

8.28 We received a range of estimates (see Appendix J, paragraphs 14 to 16) for the cost of a new line depending on what category the line would produce and the volumes required from that line. These estimates ranged from around £1 million to £5 million with the majority of estimates around £2 million. The time to acquire and install a new line was generally estimated at around one year (although one case was given where significant investment was made and brought into production far more quickly). The costs for switching production into a new CSP category by converting an existing line were seen as substantially lower by respondents as a result of a supplier only having to change the parts of the production line unique to that product category. Estimates were generally in the range of around £200,000 to £500,000.

8.29 All respondents thought that second-hand equipment was generally available and could be procured and installed significantly quicker than new equipment. Estimates were generally in the range of £0.7 million to £1.0 million with installation between three and six months (see Appendix J, paragraphs 17 to 20). However, one respondent caveated this in respect of bespoke and large items (eg ovens) which it considered were not readily available second hand.

8.30 In terms of payback or investment decision Pork Farms said that equipment costs needed to be considered in relative terms. It submitted that a £1 million investment to gain effective entry to a market might seem material at first glance but, if an incumbent would have to invest close to that to maintain an effective presence without being marginalised, such an investment was, in any real sense, much less of a barrier.[69] However, we note if any incumbent will need to make regular investments to maintain their competitiveness, it does not change the point that the initial investment constitutes an additional entry cost.

8.31 We noted that a number of businesses had invested in new lines recently (see Appendix J, paragraphs 87 to 95).

Retailer technical standards

8.32 We received consistent evidence that it was easy to switch between branded and own-label manufacturing if the manufacturer already produced both. This was as a result specifically of the fact there was no difference in the manufacturing process. However, for own-label there could be additional costs relating

[69] Pork Farms initial submission, paragraph 4.3.

to meeting the technical standards required by some Grocery retailers, eg stringent food safety standards and audits to have facilities approved by the retailer.[70] We heard examples where substantial investment had been required to get approval or where such costs had deterred the retailer from pursuing the opportunity with the prospective supplier (see Appendix J, paragraphs 46 to 51). Pork Farms, however, said that compliance with the manufacturing/ technical standards of retailers in respect of own-label products was not a meaningful barrier. For suppliers entering from another CSP market, most would already supply own-label products to retailers. In any event, it said that the technical standards required for own-label products were fundamentally no higher than those that may be demanded in respect of branded products.[71] In addition it said that retailers could, and did, allow new suppliers time to meet technical standards.

Customer relationships

8.33 One supplier ([✂]) submitted that it believed that cross-category deals were in place and that these had restricted its ability to compete for tenders. It provided examples of [✂] which it believed demonstrated that competitors, by being able to tender across more CSP categories, were effectively able to prevent it winning business in a single category.

8.34 However, we note that there have been examples of entry and diversification for branded products and in own-label (see Appendix J, paragraphs 87 to 95), including in different quality tiers. We received no evidence that cross-subsidisation was occurring within the industry which would act as a barrier to entry. We consider that category leadership (see Appendix J, paragraphs 58 to 61) does provide a supplier with a closer relationship with the retailer, but not to the extent that the retailer would necessarily ignore approaches from smaller retailers. We consider that it is still open for smaller suppliers to provide insight to retailers. There is also a requirement for the category leader to avoid giving preference to its products, otherwise it may damage the long-term relationship and therefore sales it makes to that retailer.

Advertising and marketing costs for branded products

8.35 In contrast to views received on own-label we were told that advertising and marketing costs may be a barrier to entry or expansion in branded CSP.

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[70] While there are minimum statutory standards all food suppliers must meet, retailers may also prescribe their own requirements which may entail additional expense to meet because they go beyond the statutory standards.
[71] Pork Farms initial submission, paragraph 4.6.3.

8.36 Samworth submitted that the media investment required to build brand recognition etc could cost in the region of £5–£10 million a year initially to build measurable brand awareness. Another supplier (Peter's) said establishing a completely new brand would almost certainly not be viable. However, we consider that it is not necessary to establish a well-known brand to compete, and we note as an alternative strategy that a number of originally non-CSP brands have been launched into CSP products. These include Heinz, Wall's, Branston, and Sharwood.

