

Completed Acquisition by Linergy Limited of Ulster Farm By-Products Limited

ME/6514/15

The Competition and Markets Authority’s (CMA) decision on reference under section 22(1) of the Enterprise Act 2002 given on 17 July 2015. Full text of the decision published on 21 August 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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SUMMARY

1. On 8 May 2015, Linergy Limited (**Linerger**) purchased the whole of the issued share capital of Ulster Farm By-Products Limited (**UFBP**) from SAPI SpA (**SAPI**) (the **Merger**). Linergy and UFBP are based in Northern Ireland (**NI**) and provide animal by-product processing. Linergy and UFBP are together referred to as the **Parties**.¹
2. The Parties had plans to merge in 2011/12. However, following the decision of the Office of Fair Trading (**OFT**) to refer that merger to the Competition Commission for a phase 2 investigation,² the Parties abandoned their merger plans. On 8 May 2015, through two separate agreements, Linergy acquired 100% of UFBP and SAPI acquired 30% of the combined Linergy/UFBP.
3. The CMA believes that the Parties are enterprises which have ceased to be distinct. The Parties overlap in the processing of animal by-products (which includes the processing of Category 1 animal by-products, Category 3 animal by-products, and fallen stock). The Parties submit that they have a combined share of supply of [40–50]% (increment [10–20]%) in the supply of these services. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
4. The four-month period for a decision expires on 14 September. This period has not yet expired.
5. The CMA therefore believes that a relevant merger situation has been created.
6. In considering the counterfactual against which to assess the transaction, the CMA noted that, shortly after they¹ abandoned their merger plans in March 2012, Linergy and SAPI entered into a Memorandum of Understanding dated 31 May 2012 (MOU) (as amended by a deed dated 18 June 2012). The MOU expressed Linergy's and SAPI's intention to merge Linergy and UFBP in the event that SAPI acquired UFBP. The MOU envisaged that SAPI would retain 30% of the shares in the merged entity.
7. In October 2012, UFBP closed its Category 1 plant and, currently, UFBP operates only a Category 3 plant. In December 2012, Linergy abandoned earlier

¹ SAPI, as the owner of UFBP, made submissions on behalf of UFBP. The CMA has therefore used the terms 'Party' or 'UFBP' when referring to submissions made by SAPI in relation to the UFBP business.

² ME/5294/11, Anticipated acquisition by Linergy Limited of Ulster Farm By-Products Limited, Decision of the Office of Fair Trading, 15 March 2012 (**OFT's March 2012 decision**).

plans to build a Category 3 plant and, currently, Linergy operates only a Category 1 plant. The CMA believes that the MOU incentivised each party [§], with the effect of dampening competition between them. Moreover, the MOU indicated a clear strategic intent for the two businesses. For these reasons, the CMA believes that the MOU influenced each Party's competitive conduct from 31 May 2012 onwards. The CMA therefore believes that the counterfactual should be informed by the situation directly preceding Linergy and SAPI entering into the MOU on 31 May 2012, though taking into account any changes in the market since that time.

8. On the evidence before it, the CMA believes that, absent the MOU but taking account of changes in the market since 2012, it is realistic that: (i) Linergy would have built a Category 3 plant, and (ii) UFBP would not have closed its Category 1 plant. Accordingly, in the counterfactual, each of Linergy and UFBP would have operated both a Category 1 and a Category 3 plant.
9. The CMA has distinguished between the "input side" (the sourcing of animal by-products from slaughter houses, deboning plants, retail food waste and dead farm animals) and the "output side" (the sale of processed materials such as meat and bone meal (MBM) and tallow) of the Parties' activities. With respect to the input side, the CMA has identified three product frames of reference within which to assess the Merger:
 - The processing of Category 1 animal by-products (non-fallen stock).
 - The processing of Category 3 animal by-products (non-fallen stock).
 - The processing of fallen stock.
10. The CMA found that the geographic frame of reference in each case was no wider than Northern Ireland (NI), and in the case of fallen stock may be narrower, ie just over 50 miles from the processing plant. The CMA considered constraints from renderers outside NI in the competitive assessment where appropriate. The CMA believes that it is or may be the case that the Merger has resulted or may be expected to result in a substantial lessening of competition (**SLC**) in relation to the processing of non-fallen stock (Category 1 and Category 3) and fallen stock in NI.
11. The CMA did not find sufficient evidence to justify departing from the OFT's finding in its March 2012 decision that any buyer power on the part of meat processors was likely to be offset by power on the part of the renderers. The

CMA also did not find sufficient evidence to conclude that entry or expansion would be timely and sufficient to mitigate its concerns regarding the Merger.

12. In light of its conclusions in this regard, it has not been necessary for the CMA to conclude on whether it is or may be the case that the Merger has resulted or may be expected to result in an SLC due to vertical effects in relation to the supply of processing of animal by-products (Category 1 and 3 non-fallen stock) and fallen stock to the Parties' non-shareholder meat processors, or due to coordinated effects in relation to the processing of Category 1 animal by-products and fallen stock.
13. On the basis of the evidence before it, the CMA does not believe that it is or may be the case that the Merger has resulted or may be expected to result in an SLC in relation to the supply of outputs from the processing of animal by-product materials.
14. Consequently, the CMA believes that it is or may be the case that the Merger has created a relevant merger situation which has resulted or may be expected to result in an SLC within a market or markets in the UK.
15. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised pursuant to section 22(3)(b) whilst the CMA is considering whether to accept undertakings under section 73 of the Act in lieu of a reference. Pursuant to section 73A(1) of the Act, Linergy has until 24 July 2015 to offer an undertaking to the CMA that might be accepted by the CMA under section 73(2) of the Act. If Linergy does not offer an undertaking by this date, or if Linergy indicates before this date that it does not wish to offer an undertaking, or if pursuant to section 73A(2) of the Act the CMA decides by 31 July 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered by Linergy, or a modified version of it, then the CMA will make a reference for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Transaction

16. The proposedⁱⁱ transaction relates to the purchase by Linergy of the whole of the issued share capital of UFBP from SAPI.

Parties

17. The Parties are based in NI and provide animal by-product processing. SAPI bought the entire issued share capital of UFBP in June 2012. SAPI has its registered office in Modena, Italy. SAPI is active in the processing of animal by-products in Italy and, through its subsidiaries, in a number of other countries, including NI through UFBP.

Jurisdiction

18. As a result of the Merger, the Parties have ceased to be distinct.
19. UFBP's turnover for the financial year ended 31 December 2014 was £8.6 million. Accordingly, the turnover test in section 23(1)(b) of the Act is not met.
20. The Parties overlap in the processing of animal by-products (categorised into Category 1 and Category 3) and fallen stock. The Parties submit that they have a combined share of supply of [40–50]% (increment [10–20]%) in the supply of these services. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
21. The transaction had two stages: first, under a share purchase agreement dated 8 May 2015, Linergy acquired 100% of UFBP; and, second, under a share purchase agreement dated the same day, SAPI acquired 30% of the combined Linergy/UFBP. Given that the enterprises involved in the two parts of the transaction are different (Linerger and UFBP; and SAPI and Linergy/UFBP), the CMA has considered whether to treat the transaction as giving rise to more than one relevant merger situation. The focus for the CMA's investigation has been on the loss of competition between Linergy and UFBP, where it has found that a relevant merger situation exists and where it has found that there is the realistic prospect of an SLC. Given that, following the sale of UFBP to Linergy, SAPI was not operating in NI and there was no overlap between SAPI and Linergy/UFBP, the CMA believes that the acquisition of a minority shareholding in Linergy/UFBP by SAPI gives rise to no additional plausible competition concerns on any basis. Accordingly, the CMA believes that it is not necessary for it to conclude on whether SAPI has gained material influence over Linergy/UFBP, and/or whether to treat this part of the transaction as giving rise to a separate relevant merger situation or as part of the same relevant merger situation under the Act.

Background

The animal waste rendering industry

22. The phrase 'fallen stock' refers to animals that have died on farms and therefore need to be disposed of by the farmer. The phrase 'animal by-products' (also referred to as 'non-fallen stock') refers to what remains of an animal after meat and offal for human consumption, and other uses, has been removed. The disposal and processing of fallen stock and animal by-products is heavily regulated and disposal must be in accordance with UK and European law.
23. The relevant regulations³ categorise animal by-products according to their risk of transmitting transmissible spongiform encephalopathy (TSE), and require the different categories to be treated differently at all stages. There are two principal categories of animal by-products (Category 1 and Category 3), each requiring a separate licence. In NI, the relevant licences are granted by the NI Department of Agriculture and Rural Development (DARD).⁴ Category 1 is the highest risk material and Category 3 is the lowest risk material. The regulations allow for Category 3 material to be processed in a Category 1 plant (although the outputs would all be treated as Category 1). Renderers may not process Category 1 material in a Category 3 plant.
24. Third parties told the CMA that Category 3 material attracts a lower 'gate fee' (the price paid to the renderer by the supplier of the material) than Category 1 material. This is because the outputs from the rendering of Category 3 material can be used in a broader range of finished products (including soap, paint, makeup, bottle tops, paints and sprays) than the outputs from the rendering of Category 1 material, and are therefore more valuable. For some Category 3 animal by-products, the Parties pay the supplier for the raw material (ie there is a negative gate fee). The end products are MBM⁵ and tallow⁶.

Background to the Merger

25. The Parties had plans to merge in 2011/12. At that time, Linery operated a Category 1 processing plant and its Board had approved plans to construct a

³ Regulation (EC) 1069/2009 and accompanying implementing Regulation (EC) 142/2011, enforced in Northern Ireland by the Animal By-Products (Enforcement) Regulations (Northern Ireland) 2011.

⁴ Source: [DARD's website](#) and [Licence finder on GOV.UK](#).

⁵ MBM is typically about 48-52% protein, 33-35% ash, 8-12% fat, and 4-7% moisture.

⁶ Tallow is a rendered form of beef or mutton fat, processed from suet.

Category 3 plant. UFBP operated a Category 1 plant and a Category 3 plant. The OFT investigated that anticipated merger. In a decision of March 2012, the OFT found that there was a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the processing of fallen stock, Category 1 non-fallen stock, and Category 3 non-fallen stock. The OFT therefore decided to refer the merger to the Competition Commission for a phase 2 investigation.⁷ The Parties subsequently abandoned their merger plans.⁸ⁱⁱⁱ

26. Linergy told the CMA that SAPI [redacted].⁹ Linergy and SAPI explored the possibility of a partnership that would lead to the merger of UFBP and Linergy at a future date.¹⁰ The board of Linergy met on 21 May 2012 to [redacted]. Linergy and SAPI subsequently entered into the MOU on 31 May 2012 (the MOU was amended by a deed dated 18 June 2012). The MOU expressed Linergy's and SAPI's intention to merge Linergy and UFBP in the event that SAPI acquired UFBP, and stated that SAPI would^{iv} acquire 30% of the shares in the merged entity. In June 2012, SAPI completed its acquisition of UFBP. In October 2012, UFBP closed its Category 1 plant. In December 2012, Linergy's Board resolved not to construct a Category 3 plant.

Counterfactual

27. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). In practice, the CMA generally adopts the prevailing conditions of competition at the time of the merger as the relevant counterfactual. However, the CMA will use an alternative counterfactual where, based on the evidence available to it, the CMA believes that there is a realistic prospect of a counterfactual that is more competitive than the prevailing conditions.
28. Directly prior to entering into the MOU, UFBP was operating both a Category 1 and a Category 3 plant. Linergy was operating a Category 1 plant. Linergy did not have a Category 3 plant but its Board had approved plans to construct a Category 3 plant.¹¹ Linergy had also secured the necessary licensing and

⁷ OFT's March 2012 decision.

⁸ Competition Commission (2012), Linergy Ltd/Ulster Farm By-Products Ltd proposed merger inquiry, [Notice of cancellation](#).

⁹ Parties' response to the CMA issues letter, p12.

¹⁰ Minutes of Linergy Board meeting of 21 May 2012.

¹¹ Minutes of Linergy Board meeting of 24 January 2011. All members of the Board expressed their approval for the Category 3 plant project.

planning approvals for construction of the plant. Construction was forecast to take around 18 months.

29. In light of these factors, and taking into account Linergy's rationale for seeking to acquire UFBP at the time,¹² the OFT found in the March 2012 decision that 'absent the merger, there was a realistic prospect that Linergy would have built its own Category 3 plant which would have competed with that of Ulster Farm'.
30. In October 2012, UFBP closed its Category 1 plant and, in December 2012, Linergy's Board resolved not to build a Category 3 plant. In the present investigation, the Parties therefore submitted that, contrary to the position at the time of the OFT's March 2012 decision, the Parties today operate in separate product markets and there is no horizontal overlap in their activities.
31. The CMA believes, on the basis of the evidence it has found, that the MOU influenced each Party's conduct from 31 May 2012, and that the counterfactual should be informed by the situation directly preceding the signing of the MOU.

The effect of the MOU on the Parties' incentives after May 2012

32. The MOU was an expression of intent to work towards a merger rather than a final sale and purchase agreement. However, the CMA believes that, for the purposes of assessing the counterfactual in this case, the character of the document is less important than the effect that the document might reasonably be expected to have had on the Parties' conduct.
33. The MOU included binding terms governing the [redacted] and created a mechanism which would enable each of SAPI and Linergy to [redacted] between the signing of the MOU and its expiry.¹³ Essentially, the effect of the MOU was that each Party had an incentive [redacted], as if they were already merged.
34. The Parties did not contest the CMA's understanding of the content and operation of the provisions of the MOU.¹⁴ The Parties disagreed, however, with

¹² OFT's March 2012 decision, para. 19 ('Linerger's reason for acquiring Ulster Farm [was] to acquire its Category 3 plant more quickly and more cheaply than it would have been able to build its own Category 3 plant').

¹³ Clauses [redacted] of the MOU [redacted]. Under Clause [redacted] of the MOU, [redacted]. Under Clause [redacted] of the MOU, [redacted]. Under Clauses [redacted] of the MOU, [redacted]. Indeed, Clause [redacted] of the MOU stated that, [redacted].

¹⁴ Although the Parties emphasised that certain provisions in the MOU were conditional upon the occurrence of particular events, [redacted]. See response of Linergy and SAPI to the CMA issues letter dated 23 June 2015, p19.

the CMA's assessment of how the MOU was likely to have affected the Parties' incentives during the period prior to the Merger.¹⁵

35. The CMA notes that the MOU was a binding legal document and its provisions governing the [redacted] and the [redacted] were in force throughout the period leading up to the Merger, until certain of these provisions were deleted by the Heads of Terms signed in September 2014. (The Heads of Terms expressly stated that, with the exception of Clauses 3 and 4, all provisions of the MOU continued in full force and effect until completion of the Merger.) Moreover, as described in the following paragraphs, the CMA has found evidence that it believes shows the Parties, following the MOU but prior to the Merger, conducted themselves as if they had already merged.
36. First, Linergy told the CMA that, in July 2012, ie shortly after the Parties signed the MOU, Linergy's shareholder meat processors decided to switch the supply of their Category 3 materials from Linergy to UFBP. The Parties told the CMA that the shareholder meat processors took this decision because Linergy '[redacted]'.¹⁶ However, the Parties' submissions show that the shareholder meat processors had supplied Category 3 material to Linergy for some time prior to July 2012 in order to '[redacted]', even though the shareholder meat processors suffered '[redacted]'.¹⁷ On the basis of the evidence it has found, the CMA believes that nothing had changed from this position at the time that the shareholder meat processors started sending Category 3 material to UFBP in July 2012, other than there now being the MOU. On the basis of this evidence, the CMA believes it highly likely that the terms of the MOU influenced the timing of the shareholder meat processors' decision.
37. Second, third parties which responded to the CMA's merger investigation, including customers, competitors, and companies involved in collection and transportation of animal by-products, told the CMA that they understood the Parties had effectively combined their businesses some time prior to completion of the Merger. One customer told the CMA that, several years prior to the Merger, Linergy had encouraged it to switch the supply of its Category 3 materials from Linergy to UFBP in order to help Linergy to 'get into bed' with UFBP. Another customer expressed its belief that there had been an 'unwritten agreement' in place between Linergy and UFBP prior to the Merger and that the Merger merely formalised this pre-existing arrangement. Another customer said

¹⁵ Parties' response to the CMA issues letter, p19.

¹⁶ Parties' response to the CMA issues letter, p12.

¹⁷ Parties' response to the CMA issues letter, p11.

that it had been told by SAPI some time prior to the Merger that the Parties had already merged.

38. Third, the CMA believes that Linergy's internal documents show that the MOU influenced Linergy's considerations about its commercial development plans. Linergy provided the CMA with four sets of Board minutes which pre-dated the MOU, including the minute of a Board meeting which had been called specifically to [REDACTED].¹⁸ Each of the three other minutes shows that the Board extensively discussed [REDACTED]. The minutes of the 24 January 2011 Board meeting record a lengthy discussion during which [REDACTED]. At the Board meeting of 8 April 2011 the Board [REDACTED]. The minutes of the 6 April 2012 Board meeting, shortly after the OFT's March 2012 decision, record a discussion [REDACTED], and the Board's decision that they '[REDACTED]'. In the CMA's view, these minutes indicate Linergy's clear strategic intent, prior to the MOU, of buying or building a Category 3 plant.
39. On 21 May 2012, the Board met to approve the MOU with SAPI.¹⁹ In the Linergy Board minutes submitted to the CMA which follow the signing of the MOU, there is no discussion of the Category 3 project. The minutes of the 3 July 2012 Board meeting state simply under the heading '[REDACTED]', that '[REDACTED]'. The '[REDACTED]' section of the 27 September 2012 minutes states: '[REDACTED]'. The Board minutes which Linergy provided to the CMA from after the signing of the MOU do not record a discussion of the Category 3 project until December 2012, ie seven months after the MOU, when the Board resolved not to pursue the project.
40. The CMA believes it is implausible that the MOU had no influence on Linergy's limited consideration of the Category 3 project following the signing of the MOU and its subsequent decision not to construct a Category 3 plant. The CMA believes that it is realistic that, but for the MOU, the Linergy Board would have continued to discuss the company's Category 3 plans, particularly in light of the cancellation of the earlier merger plans following the OFT's March 2012 decision.

¹⁸ Minutes of Linergy Board meeting of 21 May 2012.

¹⁹ The minutes of Linergy's 3 July 2012 Board meeting record the Board's [REDACTED] The CMA believes the absence of any reference to the MOU or SAPI's discussions with Linergy is surprising, given the discussion of SAPI's proposal in the previous meeting of 21 May 2012, at which all the attendees of the 3 July 2012 meeting were present (according to the minutes of the two meetings, submitted by Linergy to the CMA).

Linergy's Category 3 plant and UFBP's Category 1 plant in the counterfactual

41. The CMA has considered how competition is likely to have evolved in the absence of the MOU, taking into account changes in relevant markets subsequently.
42. The Parties told the CMA, and submitted evidence purporting to show, that Linergy's decision not to construct a Category 3 plant, and UFBP's decision to close its Category 1 plant, were taken by each Party based on commercial considerations independently of each other and the MOU. The Parties said that therefore, in the counterfactual, there was no horizontal overlap in their activities.

Linergy would have built a Category 3 plant

43. Linergy submitted that, although its Board had approved construction of a Category 3 plant in 2011, the case for doing so deteriorated subsequently and the Board therefore reversed its decision in December 2012.
44. Linergy told the CMA that steel costs had increased since the previous financial modelling exercise in 2011 and therefore the capital costs of constructing the Category 3 plant had increased.²⁰ [X] The CMA found evidence that the cost of building the plant would only have changed in line with inflation and exchange rates movements (which were favourable to Linergy). On that basis, the CMA estimates that capital costs may actually have decreased by around [X]% between the dates of the two assessments.
45. Linergy also said that its revised financial modelling in December 2012 forecast lower gains from switching Category 3 materials (which at the time it was processing in its Category 1 plant^v) to a new Category 3 plant. Linergy attributed this to (i) a projected fall in Category 3 output prices and (ii) an increase in the value of Category 1 yields.²¹ However, the CMA did not find evidence that the value of Category 3 outputs were projected to fall. Indeed, UFBP told the CMA that Category 3 outputs were expected to increase in value at the time.²² Also the CMA has not found any evidence that Category 1 yields were expected to improve. In the financial projections Linergy sent to its bank for consideration in April 2011, Linergy's forecast Category 1 yields did not change over time.

²⁰ Linergy's submission dated 30 January 2015.

²¹ Linergy's submission dated 4 March 2015.

²² UFBP's response dated 5 February 2015.

46. The CMA notes that internal documents submitted by Linergy showed that in 2011 and early 2012 the Linergy Board had been convinced of the strategic importance of operating a Category 3 plant. There was a clear and repeated intention to build this plant which, for a period, was replaced with an intention to buy it instead (ie through the anticipated 2011/12 acquisition of UFBP). The minutes of successive meetings of the Linergy Board express this intention in clear and unambiguous terms. The CMA has found that the only serious doubts expressed about the project arose several months after the MOU was signed and led immediately to the project being abandoned (see paragraphs 38 to 40). The CMA also notes that, at the time of that decision in December 2012, the overall construction cost of the new plant had fallen not risen since the time in 2011 when the project had previously been approved, and other variables, which had the potential to materially affect their profitability of the proposed plant (including output prices and input volumes), had neither declined nor improved. Therefore, the CMA sees no commercial basis independent of the MOU for the decision to abandon the project.
47. On the basis of the evidence before it, the CMA believes that the case for Linergy building a Category 3 plant had not deteriorated by December 2012 in the way in which Linergy has suggested.²³ The CMA therefore believes it is realistic that, in the counterfactual, Linergy would have built a Category 3 plant. The CMA also notes that there is no reason to believe that Linergy would not have continued operating this Category 3 plant through to the time of the Merger.

UFBP would not have closed its Category 1 plant

48. UFBP told the CMA that, at the time UFBP decided to close its Category 1 plant, returns from Category 1 end-products were declining and the price of Category 3 end-products was increasing. UFBP said that its Category 1 plant was loss-making and causing environmental concerns which would require expensive remediation. The plant would have needed to be taken offline during remediation, resulting in losses.²⁴ UFBP therefore decided to close its Category 1 plant and invest in improvements to its Category 3 plant.
49. The CMA has found that data provided by UFBP regarding the cost of Category 1 disposal and the price of Category 3 inputs was inconsistent with information supplied separately by Linergy. Linergy provided data showing that the cost of

²³ Linergy's submission dated 30 January 2015.

²⁴ UFBP's submission dated 5 February 2015.