8.37 An alternative route of entry has been into regional and branded premium-quality products on a small scale. In the longer term this may provide a base for expansion and diversification. There has been entry by manufacturers such as Higgidy and Pieminister at the premium end of the market.

Minimum entry size

8.38 We have not found evidence that there are significant economies of scale depending on the capacity (or range of products) for manufacturers using CSP production lines, although costs will depend on the design of production equipment (eg in-line processing is likely to be more efficient than batch processing), the level of capacity utilisation and how efficiently they are used for different product runs.

8.39 Some customers, particularly the Big 4 retailers, will have high levels of demand. This means that entering as a supplier of the most popular SKUs or supplying a broad range of such a customer's requirements will require a large-scale investment in production capacity. However, as noted in paragraphs 7.7 to 7.9, such customers often multi-source with smaller suppliers providing some non-core SKUs.

Different methods of entry

8.40 We now consider four possible means of entry:

- diversification of an existing CSP supplier into new CSP categories;
- parallel entry, from a supplier producing food products (particularly chilled products) but which does not currently produce any CSP products;
- de novo entry; and
- retailer self-supply.

8.41 Pork Farms considered that entry was most likely from diversification of existing CSP providers (including through the use of spare capacity on

existing equipment, with relatively minor changes to such equipment) or by participants in closely related markets taking advantage of, for example, their ongoing retailer relations and suitable premises.

8.42 We agree that diversification by an existing CSP supplier into different categories is the most likely possibility for entry. As well as the opportunity to utilise existing equipment and spare capacity to some extent, such suppliers are likely to have the closest relationships with the retailer's buyers. They are likely to face few, if any, additional requirements to meet retailer technical standards and the suppliers are likely to have relatively strong technical and market knowledge.

8.43 Pork Farms said that manufacturers in other related food markets already benefited from a similar platform that would allow them to enter any CSP segment for a similar cost and within a similar time frame (see Appendix J, paragraph 78). It considered that the field of potential entrants in this regard was broad, but in particular included suppliers of frozen food pastry products and food service industry suppliers.

8.44 Other suppliers indicated that supplying the frozen foods and food service sectors were substantially different to CSP supply and so such entrants would face considerable differences in their business model (see Appendix J, paragraphs 81 and 82). However, where such suppliers already have experience, for example in chilled products and in high-care food preparation (ie where products have been cooked and so need special measures to maintain product safety) and established customer relations, then entry from other food sectors is possible, if not as likely as diversification from within the CSP sector.

8.45 Pork Farms stated that it had not considered the full costs of genuine de novo entry into CSP manufacture in any greater detail as it considered there were a range of more tenable alternatives (in terms of cost and speed of expansion). Samworth estimated that a new entrant would need to spend around £20 million on investment in a new production facility and between 12 and 18 months on a land acquisition/build programme to build and fit out the facility. One supplier (Peter's) considered that it was difficult to see how a new entrant could achieve an acceptable return on a large-scale investment (eg eight production lines). We received no evidence from main or third parties that de novo entry was likely. We note that such entry would involve full exposure to all the identified barriers to entry; in particular the costs of entry and investment in production facilities would be greatly exacerbated if new sites, buildings and infrastructure were required.

8.46 Last, Pork Farms also submitted that retailers could – as they have done in the past (eg Asda, Sainsbury's), and do so now (ie Morrisons) – decide to self-supply part or all of their CSP business. No retailer submitted to us that it was currently considering in-house supply or was likely to do so as a result of the merger. In any case, in-house supply is most likely to occur as a result of a retailer acquiring one of its suppliers rather than de novo entry. This would result in that supplier stopping supplying other retailers, at least in the short term, as it concentrates its production for its new owner.

Willingness to enter and sponsored entry

8.47 Pork Farms submitted that a number of CSP manufacturers had recently undertaken, were undertaking, or were planning to undertake investments or projects that would increase their respective capacities materially. We received evidence from which it appears this was likely to be the case (see Appendix J, paragraphs 86 to 95) but we did not see evidence of substantive entry being planned into new CSP categories. Nonetheless, it appears from the evidence of expansion that diversification by existing CSP suppliers is possible.