Category 1 disposal was declining at the time of its decision regarding its Category 3 plant and said that it was forecasting a fall in the value of Category 3 outputs.^{vi} However, UFBP submitted that, at that time, it expected higher returns from Category 3 outputs as a result of the expected reintroduction of Category 3 MBM into animal feeding²⁵ and it projected increased costs from disposing of Category 1 MBM.²⁶

50. Notwithstanding this inconsistency, the CMA also notes that UFBP's forecast increased cost of disposing of Category 1 MBM (which UFBP said was from £[~~xxx~~] to £[~~xxx~~]per tonne²⁷) would have increased its cost of sales by less than [~~xxx~~]%. The CMA does not believe that an increase in costs of this magnitude could alone have justified UFBP's decision to close its Category 1 plant.
51. UFBP does not produce accounts at plant level.^{vii} However, the Parties submitted that an analysis of UFBP's management accounts showed that UFBP's Category 1 plant was loss-making because profitability increased after UFBP closed its Category 1 plant. However, the CMA found that the increase in UFBP's profitability at this time was primarily attributable to increased throughput at UFBP's Category 3 plant, due in part to the decision by Linergy's shareholders to transfer their Category 3 material from Linergy to UFBP (see paragraph 36). Following the issues meeting, the Parties submitted further management accounts data in support of their view, covering the period June to December 2012, which showed UFBP's increasing profitability following its decision to close its Category 1 plant. However, the CMA notes that this data had not been provided in response to previous CMA requests for internal documents and, although apparently prepared by SAPI, it was not clear when it had been produced. Furthermore, the methodology used to generate the data was unclear. The data was also not comprehensive as it covered only a very short period of time immediately prior to the decision to close the plant, whereas rendering is

²⁵ UFBP also submitted that that

At the time of our discussions about a possible decision on UFBP's future there was also discussion in the EU about the possibility to re-introduce again some category 3 finished product (MBM) into animal feeding. A decision like that was going to have a big impact on the commercial side considering that the value of the finished products (MBM) was estimated to become a lot higher. There was also discussion about the possibility of the bovine intestine (which currently goes into category 1) as category 3 material.²⁵

The CMA observes, however, that increased value from Category 3 outputs would not necessarily make it less attractive for UFBP to invest in improvements to the Category 1 plant. Moreover, as observed above, even if developments in EU rules could have led to more limited availability of input material for the Category 1 plant, such that the UFBP's Category 1 plant became more costly and/or less efficient, there may nevertheless have been strategic commercial benefits to UFBP from continuing to operate the Category 1 plant.

²⁶ UFBP's submission dated 5 February 2015.

²⁷ UFBP's submission dated 5 February 2015.

characterised by many seasonal variations. Given these reservations, the CMA did not place much weight on this data.

52. The CMA considered whether UFBP's Category 1 plant required urgent remedial work to address environmental concerns and, if so, whether the costs associated with this work could have led UFBP to close the plant. UFBP submitted substantial evidence about the environmental concerns. However, a third party told the CMA that environmental fines [REDACTED], and suspension notices or licence revocations [REDACTED]. The third party also told the CMA that the history of odour complaints concerning UFBP dated back around a decade,²⁸ and the CMA found no evidence that UFBP had introduced significant remediation measures during this period. While recognising that there were environmental concerns with UFBP's Category 1 plant, the CMA believes that there is insufficient evidence that, absent the MOU, UFBP would have considered these concerns a priority such that the prospect of the costs of fully remediating them would have led it to close the plant.
53. The CMA notes that, although there is evidence that UFBP considered rectifying the problems with its Category 1 plant a lower priority than upgrading its Category 3 plant, it does not follow from this prioritisation that, absent the MOU, UFBP would have closed its Category 1 plant.
54. Furthermore, several parties told the CMA that renderers derive strategic commercial benefit from operating both a Category 1 and a Category 3 plant. Linergy told the CMA that: '[REDACTED]'.²⁹ This was confirmed by a third party, which told the CMA that a renderer lacking either a Category 1 or a Category 3 plant was at a significant competitive disadvantage. The renderer told the CMA that operating both types of plant would enable a vertically-integrated renderer to extract greater value from its meat processing operations, and would enable it to offer its meat processor customers a more complete service.³⁰ The CMA has observed that, consistent with this explanation, many established renderers in the UK and the Republic of Ireland (ROI) operate both Category 1 and Category 3 plants at the same site (or in close proximity), including College Proteins, Dublin Products, SARIA, Dundas, and ABP Ltd. In light of this evidence, the CMA believes that, absent the MOU, UFBP would have had a commercial incentive to maintain its

²⁸ [REDACTED]

²⁹ Linergy's submission dated 5 February 2015.

³⁰ See also OFT's March 2012 decision, paragraph 36. The OFT found evidence that customers 'might value the ability to send both Category 1 and Category 3 materials to the same renderer' and that this 'might explain why customers have been sending a significant quantity of Category 3 material to Linergy, even though Linergy does not have a Category 3 plant'.

Category 1 plant even if the plant was loss-making and/or if remediation costs would have been significant.

55. The CMA believes that, because of the environmental concerns with the plant, the evidence that UFBP, absent the MOU, would have closed its Category 1 plant is stronger than the evidence that Linergy, absent the MOU, would have decided not to construct a Category 3 plant. However, the CMA believes, based on the evidence before it, that UFBP's decision to close this plant was influenced by the MOU and that it is realistic that, absent the MOU, UFBP would not have done so. The CMA also notes that there is no reason to believe that UFBP would not have continued operating this Category 1 plant through to the time of the Merger.

Conclusion on the counterfactual

56. Based on this evidence, the CMA believes that it is realistic that Linergy would have built a Category 3 plant and UFBP would not have closed its Category 1 plant, and that both firms would have continued operating both plants through to the time of the Merger. This would have represented a more competitive situation than the prevailing conditions of competition at the time of the Merger. Therefore, for the purposes of its competitive assessment, the CMA has used as its counterfactual the situation in which each of Linergy and UFBP operate both a Category 1 and a Category 3 plant.

Frame of reference

57. The CMA's approach to determining the frame of reference is to begin with the overlapping products of the Parties in the narrowest plausible candidate frame of reference and then to see if this can be widened on the basis of demand-side considerations. If appropriate, the CMA then considers if supply-side substitution allows several products, which are not demand-side substitutes, to be aggregated into a wider frame of reference.³¹

Product scope

58. The Parties overlap in the processing of animal by-products and fallen stock and the supply of outputs from these processes, ie MBM and tallow.

³¹ [Merger Assessment Guidelines](#), paragraph 5.2.17

59. The OFT's March 2012 decision distinguished between the 'input side' (the sourcing of animal by-products from slaughter houses, deboning plants, retail food waste and dead farm animals) and the 'output side' (the sale of processed materials such as MBM and tallow) of the Parties' activities. In the present case, third parties told the CMA that this distinction remained appropriate.

Input side

60. In its March 2012 decision, the OFT assessed the transaction using the following product frames of reference on the input side: (i) the processing of Category 1 animal by-products (non-fallen stock), (ii) the processing of Category 3 animal by-products (non-fallen stock), and (iii) the processing of fallen stock. The OFT observed that a Category 1 plant can be used to process Category 3 material but that the value of the resulting output would be lower than if the same material were processed in a Category 3 plant.
61. The European Commission has also distinguished between the processing of Category 1 and Category 3 materials.³²
62. Linergy submitted that there are separate product markets for processing Category 1, Category 3 and fallen stock material,³³ and no third party expressed a different view.
63. The CMA notes that Linergy has previously processed Category 3 material at its Category 1 plant, including for input customers with which it is not vertically integrated. This may suggest that there are asymmetric constraints between Category 1 and Category 3 renderers, ie that Category 1 renderers are not constrained by Category 3 renderers but that Category 3 renderers are constrained to an extent by Category 1 renderers. However, Linergy submitted that it processes only very small volumes of Category 3 material at its Category 1 plant and that it is '[X]'.³⁴ The CMA also found that many renderers in the UK and the ROI operate both Category 1 and Category 3 plants, which suggests that they are not substitutable. The CMA notes that the volume of Category 3 material processed in Category 1 plants is very small as a proportion of the total volume of Category 3 materials processed.

³² M.6285 – Saria/Danish Crown/Daka JV, European Commission decision of 29 June 2012; M.5935 – Vion/Weyl, European Commission decision of 20 August 2010; M.3337 – Best Agrifund/Nordfleisch, European Commission decision of 19 March 2004.

³³ Linergy's submission dated 5 February 2015.

³⁴ Linergy's submission dated 30 January 2015.

64. The CMA believes that the evidence it has found supports the use of the same product frame of reference on the input side as used by the OFT in the March 2012 decision. The CMA has therefore assessed the effects of the Merger on the input side with regard to:
- the processing of Category 1 animal by-products (non-fallen stock);
 - the processing of Category 3 animal by-products (non-fallen stock); and
 - the processing of fallen stock.
65. Although the CMA has treated the processing of Category 1 and Category 3 materials (non-fallen stock) separately, it has considered possible constraints on Category 3 renderers from Category 1 plants, and the bundling of Category 1 and Category 3 processing by renderers, within its competitive assessment.

Output side

66. In the March 2012 decision, the OFT did not consider it necessary to form a definitive view on the product frame of reference on the output side, since the transaction did not give rise to a realistic prospect of an SLC under any plausible frame of reference. In that case, the merging parties submitted that the outputs of processing (MBM and tallow) had different uses, depending on whether the input material was Category 1 or Category 3, and the OFT found that outputs from processing animal by-products were interchangeable with other commodities for many uses.
67. In the present investigation, the Parties submitted that MBM and tallow compete with a broad range of other products. Linergy told the CMA that Category 1 tallow, for example, competes with, among other products: biodiesel, heavy fuel oil, and natural gas.³⁵ Nuova Campari (part of SAPI) told the CMA that customers of its Category 3 tallow include producers of biodiesel, oleochemicals and animal feed.
68. Third parties confirmed that the finished products from the rendering process were MBM and tallow, and that these products could be used for different purposes depending on whether they are manufactured in a Category 1 plant or a Category 3 plant. Third parties told the CMA that renderers sold MBM and tallow principally to customers active in the following areas: animal feed,

³⁵ Linergy's submission dated 13 February 2015.

fertilisers, oleochemicals, and energy (eg producers of biofuel which use tallow as feedstock for the biofuel production process). Renderers might sell the materials directly to these customers, or via an intermediary (eg a broker). Third parties also told the CMA that brokers generally carried out some further processing of the material, eg blending it together with additional inputs to create finished products for fish food and pet food.

69. As in the OFT's 2012 decision, the CMA does not believe that it is necessary in the present investigation to conclude on the precise product frame of reference on the output side, given that, as set out below, no competition concerns arise in relation to the output side on any plausible basis. However, on a cautious basis, the CMA has assessed the Merger using separate frames of reference for MBM and tallow with a further segmentation by category of animal by-products used to produce the outputs, ie (i) Category 1 MBM, (ii) Category 1 tallow, (iii) Category 3 MBM and (iv) Category 3 tallow.

Geographic scope

Input side

70. In the OFT's March 2012 decision, the OFT used NI as its geographic frame of reference for the processing of, respectively, Category 1 and Category 3 non-fallen stock. The OFT found that renderers in other parts of the UK and in the ROI were unlikely to exert a sufficiently significant constraint on the merging parties. The OFT found that the relevant geographic frame of reference for the processing of fallen stock was no wider than NI, and could have a much narrower radius of just over 50 miles from the relevant processing plant given the greater costs involved in transporting this material (as typically fallen stock tends to be transported in small loads from the farms to the renderers).
71. In previous decisions relating to the collection and processing of animal by-products, the European Commission has left open the precise geographic market definition.³⁶ The European Commission's market investigations in these cases have found evidence that export licences and local regulations³⁷ may limit cross-border movement of animal by-products. In Saria/Danish Crown/Daka JV, the European Commission found certain indications that markets may be broader than national but, noting the impact of time restrictions for the processing of raw

³⁶ COMP.M.3337 – Best Agrifund/Nordfleisch, paragraph 69; COMP/M.3175 – Best Agrifund/Dumeco, paragraphs 25, 152-153; COMP/M.3605 – Sovion/HMG, paragraph 124.

³⁷ COMP.M.3337 – Best Agrifund/Nordfleisch, paragraph 76; COMP/M.3605 – Sovion/HMG, paragraph 124.

materials and the impact of transport costs on price, it left open the geographic market definition.³⁸

72. In the present investigation, the Parties argued that the appropriate geographic frame of reference for the processing of non-fallen stock and fallen stock is broader than NI, and should, in particular, include renderers in the ROI and Great Britain (**GB**). They said that this is because:
- the approach of using 80% catchment areas was not sufficient or relevant for determining the geographic frame of reference;
 - if catchment areas are used, they should be calculated to take account of volumes of material sent to the Parties by customers associated with Linergy through non-direct shareholdings³⁹ (which the OFT had excluded in the March 2012 decision);
 - approximately [X]% of the Category 1 material processed by Linergy came from the ROI, which implies a market for Category 1 material which is wider than NI;⁴⁰
 - some ROI rendering plants were closer to the Linergy and UFBP rendering plants than Foyle Proteins, the only other Category 1 rendering plant in NI; and
 - some NI meat processors send materials to renderers in ROI, and *vice versa*, and some NI meat processors send materials to renderers located in Scotland and the North of England.⁴¹

Catchment areas

73. Many third parties which responded to the CMA's merger investigation emphasised the importance of transport costs. One third party told the CMA that transport costs could be between £5 per tonne and £35 per tonne, depending on the distance travelled, and these estimates were confirmed by other third parties. Based on these estimates, transport costs could be equivalent to up to around

³⁸ M.6285 – Saria/Danish Crown/Daka JV, European Commission decision of 29 June 2012, paragraph 45.

³⁹ That is, customers whose shareholders also have shareholdings in Linergy.

⁴⁰ Parties' response to the CMA issues letter, paragraph 71.

⁴¹ See also Linergy's submission dated 30 January 2015.

40–65% of the price charged to meat processors (depending in part on the customer's size).

74. Given this evidence, the CMA believes it appropriate to use the geographic catchment area within which the great majority of the Parties' customers are located as a starting point for determining the appropriate frame of reference.
75. In its March 2012 decision, the OFT excluded Linergy's shareholder meat processors when establishing 80% catchment areas. The OFT said this was because shareholders may take into account the need of their associated rendering plant to achieve adequate throughput to cover its fixed costs. Therefore, the fact these firms use renderers which are located at significant distances (eg in the south of the ROI) may not be indicative of the competitive constraint these renderers pose for independent customers in NI.⁴² The OFT applied this reasoning equally to vertically integrated meat processor/renderers and customers linked through shareholdings.⁴³
76. This reasoning is supported by evidence from the Parties' internal documents, eg that Linergy's shareholder meat processors supplied Category 3 material to Linergy prior to July 2012 in order to '[redacted]', despite the shareholder meat processors suffering '[redacted]'.⁴⁴
77. For these reasons the CMA has not placed much weight on the behaviour of shareholder customers when considering which alternative renderers provide a competitive constraint on the Parties or when assessing the distances over which renderers are competitive. The CMA has put more weight on evidence of actual choice of suppliers by independent meat processors. The CMA has also put more weight on the 80% catchment areas for the Parties calculated excluding Linergy's shareholder customers.
78. The CMA found that 80% of UFBP's customers (by volume) are within [70–80] miles of its plant (or within [70–80] miles if Linergy's shareholder customers are excluded), and that the only alternative renderer within that 80% catchment area is Linergy. The CMA found that 80% of Linergy's customers (based on sales by value in 2014) are within [70–80] miles of its plant (or within [45–55] miles if Linergy's shareholder customers are excluded). This evidence suggests that

⁴² OFT's March 2012 decision, paragraph 58.

⁴³ OFT's March 2012 decision, paragraph 55.

⁴⁴ Parties' response to the CMA issues letter, p11.

rendering plants are competitive over distances of approximately [45–80] miles, and progressively less competitive as the distance travelled increases.

79. The closest ROI renderer to the Parties is College Proteins in Meath (a Category 1 plant), which is located 57 miles from Linergy and 78 miles from UFBP. However, the CMA found that very few NI meat processors use College Proteins and the CMA's market investigation found that College Proteins is not perceived as a viable alternative to the Parties. Moreover, given the location of the plants, the CMA believes that College Proteins could only exert a potential competitive constraint over a limited part of the Parties' catchment areas. For these reasons, the CMA believes that College Proteins is unlikely to exert a sufficient competitive constraint to prevent unilateral effects post-Merger.
80. As a further cross-check, the CMA assessed how far it might be profitable to transport animal by-products in response to a small but significant non-transitory increase in price (**SSNIP**).⁴⁵ The average payment for Category 3 material (excluding feathers) was £[~~xxx~~] per tonne (£[~~xxx~~] for non-shareholder customers).⁴⁶ A 5% price change on the average price per tonne would therefore be £[~~xxx~~]. Using Linergy's median transport costs of £[~~xxx~~] per tonne suggests that a SSNIP would result in an economic additional transportation distance of only [5–10] miles.⁴⁷ On the basis of this evidence, the CMA believes that a hypothetical monopolist could increase the price charged in NI by 5% without facing significant additional competition by renderers located further away in the ROI or GB.⁴⁸

⁴⁵ The CMA used the SSNIP test to assess whether the candidate frame of reference was too narrow, and should be extended to included renderers outside the identified catchment area. The Parties submitted that it was inappropriate to use the SSNIP test because renderers are customers of fallen and non-fallen stock materials, not suppliers. However, the CMA considers that any given instance of a meat processor sending material to a renderer effectively comprises two transactions: the supply of material to the renderer, and the supply of an approved disposal service to the meat processor. Where input customers receive a payment (ie gate credit) from a renderer, this may comprise a gate fee for the disposal service and a gate credit for the material. Whether the net value of those two services is positive or negative says little about whether a service has been provided.

⁴⁶ The CMA calculated these average payments based on weighted averages calculated using UFBP's total annual volumes of bone, soft and fat material and the prices set for individual customers for those types of material as at December 2014.

⁴⁷ This assumes that all transport costs vary with the distance covered.

⁴⁸ The Parties referred to evidence submitted during the OFT's March 2012 investigation that two of UFBP's customers switched supply of their Category 3 materials to renderers in ROI in response to a 100% price increase by UFBP in January 2012. The Parties said that the CMA could not dismiss the significance of this evidence in the present investigation on the ground that the price increase exceeded a 5% SSNIP. The Parties told the CMA that the SSNIP test must be applied on the basis of the competitive price level but, prior to the 100% price increase, UFBP had been pricing well below the competitive level. (See Parties' response to the CMA issues letter, paragraph 75.) With respect to the frame of reference, the CMA notes that, in most cases, a hypothetical monopolist test would be conducted relative to prevailing prices (see [Merger Assessment Guidelines](#), paragraph 5.2.12). UFBP's prices, even if below the competitive level, were the prevailing prices at the time. Moreover, the OFT's March 2012 decision

Trade flows

81. The CMA considered whether there is evidence of cross-border trade flows between NI and ROI, and between NI (and, in some cases, the ROI) and Scotland, and whether this evidence supports a geographic frame of reference broader than NI, taking into account the distorted incentives of vertically integrated meat processors (see paragraphs 75 to 77).⁴⁹
82. Linergy submitted that ‘whether or not product is shipped between locations does not necessarily say anything about the relevant geographic market because the presence or absence of trade flows between two areas is neither a necessary nor a sufficient condition to establish whether or not they constitute a single market.’⁵⁰ However, to extend the frame of reference to GB and/or the ROI, the CMA would need to see evidence that renderers located in this broader area can and do compete for customers located in NI on terms similar to those offered by renderers in NI. If trade flows are limited or exceptional then this might imply that renderers located in GB and/or the ROI cannot constrain NI renderers to the same extent as renderers located in NI. Therefore, the CMA has sought to understand not merely the volume and direction of cross-border trade flows but also the reasons underlying these flows, and whether in light of these reasons, it is appropriate to use a broader geographic frame of reference than the OFT used in its March 2012 decision.
83. During its merger investigation, the CMA found the following evidence of cross-border trade flows:
- Some NI meat processors send materials to their own rendering plants in the ROI.
 - [redacted] meat processors located in NI are sending materials to a renderer in Scotland. [redacted]
 - [redacted] meat processor in NI [redacted] to a renderer in the ROI.
 - [redacted] other NI meat processors active in specific areas [redacted] use a renderer in the ROI for part of their requirements.

concluded that the price increase was profitable. The CMA has considered the significance of this incident further in the competitive assessment section of this decision.

⁴⁹ See [Merger Assessment Guidelines](#), paragraph 5.2.23.

⁵⁰ Parties’ response to the CMA issues letter, paragraph 67.

- One respondent to the CMA's merger investigation believed that some hunts operating in the ROI, which collect fallen stock found on farmers' land, may send this fallen stock to renderers in NI.
84. Contrary to Linergy's submission, the CMA did not find any evidence that NI meat processors were sending materials to the North of England.^{viii} Rather, a renderer active in England told the CMA that the Merger would have little effect on the processing of animal by-products in GB because the cost of transporting material between the UK and Ireland was too high. One customer based in NI told the CMA that a renderer in Northern England might be an alternative option but the customer had never used this renderer and did not know where it was based.
85. The CMA notes that there appears to be currently more cross-border trade in animal by-products than the OFT found in its March 2012 decision. However, the CMA believes it is necessary to exercise caution in considering how customers' current conduct informs the assessment of the competitive effects of the Merger against the counterfactual (in which Linergy and UFBP would each have had a Category 1 and Category 3 plant). UFBP currently has the only active Category 3 plant in NI; and Linergy operates one of only two large-scale Category 1 rendering plants in NI. Customers confirmed that they have very limited rendering options in NI. Therefore, current prices in NI may already be substantially above the prices which would have prevailed in the counterfactual (eg because the Parties have already raised prices above competitive levels). If so, the willingness of some customers to send materials to renderers in Scotland or the ROI might overstate the extent to which, in the counterfactual, renderers in Scotland or the ROI would compete with the Parties.
86. The CMA found that some of the independent meat processors which send material to Scotland had only begun doing so recently (ie in the first half of 2015). The CMA therefore believes that some of the trade flows to Scotland may be at least in part an effect of the Merger. One customer confirmed that it is sending materials to Scotland in part because of its concerns regarding the Merger.
87. Several parties said that the high transport costs for shipping material to GB made it prohibitive to use renderers in GB, including in Scotland. For example, one customer told the CMA that it would only consider sending materials across the Irish Sea for rendering in exceptional circumstances given the transport costs, environmental concerns and the risk of disruption to supply.

88. For all these reasons, the CMA does not believe that there is sufficient evidence to include renderers in Scotland, or elsewhere in GB, within the geographic frame of reference. The CMA believes that the evidence of customers in NI sending animal by-products and fallen stock to Scotland is consistent with renderers in Scotland constituting a limited out-of-market constraint.
89. The CMA also considered the extent to which renderers located in the ROI would constrain the Parties in the counterfactual and whether the geographic frame of reference should be widened to include them.
90. The CMA notes that UFBP did not send WD Meats' Category 1 material to renderers outside the ROI after UFBP closed its Category 1 plant. Rather, UFBP sent this material to Linergy and Foyle Proteins (see paragraph 124 below).
91. The CMA is aware of four cases of meat producers located in NI sending some of their material to renderers in the ROI. However, one of these cases relate to a meat producer sending material to a renderer in the same group. Moreover, it is unclear whether these flows would exist under the counterfactual scenario. Linergy provided data which showed that around [X]% of its Category 1 material comes from the ROI but [X] of this material is sent by customers with direct or indirect shareholdings in Linergy. As explained above (see paragraphs 75 to 77), the CMA does not believe that these trade flows are informative on the extent of the constraint on renderers in NI by renderers in the ROI.
92. The CMA has sought to understand whether there are obstacles to greater cross-border flows between meat processors and rendering plants located in NI and the ROI. One renderer in the ROI told the CMA that renderers located in the ROI did not compete strongly with NI renderers for animal by-products from NI customers for a number of reasons: (i) euro/sterling exchange rates (the meat processor would receive payments for their materials in euros but would need to convert this into sterling); (ii) regulatory restrictions are tighter in the ROI, in particular for fallen stock; and (iii) NI is too far away from the ROI for the cross-border transportation of animal by-products to be commercially viable.
93. Third parties gave mixed views on the importance of exchange rates. Two respondents told the CMA that exchange rates made cross-border trade less attractive; however, one ROI renderer was uncertain whether exchange rates materially affected trade flows within the island of Ireland, and one NI renderer told the CMA that, provided a renderer had an import/export licence, the island of Ireland was effectively a single land mass.