8.48 We did not receive expressions of interest in entry from outside the industry, although of course anyone contemplating such a move may choose not to declare it. Moreover, views will reflect perceptions of the potential profitability based on pre-merger margins rather than any margins that might apply post-merger.

8.49 Pork Farms submitted that large retailers were able to encourage or sponsor entry (see Appendix J, paragraphs 96 to 102). It considered that there was a clear track record of retailers encouraging or sponsoring supplier entry or expansion in CSP supply whenever it had been in their interests to do so. Pork Farms said it would be relatively straightforward for retailers directly or indirectly to ensure that additional capacity was brought into the market. It said this did not necessarily mean that retailers would need to give contractual commitments for guaranteed volumes or to provide financial support. In practice, retailers have been able to facilitate entry or expansion and they would be able to do so in the future, if the perceived need arose. It said that encouragement and soft assurances had proven to be sufficient to bring about expansion in the past.

8.50 We received little indication from suppliers and retailers that any formal sponsored entry or expansion had occurred, particularly in terms of direct financial support from retailers. There are some indications that retailers have offered a greater degree of certainty of orders to suppliers in some cases. Some retailers indicated they would be willing to encourage entry or

expansion under certain circumstances and might consider possible support such as through extended contracts with greater certainty for the supplier.

Conclusions on entry and expansion as a constraint

8.51 Overall we have found that there are some barriers to entry; costs of entry in investing in production facilities; potentially further costs in meeting retailer technical standards; and entry may need to be at a minimum size sufficient to supply own-label demands.

8.52 However, we think that entry and expansion are possible, with the most likely strategy being diversification by existing CSP providers, or expansion through new facilities and lines. We consider that de novo entry is unlikely. Where necessary, if retailers considered that post-merger they were suffering detriment from a lack of competition in the provision of CSP products, it would be open to them to encourage or support entry and expansion, for example by providing greater certainty and duration to contracts.

8.53 An alternative route of entry has been into regional and branded premium-quality products on a small scale. In the longer term this may provide a base for expansion and diversification.

Countervailing buyer power as a post-merger constraint

8.54 Our assessment of pre-merger countervailing buyer power is set out in paragraphs 7.41 to 7.50. We have found that pre-merger, there was a significant degree of buyer power with customers credibly threatening to delist and substitute a supplier. We have found that customers do not generally face any significant barriers to switching. Moreover, it is open to them to switch just part of their purchases. As noted above, many retailers currently multi-source their CSP requirements, even within a CSP category, although they may prefer to take the core of their range from a single supplier – see paragraphs 7.7 to 7.9. Retailers generally were willing to purchase from different suppliers if necessary and often did so, even if there were advantages in a single supplier in terms of consistency of product quality, taste and appearance. The extent to which large retailers seek single prime suppliers varies from time to time (for example, a supplier (Peter's) told us that various Grocery retailers in the past had at times followed such a strategy).

8.55 Of course, the retailers' buyer power will depend in large part on their ability to switch away from a supplier and find alternative sources. Hence negotiating power depends essentially on the availability of alternative existing competitors post-merger (which will have reduced compared with the pre-merger situation), and their ability to sponsor entry or expansion and/or to vertically

integrate. Alternatively, it might arise from the ability to undertake disciplining behaviour in other lines or categories purchased from the same supplier, or any ability (separate from pricing) to modify terms such as by reducing promotional exposure. Our analysis of the switching options open to retailers post-merger are set out in paragraphs 8.6 to 8.22, where we found in most categories there are alternatives available. However, for cold pies, [✂].

8.56 Prospects for supporting entry or expansion of competitors, whether through direct financial support or by assuring guaranteed levels of business beyond normal trading arrangements, are discussed in paragraphs 8.49 and 8.50. It would be open to customers to encourage or support entry and expansion if, post-merger, they wished to reinforce the constraints that exist within the market. There is a lack of significant past examples of sponsored expansion in the CSP industry, however this may be due to there not being a need to sponsor entry or expansion due to the state of competition pre-merger. One means of encouraging entry or expansion could be by offering to commit large volumes of purchases for a period such as to make the necessary capital investment viable.