94. One ROI renderer told the CMA that it believed regulatory restrictions made it difficult to move animal by-products and fallen stock between NI and the ROI (particularly cattle). However, another respondent told the CMA that there were no such restrictions. The CMA found evidence that regulatory restrictions are stricter with respect to fallen stock than for other animal by-products.⁵¹
95. Many third parties cited transport costs as being a significant factor limiting cross border trade flows. For this reason, the CMA believes that ROI renderers which are located significantly further away from NI customers than the Parties are unlikely to constrain the merging parties sufficiently for them to be included in the geographic frame of reference. In contrast, ROI renderers located closer to the border with NI would be likely to provide a stronger constraint, in particular for customers located close to or south of Linergy's and UFBP's plants.
96. The CMA notes that no ROI renderers which responded to the CMA's merger investigation indicated plans to expand their activities in NI. One ROI renderer told the CMA that, because of the high degree of vertical integration in NI, the NI meat processors controlled much of the bidding for animal by-products, and remaining volumes of material available from independent meat processors in NI were too small to be commercially attractive.
97. On the basis of the evidence before it, the CMA does not believe that there is a sufficient basis to include ROI renderers within the geographic frame of reference.
98. For the reasons set out above, the CMA does not believe it has found sufficient evidence to justify departing from the geographic frame of reference used in the OFT's March 2012 decision, ie:
 - The processing of Category 1 non-fallen stock: the whole of NI.
 - The processing of Category 3 non-fallen stock: the whole of NI.
 - The processing of fallen stock: no wider than NI, and potentially as narrow as just over 50 miles from the processing plant.

⁵¹ For example, for fallen stock over the age of 48 months, farmers must contact the operator of an approved TSE site within 24 hours of the animal's death in order to make arrangements for the animal to be collected and disposed of for the purposes of TSE testing. See [DARD, *Fallen Animals – Safe Disposal*](#).

99. The possibly narrower frame of reference for fallen stock is due to the greater weight of this material.
100. However, the CMA has taken into account constraints from renderers outside NI in its competitive assessment where the evidence supports the existence of such a constraint.

Output side

101. In the OFT's March 2012 decision, the OFT did not consider it necessary to form a definitive view on the relevant geographic frame of reference for the output side. The merger parties had submitted that their tallow and MBM was sold throughout the UK and in some cases to other European countries. In Saria/Danish Crown/Daka JV, the European Commission found evidence that the market may be regional and could be limited to certain Northern European Member States. The European Commission left open the precise geographic market definition but indicated that the market was likely to be narrower than EEA-wide for Category 1 outputs and broader than national for Category 3 outputs.⁵²
102. In the present case, Linergy told the CMA that the geographic frame of reference for Category 1 tallow and Category 1 MBM is at least as wide as the UK and Ireland. Linergy and SAPI told the CMA that UFBP sells Category 3 tallow and MBM on a Europe-wide or wider basis. SAPI told the CMA that it produces and trades MBM and tallow on a worldwide basis. SAPI said that it and its subsidiary, Nuova Campari, purchase tallow and MBM from many different companies located all over Europe and worldwide, and that hundreds of companies trade in tallow and MBM in Europe alone.
103. Third parties told the CMA that there was little demand for tallow from customers located in UK and the ROI. Most renderers export tallow to mainland Europe, and in particular to customers located in The Netherlands, Belgium, and Germany. One third party told the CMA that it sourced tallow from all over Europe, and had around 120 suppliers at any one time. Another third party told the CMA that the markets for MBM and tallow were at least Europe-wide.
104. Based on this evidence, the CMA believes that the geographic frame of reference for rendering outputs is broader than the UK and could be as broad as

⁵² M.6285 – Saria/Danish Crown/Daka JV, European Commission decision of 29 June 2012, paragraphs 51–52.

EEA-wide or at least Northern Europe. However, the CMA has not found it necessary to conclude in this regard because no competition concerns arise on either an EEA-wide or Northern Europe-wide basis.

COMPETITIVE ASSESSMENT

105. The CMA assessed the competitive effects of the Merger against the counterfactual, ie that each of Linergy and UFBP operates both a Category 1 and a Category 3 plant. The CMA's assessment focused on six theories of harm (TOH):

- **TOH 1.** Horizontal unilateral effects in relation to the processing of Category 1 (non-fallen stock) animal by-products.
- **TOH 2.** Horizontal unilateral effects in relation to the processing of Category 3 (non-fallen stock) animal by-products.
- **TOH 3.** Horizontal unilateral effects in relation to the processing of fallen stock.
- **TOH 4.** Vertical effects in relation to the processing of non-fallen stock (Category 1 and 3) and fallen stock for meat processors which compete with the Parties' shareholder meat processors.
- **TOH 5.** Horizontal unilateral effects in relation to the supply of outputs from the processing of Category 1 and Category 3 (non-fallen stock) animal by-products and fallen stock.
- **TOH 6.** Coordinated effects in relation to the processing of Category 1 animal by-products and fallen stock.

106. The structure of the competitive assessment is as follows: Section I considers the horizontal TOH for non-fallen (Category 1 and Category 3) and fallen stock; Section II considers possible vertical issues (TOH 4); Section III considers the horizontal TOH on the output side (TOH 5); and Section IV considers possible coordinated effects (TOH 6).

Section I: Horizontal issues on the input side

107. Section I considers three TOH relating to horizontal unilateral effects in non-fallen (Category 1 and 3) and fallen stock. This section discusses separately for each

TOH the Parties' plants, their shares of supply, the closeness of competition and alternative constraints. It then provides a single discussion of countervailing factors. It concludes with a single conclusion for all three TOH.

108. Horizontal unilateral effects may arise where the removal of one party as a competitor may allow merging parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered factors such as: (i) the number of plants within the relevant geographic frame of reference; (ii) shares of supply; (iii) closeness of competition between the Parties; and (iv) competitive constraints from alternative suppliers (both within and outside of the frame of reference).

TOH 1: Horizontal unilateral effects in relation to the processing of Category 1 (non-fallen stock) animal by-products

Number of plants

109. In its March 2012 decision, the OFT found that the merging parties would operate two of the three Category 1 animal by-products processing plants in NI, with Foyle Proteins being the only remaining competitor in Category 1 processing in NI.
110. Linergy identified the following possible recent entrants in the processing of Category 1 animal by-products in NI: Envirocare, Route Hunt, and Mr H Cochrane.⁵³
111. Envirocare is situated in Omagh in the west of Northern Ireland, around 60 miles from the Parties' plants.^{ix} Linergy told the CMA that Envirocare has a weekly capacity of 70 tonnes,⁵⁴ which compares to Linergy's total weekly capacity at its Category 1 plant of approximately 1,800 tonnes⁵⁵ (as estimated by Linergy). [X] On the basis of this evidence, the CMA believes that Envirocare does not exert any material competitive constraint on the Parties. The CMA also found that neither Route Hunt nor Mr H Cochrane are active at the same level of the supply

⁵³ Linergy's submission dated 4 March 2015. Linergy told the CMA that it identified Route Hunt and Mr H Cochrane using a list of registered animal by-products premises on the DARD website.

⁵⁴ Linergy's submission dated 14 January 2015.

⁵⁵ Linergy's submission dated 5 February 2015.

chain as the Parties, and believes that neither of these parties is a competitive constraint on the Parties.⁵⁶

112. For the reasons set out above, the CMA does not believe that any of the entrants identified by the Parties would competitively constrain the merged entity. The CMA therefore believes that, as against the counterfactual, the Merger would result in a reduction from three (Linergy, UFBP and Foyle Proteins) to two (Linergy/UFBP and Foyle Proteins) competitors in the supply of Category 1 animal by-product processing in NI.

Pricing

113. The Parties submitted pricing data which showed that the gate fee charged by Linergy for Category 1 material increased significantly shortly after UFBP closed its Category 1 plant. The Parties said that this price increase coincided with a decrease in output prices for category 1 tallow and MBM, such that Linergy's total revenues per tonne of material collected actually decreased. The Parties said that this evidence of an effective price decrease was inconsistent with the proposition that the closure of UFBP's Category 1 plant enabled Linergy to exert market power.
114. The CMA disagrees with this conclusion for the following reasons:
115. First, there was no clear trend in Category 1 output prices at the time Linergy implemented the increase in gate fees (in November 2012) (see Figures 1 and 2). Prices for MBM decreased in the first half of 2012, but then rebounded to their initial level in October 2012. Prices for tallow also decreased in the first half of 2012, but then increased slightly in the second half of the year, while remaining volatile. MBM and tallow prices decreased in 2013, but there is no indication that this trend was anticipated by Linergy at the time it decided to increase its price.

Figure 1: Average gate fees and MBM prices

⁵⁶ DARD's website identifies Route Hunt and Mr H Cochrane on a list of 'Registered ABP Premises including Haulier[s]'. They are categorised as 'collectors and final users' of Category 2 and/or 3 animal by-products. See [DARD list of approved premises](#). DARD's website identifies all approved companies active in the animal by-products sector ([Approved Premises](#)). The website lists companies active in processing of non-fallen stock and fallen stock, including the Parties, in a different document: [Lists of approved plants in Northern Ireland](#). The Parties do not feature on this list, nor do any other NI renderers eg ABP or Moy Park. The CMA found that Route Hunt is a local hunt in the North Antrim and Coleraine area, which does not compete with the Parties in the processing of Category 1 (non-fallen stock) animal by-products but has in the past sent materials to UFBP for processing. No third party identified Route Hunt or Mr H Cochrane as a competitor to the Parties.



Source: Linergy volume and revenue data; CMA calculations.



Figure 2: Average gate fees and tallow prices



Source: Linergy volume and revenue data; CMA calculations.



116. Second, output prices are only one of the factors which affect the profitability of rendering, and the Parties have not provided sufficient information on Linergy's other costs to form a view on how its margins evolved over time.
117. Third, even if verified, the observation that Linergy did not fully pass-through increases in its costs is not inconsistent with the proposition that it had a degree of market power (or indeed, that this market power increased over the period). Even if Linergy and UFBP competed against each other before the Merger they might have had a degree of market power due to high concentration and geographic differentiation. Economic theory predicts that a firm with market power will only pass-through part of the cost increases it incurs. Moreover, the Parties have had plans to merge since 2011 and it is possible that the prices observed in 2012 already reflected the effect of weakened competition between them.

Shares of supply

118. In the March 2012 decision, the OFT did not calculate individual shares of supply for the processing of Category 1 material. Instead, the OFT calculated shares of supply based on the number of all non-fallen stock customers which Linergy and UFBP supplied. The OFT concluded that the figures showed that the merging parties were both significant competitors in NI, providing animal by-product processing to over half of meat processors. The OFT cautioned, however, that the shares of supply: (i) did not distinguish between Category 1 and Category 3 material; and (ii) did not take account of the size of customers.
119. In the present case, the Parties submitted share of supply data. However, the CMA has reservations as to the representativeness and usefulness of this data for the purposes of its competitive assessment. These reservations are set out fully in relation to the processing of Category 3 material below (see paragraphs 144 to 148). The Parties used the same methodology in relation to share of

supply data for the processing of Category 1 material, and therefore the CMA has the same concerns.

120. In light of these reservations, the CMA believes that it cannot place significant weight on share of supply data in this case.