8.57 The Parties sell (and/or are willing to sell) a range of CSP products to retailers which include categories where the Parties' position may be significantly less strong. In theory, large customers can credibly threaten to limit purchase of other products in order to increase their leverage when negotiating with the Parties on cold pie and sausage rolls contracts. However, with one exception we have not received evidence of this type of behaviour occurring in the CSP sector, and several retailers told us that negotiations are typically held on a product-by-product basis.

8.58 Nonetheless, we note that Pork Farms and Caspian [✂]. This might be indicative of some disciplining power; it does show that retailers have found it possible to switch to alternative suppliers. [✂] (see Appendix G, paragraphs 80 to 82).

Findings on effects of the merger on competition

8.59 We now draw our conclusions by product category.

8.60 In considering the effects of the merger on competition, we attach considerable weight to the importance of countervailing buyer power as it applies in CSP products. We note that during the course of the CMA's phase 2 investigation, most retailers did not express concern about the effects of the merger on competition (only two retailers did express concerns, see paragraph 8.3). Instead they considered that even with a reduced number of large suppliers they would still be able to assure reasonable service and pricing

from them. They told us that their partnerships with suppliers meant that their interests were often aligned. In any case, they appeared to consider that the merger would not curtail their ability to get the best deal, and if necessary they would consider changing their current buying strategies to ensure the merger had no adverse effect on them. Switching could occur even if only in part of their range, and could cover other categories within or separate from CSP products. We were persuaded by evidence of past buyer power, such as retailers resisting price increases or at times being able to demand other concessions from suppliers (see paragraphs 8.54 to 8.58). We also noted that some evidence suggests that retailers have managed to maintain some negotiation power post-merger (see paragraph 8.58). [✂]

8.61 We considered it highly improbable that customers would acquiesce to an increase in pricing or reduction in the service they receive. These customers have alternative supplier options available. There are also strong incentives on retailers to compete with each other,[72] and we considered that countervailing power was likely to remain after the merger. Aspects such as product quality and service standards are closely specified and policed by the retailers.

8.62 We are also satisfied that a degree of buyer power applies to retailers other than the largest supermarkets. The smaller retailers are more likely to have a greater variety of alternative supply options open to them as their demand imposes a smaller increment to the spare capacity of alternative suppliers compared with the Big 4 retailers. They also employ similar purchasing tactics and so will have many of the same negotiating options open to them.

8.63 We consider that a number of factors are likely to support countervailing buyer power in CSP products. First, these are to a considerable extent commoditised products; while there is differentiation and limited innovation, in the main core products are very similar and so can be easily supplied by most producers. Second, there is little branding power and no 'must-stock' brands. Third, there is by and large spare capacity in the industry and fairly static overall demand levels. Fourth, if they so choose, retailers can and do switch either part or all of their business between different suppliers. Fifth, there are few significant barriers to entry/expansion, such that growth of capacity and new entry or diversification into different CSP products, on a significant scale would be a possibility. This might possibly be with some retailer encouragement if competition was seen to be limited and opportunities emerged.

[72] As buying habits change with more online and local store purchases, and discounters and certain other retailers are increasing their market share at the expense of the Big 4 retailers.

8.64 Given the incentives on retailers to compete with each other in this case, we expect that they will benefit from their use of countervailing power in CSP products, which will consequently also protect the interests of final consumers.

Cold pies

8.65 The post-merger market for cold pies leaves just three significant suppliers. We consider that there was competition between the Parties pre-merger. However, we note that Samworth [✂], and that Vale of Mowbray is currently expanding. Vale of Mowbray has shown it is a credible competitor, [✂]. Further expansion in the future would be possible.