Closeness of competition

121. The OFT's March 2012 decision found that the Parties were each other's closest competitor (relating to Category 1 and Category 3 material taken together). This finding was based on the following considerations:⁵⁷

- Linergy and UFBP were each other's geographically closest competitors and were the closest renderers to most customers in NI. The only other competitor, Foyle Proteins, was located in the far north-west of NI.
- More than 80% of the merging parties' business would be unconstrained by a NI renderer post-merger, and a substantial majority of the remaining proportion of the merging parties' business would need to switch to Foyle Proteins in response to a SSNIP in order to make it unprofitable.
- A large input customer in NI told the OFT that the merging parties were each other's closest competitor and were its only options for animal by-product processing. Other third parties confirmed that the merging parties were close competitors.
- Linergy's spare capacity was much greater than that of Foyle Proteins. Third parties told the OFT that Foyle Proteins' spare capacity was insufficient to serve UFBP's largest customers if they wished to switch.

122. In the present case, the Parties submitted that they are not each other's closest competitor because their activities do not currently overlap: Linergy has a Category 1 plant, whereas UFBP has a Category 3 plant. However, in the counterfactual against which the CMA is assessing the effects of the Merger, each of Linergy and UFBP would operate both a Category 1 and a Category 3 plant.

123. The CMA notes that, in the counterfactual, the Parties would be each other's geographically closest competitor operating a Category 1 plant (35 miles apart).

⁵⁷ OFT's March 2012 decision, paragraphs 104–108.

The only remaining competitor in NI, Foyle Proteins, is located in the far north-west of NI (around 60 to 70 miles away from the Parties). Third parties confirmed that, when UFBP operated a Category 1 plant, the Parties were each other's geographically closest Category 1 competitor. One NI customer told the CMA that it would not consider using Foyle Proteins because it was too far away. The CMA has not found evidence of any significant instances of meat processor entry or exit in recent years which have materially changed the geographic distribution of the Parties' customers.

124. The CMA considered whether there is evidence of customers switching supply to Foyle Proteins, which could indicate that Foyle Proteins would compete closely with the merged entity. UFBP told the CMA that, following the closure of its Category 1 plant, it arranged for Linergy and Foyle Proteins to process WD Meats' Category 1 material.⁵⁸ However, both WD Meats and UFBP said that UFBP made these arrangements for WD Meats, and WD Meats said that UFBP retained control over where WD Meats' Category 1 material is processed. For these reasons, the CMA has placed little weight on Foyle Proteins' acquisition of Category 1 material from WD Meats as an example of customer switching.
125. Several third party customers told the CMA that the Parties had been each other's closest competitors. One third party customer told the CMA that Linergy was currently its only viable option for disposing of its Category 1 material (ie since the closure of UFBP's Category 1 plant) because it would be prohibitively expensive to transport its small volumes to Foyle Proteins. This third party told the CMA that it would not switch part or all of its supply to Foyle Proteins in response to a SSNIP. Another third party customer told the CMA that, post-Merger, there would be little, if any, competition on price for the disposal of animal by-products because the majority of disposal facilities for Category 1 and Category 3 would be controlled by the Parties.
126. One customer expressed concern that Foyle Proteins lacks sufficient spare capacity to serve meat processors which are independent of the Parties. However, the CMA found some evidence indicating that Foyle Proteins' spare capacity may be similar to that of Linergy. Some third parties said that a renderer would need to retain some spare capacity in order to manage seasonal fluctuations and volumes supplied by other renderers in the event of a

⁵⁸ UFBP's submission dated 5 March 2015. UFBP also told the CMA that a second customer, Western Brand, used UFBP's category 1 plant to process Category 3 feathers. As a result of modifications that SAPI has made to UFBP's Category 3 process, UFBP can no longer sterilise feathers at its plant. UFBP has therefore arranged for College Proteins (based in the ROI) to process Western Brand's feathers.

breakdown at their plants. Given this mixed evidence, the CMA was unable to conclude at this stage whether Foyle Proteins would have the capacity to serve a large new customer.

127. Recent internal documents submitted by the Parties do not discuss competition between Linergy and UFBP in Category 1 processing, which is unsurprising given that UFBP does not currently operate a Category 1 plant. For this reason, the CMA has placed little weight on these documents in this regard.⁵⁹
128. On the basis of the evidence before it, the CMA believes that, in the counterfactual, the Parties would have been each other's closest competitor in the processing of Category 1 (non-fallen stock) animal by-products and that Foyle Proteins would have been a less close competitor to each of the Parties. There would have been no other Category 1 competitors in NI.

Alternative constraints

129. Unilateral effects are more likely where customers have little choice of alternative suppliers. The CMA has considered whether Category 1 renderers outside NI may constrain Category 1 renderers in NI.

Scotland

130. The Parties and third parties identified recent examples of customers switching a portion of their Category 1 supply from the Parties to a renderer in Scotland. One customer told the CMA that it had been approached by a Scottish renderer offering better prices than Linergy.
131. However, the CMA believes that the balance of the evidence found during its investigation shows that competition from renderers in Scotland will not be sufficient to constrain the Parties post-Merger.
 - Most customers which have switched supply to a Scottish renderer have switched only a portion of their supply and continue to use the Parties to process the majority of their animal by-product materials. One renderer told the CMA that they believed at least one of these customers used the Scottish renderer to obtain better prices from Linergy.

⁵⁹ The CMA notes that Linergy's internal documents also do not [REDACTED]. The only reference to [REDACTED], which describe exploratory discussions with [REDACTED] regarding a possible plan to [REDACTED].

- A third party told the CMA that it may not be commercially viable for smaller meat processors to use renderers in Scotland, as they would not be able to fill the vehicles used to transport the materials across the Irish Sea. A NI customer which had been approached by a Scottish renderer expressed concern that its volumes would not be sufficient.
- Several third parties, including customers and renderers, told the CMA that sending waste materials to Scotland for processing was not a viable long-term solution. The third parties cited additional transport costs associated with moving material across the Irish Sea and the risk of introducing disruption into the meat processor's supply arrangements.⁶⁰
- Several third parties told the CMA that they did not think a Scottish renderer could compete for material in NI while charging commercially viable gate fees. One renderer estimated that transporting materials across the Irish Sea would more than triple its transport costs.
- [✂]

132. The CMA notes that the current level of activity of Scottish renderers in NI may be at least in part an effect of the Merger. Given in particular the high costs to transport material to Scotland, and the associated risks of this transportation, it appears unlikely that Scottish renderers would have gained as much business from NI in the counterfactual. The CMA believes that the increased flows to Scotland are unlikely to have prevented unilateral horizontal effects arising from the Merger, but may represent a consequence of those effects.
133. On the basis of this evidence, the CMA does not believe that Scottish renderers would, under the conditions of competition prevailing in the counterfactual, constrain the Parties sufficiently to prevent a realistic prospect of an SLC arising through unilateral effects as a result of the Merger.

The ROI

134. The Parties submitted that the response of UFBP's customers to its price rise in early 2012 (when two out of three of its main meat processor customers switched

⁶⁰ Ships booked to transport by-products could be delayed in the port by bad weather; in the customer's experience, this had happened on a number of occasions. If ferry transport was delayed, the ferry operator might refuse to transport the by-products on the grounds of odour. The producer would then need to delay further slaughtering activities until it had cleared the backlog of by-products. Furthermore, in the event of disease outbreak, cross-border transportation of by-products might be prohibited entirely, as had been the case during the foot-and-mouth outbreak.

to renderers in the ROI) indicates that customers could switch to renderers in the ROI in the event of a unilateral price increase post-Merger.

135. In the March 2012 decision, the OFT gave several reasons why it did not believe that the response of those two customers was reliable evidence of a competitive constraint from outside NI:
- the customers were not necessarily representative of other customers, in particular because one of the two customers switched its Category 1 supply to its own in-house rendering operations;
 - the price increase was unusually large and therefore did not provide evidence as to how customers would have reacted to a smaller price rise (ie a SSNIP); and
 - it was likely that increased transport costs associated with moving materials across the border to the ROI would have made switching in response to a smaller price not cost effective.⁶¹
136. The CMA has found no evidence which challenges these findings. The CMA's investigation in the present case has confirmed the importance of transport costs and several ROI renderers told the CMA that they did not compete in NI and had no plans to do so.
137. With the exception of some instances of internal supply, the CMA has not identified any examples of NI customers switching a portion of their Category 1 materials from the Parties to a renderer in the ROI. As discussed above (see paragraphs 134 to 141), third parties indicated several reasons why it may be unattractive for ROI renderers to compete with NI renderers, including euro/sterling exchange rates, regulatory restrictions, and transport costs.
138. UFBP told the CMA that, following the closure of its Category 1 plant, it had a contractual responsibility to find alternative arrangements for WD Meats for the disposal of WD Meats' Category 1 material.⁶² UFBP approached only one renderer in the ROI, College Proteins, which did not accept the material. The Parties told the CMA that UFBP did not approach any other renderers in the ROI.
139. College Proteins is the most closely-located independent operator in the ROI to WD Meats. Therefore, the CMA believes that College Proteins' refusal to

⁶¹ OFT's March 2012 decision, paragraph 111.

⁶² UFBP's submission dated 5 March 2015.

compete for WD Meats' volumes and UFBP's decision not to approach other ROI renderers suggests that ROI renderers do not competitively constrain NI renderers for Category 1 material.

140. The Parties cited an internal Linergy Strategy Presentation (submitted to Linergy's Board in May 2014) which describes the rationale for the Merger. The document identifies one benefit of the Merger as enhancing the Parties' ability to defend against [X]. However, the document was generated in May 2014, after the MOU and during the period in which the Merger was in contemplation. The CMA has therefore not attributed much weight to this evidence.
141. On the basis of this evidence, the CMA does not believe that ROI renderers would, under the conditions of competition prevailing in the counterfactual, constrain the Parties sufficiently to prevent a realistic prospect of an SLC arising through unilateral effects as a result of the Merger.

TOH 2. Horizontal unilateral effects in relation to the processing of Category 3 (non-fallen stock) animal by-products

Number of plants

142. In the March 2012 decision, the OFT noted that UFBP had the only Category 3 plant in NI. In the OFT's counterfactual, Linergy would have built its own Category 3 plant in competition with UFBP. Compared with this counterfactual, the combination of Linergy and UFBP would be a merger to monopoly.
143. The CMA has not found that any renderers have constructed new Category 3 plants in NI since March 2012. Therefore, as in the March 2012 decision, the CMA believes that, compared with the counterfactual, in which Linergy would have operated its own Category 3 plant, the combination of Linergy and UFBP represents a merger to monopoly. The CMA has taken into account processing plants operated by non-renderers and/or renderers outside NI in its assessment of alternative constraints.

Shares of supply

144. In the March 2012 decision, the OFT did not calculate individual shares of supply for the processing of Category 3 material. Instead, the OFT calculated shares of supply based on the number of all non-fallen stock customers which Linergy and UFBP supplied. The OFT concluded that the figures showed that the merging parties were both significant competitors in NI, providing animal by-product

processing to over half of meat processors. The OFT cautioned, however, that the shares of supply: (i) did not distinguish between Category 1 and Category 3 material; and (ii) did not take account of the size of customers.

145. The Parties submitted that UFBP processes [20–30]% of all Category 3 material produced in NI. To estimate the total market size, the Parties used data for the total number of livestock killed in NI and the average carcass weight of different types of animals, and made some assumptions about the ratio of live weight to carcass weight, and the ratio of Category 3 material to live weight. The Parties said that UFBP's [X] market share is evidence that most Category 3 material produced in NI is currently processed outside NI. The Parties argued on this basis that there is very little prospect of an SLC in the processing of Category 3 material.
146. However, the CMA has been unable to verify the assumptions used by the Parties to estimate this total market size. For example, the Parties submitted that the ratio of Category 3 material to live weight for bovine, ovine, and porcine livestock is [15–25]%, while information received from one third party indicates that this ratio may be closer to [10–20]% for bovine livestock (which represents roughly half of all livestock killed in NI in 2014). This indicates that the Parties may have overestimated the total market size and, consequently, may have underestimated their own market share.
147. Furthermore, while the CMA's investigation has confirmed that some meat processors currently use renderers located outside NI, it is unclear whether this would be the case in the counterfactual. UFBP is currently the only Category 3 renderer located in NI, so any customers looking for an alternative must use renderers located outside NI. This does not mean that the constraint exercised by these renderers on UFBP is as strong as the constraint which Linergy would have exercised on UFBP in the counterfactual. Customer views are consistent with this analysis (see paragraphs 130 to 141).
148. The CMA has therefore attributed little weight to the Parties' share of supply estimates.

Closeness of competition

149. The OFT's March 2012 decision found that the Parties were each other's closest competitor (considering Category 1 and Category 3 material together).

150. In the present case, the Parties submitted that they are not each other's closest competitor because their activities do not currently overlap: Linergy has a Category 1 plant, whereas UFBP has a Category 3 plant. However, in the counterfactual, against which the CMA is assessing the effects of the Merger each of Linergy and UFBP would operate both a Category 1 and a Category 3 plant.
151. In the counterfactual, the Parties would be each other's geographically closest competitor operating a Category 3 plant.
152. Although the CMA has not placed significant weight on the content of internal documents in relation to the processing of Category 1 materials, the CMA believes that internal documents are more informative in assessing the closeness of competition between the Parties in relation to Category 3 processing. This is because, while the Parties do not currently operate competing Category 3 plants, Linergy has historically processed some volumes of Category 3 material in its Category 1 plant. The CMA therefore considered the extent to which the Parties' internal documents identified each other as a competitor in Category 3 processing.
153. Some Linergy board minutes indicated that, notwithstanding the difference in facilities, it considered itself to compete with UFBP for Category 3 material:
- Linergy board minutes dated 3 July 2012 stated: '[redacted]'.⁶³
 - Linergy board minutes dated 27 September 2012 stated: '[redacted]'.⁶⁴
154. Linergy's internal documents did not identify any other renderers as a source of competition in the processing of Category 3 materials.
155. On the basis of this evidence, the CMA believes that, in the counterfactual, the Parties would have been each other's closest competitor in the processing of Category 3 (non-fallen stock) animal by-products in NI, and there would have been no other competitors in NI for this material.

⁶³ Minutes of Linergy board meeting of 3 July 2012.

⁶⁴ Minutes of Linergy board meeting of 27 September 2012.

Alternative constraints

156. The CMA has considered the following possible alternative constraints on the Parties:

- Category 3 renderers outside NI;
- fat/food processors and edible fat plants;
- pet food manufacturers;
- soup manufacturers; and
- anaerobic digestion plants.

Scotland

157. The CMA's merger investigation found that a few NI meat processors had recently switched a portion of their Category 3 animal by-products to a renderer in Scotland. However, for the reasons set out above (see paragraphs 130 to 133), the CMA does not believe that competition from renderers in Scotland is sufficient to competitively constrain the Parties post-Merger.

The ROI

158. The CMA has found evidence that one customer in NI is sending some of its Category 3 materials for processing to a renderer in the ROI. The customer told the CMA that this was because the ROI renderer had offered it a more competitive price. However, the CMA does not believe that the data provided by the customer supports this conclusion. [REDACTED]. Therefore, the CMA does not believe that this example indicates that ROI renderers (generally, or the specific ROI renderer in question) would constrain the Parties' behaviour post-Merger.

Alternative processors of Category 3 materials

159. A third party customer told the CMA that the services provided by alternative processors of Category 3 materials, such as pet food manufacturers, soup manufacturers, digestion plants and fat processors, were not close substitutes for the service provided by Category 3 renderers. It said that pet food manufacturers and soup manufacturers might have limited Category 3 supply requirements, and soup manufacturers also had high quality standards and were therefore more likely than a renderer to reject a load of Category 3 material. It said that only

certain types of Category 3 material could be sent to anaerobic digestion plants (eg stomach contents, sludges) and only then if the plant had both a Category 3 licence and a pasteuriser. The customer said that it would not send its fat to a fat processor or edible fat plant (eg Duncrue Food Processors) in response to a SSNIP by the merged entity (ie a reduction in the negative gate fee paid by the renderer), and added that it would only be likely to switch if the reduction in gate fee were in the order of 25–30%. The customer noted that, compared with sending by-products to a renderer, there were several additional steps a meat processor would need to take prior to sending its fat by-products to a food processor or edible fat plant (eg removing foreign bodies such as floor sweepings, boxing, freezing, removing gristle, and storing the fat), which would generate additional costs for the meat processor.⁶⁵

160. On the basis of this evidence, the CMA believes that alternative processors of specific Category 3 materials exert only a very weak constraint on Category 3 renderers, which are able to acquire and dispose of all Category 3 animal by-products.
161. The CMA believes that alternative constraints are not, individually or in aggregate, sufficient to constrain the Parties post-Merger in relation to the processing of Category 3 materials.

TOH 3. Horizontal unilateral effects in relation to the processing of fallen stock

162. Fallen stock is classified as Category 2 animal by-product material (as are manure and digestive material). There are no Category 2 rendering plants in NI and therefore fallen stock is generally rendered as Category 1 material. For this reason, much of the discussion above of competition and entry in relation to Category 1 non-fallen stock applies equally to fallen stock.

Number of plants

163. In its March 2012 decision, the OFT found that the merger represented a reduction in the number of competitors from three to two in the supply of processing for fallen stock in NI (the other competitor being Foyle Proteins). The Parties together accounted for a 93% share of supply in this segment (UFBP

⁶⁵ Linergy told the CMA that, in January 2011, it drew up plans to construct an edible fat plant on the same site as its Category 1 plant. However, Linergy's board cancelled these plans in April 2011 because it had resolved to construct a Category 3 plant, and the Category 3 plant was capable of processing a broader range of Category 3 by-products than the proposed fat plant.

[55–65]%; Linergy [30–40]%). On a narrower geographic frame of reference based on a catchment area of just over 50 miles, the transaction was a merger to monopoly. The OFT found that there were no alternative constraints from renderers outside NI.

164. In the present case, as well as Foyle Proteins, Linergy has submitted that there are three additional processors of fallen stock in NI: Envirocare, SC Hanna, and Castlehill Vets.
165. For the reasons stated above (see paragraph 111) the CMA does not believe that Envirocare is a competitive constraint on the Parties. Envirocare's weekly capacity of 70 tonnes for both Category 1 material and fallen stock is substantially less than the average weekly volume of fallen stock material processed across NI, ie approximately 330 tonnes.⁶⁶
166. As noted in the March 2012 decision, Castlehill Vets is a fallen stock collector, operating at a different level of the supply chain to renderers, and therefore cannot be regarded as a competitor to the Parties.⁶⁷
167. The CMA has found that SC Hanna is also a fallen stock collector and for the same reason cannot be regarded as a competitor to the Parties.
168. On the basis of this evidence, the CMA believes that, compared with the counterfactual (in which both Linergy and UFBP operate a Category 1 plant capable of processing fallen stock), the Merger would represent a reduction from three (Linerger, UFBP, Foyle Proteins) to two (Linerger/UFBP, Foyle Proteins) competitors in the processing of fallen stock in NI.

Closeness of competition

169. In its March 2012 decision, the OFT found that the Parties were the two leading renderers of fallen stock in NI and that Foyle Proteins was less conveniently located than the Parties for many customers. The OFT concluded that the Parties were each other's closest competitor.
170. In the present case, the CMA has tested the 2012 conclusion by using share of supply data provided by Linergy. Linergy submitted that its share of supply has increased to around [65–80]% since UFBP exited Category 1 processing,

⁶⁶ Linergy's submission dated 13 March 2015.

⁶⁷ March 2012 decision, paragraph 134.

implying that Linergy has gained [30–50]% of this segment since 2011. Using this data, the CMA estimated that the diversion ratio of fallen stock customers between UFBP and Linergy is around [45–75]%. This suggests a high degree of competition between the Parties.

171. The CMA understands that only Linergy and Envirocare have licenses for 48-month cattle sampling^{68,x} but, as noted above (see paragraphs 111 and 165), the CMA does not believe that Envirocare is a sufficiently material competitive constraint on the Parties.
172. On the basis of this evidence, the CMA believes that, in the counterfactual, the Parties would have been each other's closest competitor in the processing of fallen stock in NI.

Alternative constraints

173. The alternative constraints which are relevant to fallen stock processing are the same as those which are relevant to Category 1 (non-fallen stock) processing (see paragraphs 129 to 141). The CMA notes, in addition, that the regulatory framework for fallen stock is stricter than for other Category 1 materials.⁶⁹ The CMA therefore believes that alternative constraints from renderers outside NI are even weaker with respect to fallen stock than with respect to Category 1 material.

TOH 1-3: Countervailing factors

174. The CMA has considered whether buyer power and/or the threat of new entry/expansion by competitors may offset the horizontal unilateral effects concerns described in **TOH 1-3** above in relation to the supply of non-fallen stock animal by-products (Category 1 and Category 3) and fallen stock.

Buyer power

175. In the OFT's March 2012 decision, the OFT found in relation to non-fallen stock that any buyer power on the part of producers was likely to be offset by power on the part of the renderers because the regulatory regime dictates where animal by-products must be processed, and there is no option for large customers other

⁶⁸ In relation to bovine carcasses over 48 months of age, farmers must contact the operator of an approved TSE sampling site within 24 hours of the animal's death in order to make arrangements to have the animal collected and disposed of for the purpose of TSE testing. See www.dardni.gov.uk/fallen_stock_guidance_v1_july_11-2.doc.

⁶⁹ Regulations do not permit renderers outside NI to process NI fallen stock aged over 48 months. In addition, a third party told the CMA that fallen stock could not be transported by ferry.

than to use renderers. The OFT did not identify specific additional factors relevant to the consideration of buyer power in relation to fallen stock.

176. In the present case, the Parties submitted that meat processors based in NI could switch to other renderers located in the ROI and GB in response to a price increase by the merged entity. However, for the reasons explained above (see paragraphs 129 to 141), the CMA does not believe that processors outside NI would constrain the Parties sufficiently post-Merger to prevent horizontal unilateral effects in relation to non-fallen stock (Category 1 and Category 3) or fallen stock.
177. The CMA has therefore found no reason to support a different conclusion in relation to buyer power to that which the OFT reached in its March 2012 decision.

Barriers to entry and expansion

178. Entry or expansion of existing firms can mitigate possible unilateral effects resulting from a transaction and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁷⁰ In terms of timeliness, the CMA's guidelines indicate that the CMA will look for entry to occur within two years.⁷¹
179. In the OFT's March 2012 decision, the OFT found that barriers to entry, including the cost of building a processing plant and the time required to obtain planning permission, were sufficiently high that possible new entry could not be treated as a mitigating factor. The OFT found that barriers to entry were lower for existing renderers which could co-locate facilities on their existing sites but noted that the only other renderer active in NI was Foyle Proteins, and that Foyle Proteins was already active in Category 1, and therefore could only 'enter' in relation to Category 3.
180. In the present case, the CMA has tested the OFT's conclusions against evidence of recent entry/expansion in the processing of non-fallen stock (Category 1 and Category 3) and fallen stock. Linergy submitted the names of the following recent entrants: Envirocare (which Linergy told the CMA had been licensed since 2008 but only entered the fallen stock segment in 2013), Route Hunt/H Cochrane,

⁷⁰ [Merger Assessment Guidelines](#), paragraph 5.8.3.

⁷¹ [Merger Assessment Guidelines](#), paragraph 5.8.11.