8.66 While other CSP suppliers appeared reluctant to enter the cold pie sector, there are not substantial barriers to them doing so, see paragraphs 8.26 to 8.39. This may be attractive to large food manufacturers outside the CSP sector as well as CSP producers diversifying. The growth of, for example, Welsh Pantry and Peter's in other areas suggests that a new entrant may well be able to establish a significant presence. Pork Farms also told us that Stobart's currently also manufactured frozen pork pies, which could easily be supplied unfrozen.

8.67 We note that Samworth (Walkers) does not currently supply the value tier segment despite having significant spare capacity which in theory would have enabled it to manufacture value tier products with no, or very limited, additional investment. We considered whether Samworth may be willing to reposition and enter the value tier following an increase in price. On the one hand, there are no technical obstacles to move across tiers as the production processes and the equipment are the same. On the other hand, Samworth told us that its current strategy was driven by its perception of quality/ reputational considerations and therefore it is unclear whether it would consider changing its strategy in response to a hypothetical price increase by the Parties following the merger. Samworth's other operating companies do supply value tier products in other CSP categories, implying there is not a group-wide policy of avoiding this tier.

8.68 We also note that the size of this tier is small relative to the standard tier, making the proportionate impact of any expansion by Vale of Mowbray, or impact of a new entrant, much greater than across cold pies as a whole.

8.69 We do not consider that competition effects will be different in the branded segment, because: the branded category is of relatively small size; there is close substitutability in both demand and supply with own-label products; and

there are alternative (albeit small) suppliers of branded pork pies (Stobart's being the largest).

8.70 Because of the competition offered to the Parties by Samworth and Vale of Mowbray, the availability of spare capacity, the prospects for expansion, the potential for entry, and countervailing buyer power, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply of cold pies in the UK for retail.

Hot pies

8.71 As noted in paragraphs 8.13 and 8.14, we have found that there are a variety of potential suppliers of both branded and own-label hot pies, and there is substantial spare capacity spread across several of them. They could compete for major retailer contracts, and we consider that they are incentivised to do so. There have been recent examples of entry, particularly in regional and premium suppliers.

8.72 While there was competition between the Parties pre-merger, given these alternative suppliers, the distribution of market shares between suppliers, the availability of spare capacity, and countervailing buyer power, we consider that competition will remain strong and so we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply of hot pies in the UK for retail.

Sausage rolls, pasties and slices

8.73 We have considered sausage rolls separately, and also in combination with pasties and slices.

8.74 The Parties combined would be the largest supplier in sausage rolls, with a share in excess of [60–70]%, and a substantial overlap between them. Although a number of alternative suppliers operate in sausage rolls, they have, particularly Samworth, smaller shares compared with other CSP categories. We also noted that relative to the sales currently made by the Parties, the competitors' spare capacity appears to be limited. However, the capacity constraints would be relaxed if some of the capacity currently available to manufacture the pasties and slices was utilised to increase production of sausage rolls, and we have found no barriers to that occurring. In our view, the capacity in pasties and slices could relatively quickly and easily be used to produce sausage rolls if a price increase offered attractive margins to suppliers.

8.75 In light of the presence of alternative suppliers with a significant share, and particularly the availability of spare capacity, some of it currently in pasties and slices, and countervailing buyer power, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply of sausage rolls in the UK for retail.

8.76 Pork Farms has very limited sales in the pasties and slices category, so there was no significant pre-merger overlap or competitive constraint between the Parties. In combination, for sausage rolls, pasties and slices, there are several alternative suppliers with a significant share and spare capacity. We also note the existence of expansion plans, countervailing power, and that new entry into the provision of these products is possible given that barriers may not be prohibitively high. Consequently we do not consider that the merger would affect competition in the supply of pasties and slices.

8.77 Therefore, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the supply in the UK for retail of sausage rolls, and/or pasties and slices, whether individually or collectively.

9. Conclusions on the SLC test

9.1 For the reasons set out in paragraphs 8.59 to 8.77, we have concluded that the merger has not resulted, and may not be expected to result, in an SLC in the markets for the supply in the UK for retail of cold pies; hot pies; and sausage rolls, pasties and slices (whether individually or collectively).