Premier Proteins, Simply Soups, Munster Proteins, and Dublin Products. Third parties which replied to the CMA's merger investigation did not identify any recent or potential entrants.

181. In light of the evidence described above (see paragraphs 111 and 112), the CMA does not believe that Envirocare, Route Hunt or Mr H Cochrane could expand their operations to provide a sufficient competitive constraint to the merged entity [REDACTED]
182. Premier Proteins, Munster Proteins, Simply Soups and Dublin Proteins are located in the ROI. For the reasons explained above (see paragraphs 159 to 161), the CMA believes that renderers and non-renderers in the ROI will not constrain the Parties sufficiently post-Merger. Moreover, Linery told the CMA that there were no active processing operations at Munster Proteins or Premier Proteins.^{72,xi}
183. The CMA also considered whether Foyle Proteins would be likely to expand its operations and/or open a Category 3 plant. [REDACTED] Foyle Proteins also provided data to the CMA showing that it had spare capacity at its Category 1 plant, and that this had been the case for several years. The CMA therefore found no evidence that Foyle Proteins was likely to expand its Category 1 operations, or build a Category 3 plant, such that its entry/expansion would be timely, likely and sufficient.
184. The CMA has therefore found no reason to support a different conclusion in relation to barriers to entry and expansion to that which the OFT reached in its March 2012 decision. The CMA believes that it does not have sufficient evidence to conclude that entry or expansion will be timely, likely and sufficient, so as to mitigate any anti-competitive effects of the Merger.

Conclusion on TOH 1-3: Horizontal unilateral effects in non-fallen stock (Category 1 and Category 3) and fallen stock

185. Based on the evidence described above, the CMA believes that it is or may be the case that the Merger has resulted or may be expected to result in an SLC in relation to the processing of non-fallen stock (Category 1 and Category 3) and fallen stock in NI.

⁷² In addition, the CMA found that Premier Proteins has acquired an existing entrant (College Proteins) and that Simply Soups opened its plant more than five years ago.

Section II: Vertical issues

TOH 4. Vertical effects in relation to the processing of non-fallen stock (Category 1 and 3) and fallen stock for meat processors which compete with the Parties' shareholder meat processors

186. Mergers which are principally horizontal in character may have vertical effects if one or more of the merger firms also operates at a different level of the supply chain. The merged firm will generally need to have a significant position in the market for an SLC to arise from vertical effects.
187. The CMA has considered whether the Merger would give rise to an SLC by giving the merged entity the ability and incentive to foreclose competing, independent meat processors in NI (eg WD Meats, Ballymena Meats, Oakdale Foods) in order to advantage its shareholder meat processors (eg Linden, Dunbia), by refusing or charging a higher price to process their animal by-products.
188. In the March 2012 decision, the OFT found that there was insufficient evidence to identify an SLC in this regard.

Ability to foreclose

189. For the merged entity to have the ability to foreclose independent meat processors, (i) animal by-product processing must be an important input or represent a significant proportion of the meat processor's cost base; and (ii) the merged entity must be an important source of supply for the independent meat processor.
190. Linergy told the CMA that, in 2011, at the time that it was considering purchasing UFBP, Linergy's shareholder meat processors were sending their Category 3 material to Linergy's Category 1 plant for processing. The shareholder meat processors were therefore '[redacted]'.⁷³ The CMA believes that this evidence suggests that the Parties would, post-Merger, be in a position to disadvantage third party meat processors in NI which require Category 3 rendering facilities.
191. One third party meat processor told the CMA that if it does not have access to both Category 1 and Category 3 processing, it will be immediately unable to

⁷³ Parties' response to the CMA issues letter, p11.

slaughter livestock because animal by-products must be removed for processing on the day of slaughter. The third party said that customers purchasing fresh meat products often required continuous, rolling supply on a six or seven days per week basis, and that customers may be unwilling to work with a producer that could not guarantee continuous supply. The third party said that it was not possible for an independent meat processor to comply with disposal requirements in the event of an interruption in the supply of processing by removing the materials and temporarily refrigerating or storing them off-site. Another third party confirmed that there are no approved facilities in NI for storing Category 1 material.

192. Linergy submitted that a customer could defeat a foreclosure strategy by using renderers outside NI or non-renderers to dispose of their animal by-products and fallen stock. However, for the reasons stated above (see paragraphs 129 to 141 and 157 to 161), the CMA believes that it does not have sufficient evidence that renderers outside NI and/or non-renderers would be a viable option for customers.
193. On the basis of this evidence, the CMA believes that independent meat processors in NI are dependent on the Parties for at least part of their animal by-product disposal requirements, and that the Parties would therefore have the ability to foreclose independent meat processors which compete with the Parties' meat processors.

Incentive to foreclose

194. To assess whether the Parties would have an incentive to increase the prices charged to its rival meat processors, the CMA has considered whether the foreclosure strategy would be profitable for the merged entity.
195. Linergy told the CMA that it would not have an incentive to foreclose competitor producers post-Merger because non-shareholder animal by-product material represented around [60–70]% of its current volumes. It said that non-shareholder material was therefore valuable to the merged entity.
196. However, one meat processor submitted that any livestock not slaughtered by a foreclosed meat processor would be slaughtered by another meat processor and would ultimately be processed by the merged entity. The merged entity therefore would not suffer any loss of margin by pursuing a foreclosure strategy.

197. Given that the geographic frame of reference for procuring livestock for slaughter may be broader than the geographic frame of reference for the processing of animal by-products, it is not necessarily the case that, if a foreclosed meat processor in NI reduced the volume of livestock it acquired, these livestock would instead be acquired by a customer of the Parties. The livestock could instead be acquired by a meat processor outside NI (eg in the ROI). The by-products from the slaughter of these animals might then be processed by a renderer outside NI, in which case the merged entity would not re-capture the material lost from the foreclosed producers. However, based on Livestock & Meat Commission data for weekly cattle kills in NI in 2014, the CMA has calculated that only around 12% of Northern Irish livestock are not slaughtered in NI. An independent meat processor submitted that only around 4% of Northern Irish cattle are procured by producers in the ROI. On the basis of this evidence, the CMA believes that cross-border flows of livestock are unlikely to be sufficient to make a foreclosure strategy unprofitable for the merged entity.
198. For these reasons, the CMA believes that the merged entity would have the incentive to foreclose independent meat processors.

Effect

199. One third party told the CMA that independent meat processors accounted for around 22% of livestock procured in NI in 2014. This would suggest that the impact of the foreclosure strategy would be significant.

Conclusion on TOH 4: Vertical effects

200. On the basis of this evidence, the CMA believes that the Merger raises a credible vertical effects concern. However, in light of its conclusion in relation to TOH 1-3, it has not been necessary for the CMA to conclude on whether it is or may be the case that the Merger has resulted or may be expected to result in an SLC due to vertical effects in relation to the processing of non-fallen stock (Category 1 and 3) and fallen stock for meat processors which compete with the Parties' shareholder meat processors.

Section III: Horizontal issues on the output side

TOH 5. Horizontal unilateral effects in relation to the supply of outputs from the processing of animal by-product materials

201. The OFT's March 2012 decision found that there was no evidence that the Parties' market positions were significant in relation to the production of tallow or MBM. The OFT received no complaints regarding possible unilateral effects on the output side, and thought it likely that these outputs were constrained by other commodities.
202. In the present case, the Parties submitted that the correct frame of reference for Category 1 tallow and Category 1 MBM includes at least the UK and Ireland. Linergy estimated its share of supply at [0–10]% but said that this figure would be lower if other products that it believes compete with Category 1 outputs, such as biodiesel, heavy fuel oil, and natural gas, are included.⁷⁴ The Parties told the CMA that UFBP sells Category 3 tallow and MBM on a Europe-wide or wider basis.
203. The CMA has not found any evidence that the Parties would be in a position, post-Merger, to restrict the supply of certain outputs and/or raise their prices. Third parties told the CMA that tallow quality varied according to its fat content but that all tallow grades competed with a variety of alternative products, such as palm oil. Third parties told the CMA that output customers sourced MBM and tallow from a large number of producers (over 100) located all over Europe.

Conclusion on TOH 5: Horizontal Issues on the output side

204. Based on this evidence, the CMA does not believe that it is or may be the case that the Merger has resulted or may be expected to result in an SLC in the supply of outputs from the processing of animal by-product materials.

⁷⁴ Linergy's submission dated 13 February 2015.

Section IV: Coordinated effects

TOH 6. Coordinated effects in relation to the processing of Category 1 animal by-products and fallen stock

205. The March 2012 decision found that the merger would lead to further concentration in an already concentrated and vertically-integrated industry, and that this would enhance the conditions for coordination, which were already high. However, the OFT concluded that there was not enough evidence to conclude that there was a realistic prospect of an SLC as a result of coordinated effects.
206. In the present case, Linergy submitted that there were no good reasons for the CMA to reach a different conclusion to that reached by the OFT in its March 2012 decision, in particular because the relevant geographic frame of reference should include renderers outside NI. However, as set out above, the evidence the CMA has found does not justify departing from the geographic frame of reference that the OFT used in the March 2012 decision.
207. Several third parties expressed concern at the extent of vertical integration in the sector. One third party, a renderer in the ROI, told the CMA that this was one reason why it had not considered expanding its activities into NI. The third party said that the meat processors controlled much of the bidding for animal by-products. Another third party told the CMA that the supply chain was effectively run by the meat processors.
208. The CMA received one specific complaint in relation to possible coordinated effects. The third party told the CMA that if the Merger were allowed to proceed, there would be little incentive for the remaining renderer in NI, Foyle Proteins, to compete with the merged entity on price.

Conclusion on TOH 6: Coordinated effects

209. The CMA has found no reason to believe that the observations in the 2012 decision do not continue to apply as the Merger will lead to a further concentration in an already concentrated and vertically-integrated industry, which is likely to enhance the conditions for coordination, which are already high. However, in light of its conclusion in relation to TOH 1-3, it has not been necessary for the CMA to conclude on whether it believes that it is or may be the case that the Merger has resulted or may be expected to result in an SLC due to coordinated effects in relation to the processing of Category 1 animal by-products and fallen stock.

Decision

210. Consequently, the CMA believes that it is or may be the case that the Merger has created a relevant merger situation which has resulted or may be expected to result in an SLC within a market or markets in the UK.
211. The CMA therefore considers that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised pursuant to section 22(3)(b) whilst the CMA is considering whether to accept undertakings under section 73 of the Act in lieu of a reference. Pursuant to section 73A(1) of the Act, Linergy has until 24 July 2015 to offer an undertaking to the CMA that might be accepted by the CMA under section 73(2) of the Act. If Linergy does not offer an undertaking by this date, or if Linergy indicates before this date that it does not wish to offer an undertaking, or if pursuant to section 73A(2) of the Act the CMA decides by 31 July 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered by Linergy, or a modified version of it, then the CMA will make a reference for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Andrea Coscelli
Executive Director – Markets and Mergers
Competition and Markets Authority
17 July 2015

ⁱ Paragraph 6: ‘they’ refers to Linergy and UFBP.

ⁱⁱ Paragraph 16: the transaction completed prior to the commencement of the CMA’s merger investigation.

ⁱⁱⁱ Paragraph 25: the Parties told the CMA that Linergy and UFBP abandoned their merger plans shortly after the March 2012 reference decision because UFBP’s owners were concerned that the company would not survive trading during the extended phase 2 investigation period, irrespective of the outcome of that investigation.

^{iv} Paragraph 26: subject to certain conditions.

^v Paragraph 45: the Parties told the CMA that this statement was inaccurate because Linergy was not processing Category 3 materials in its Category 1 plant in December 2012.

^{vi} Paragraph 49: the CMA clarifies that Linergy provided information showing that among the changes in assumptions in December 2012, Linergy at the time forecast an increase in the price for Category 3 MBM and a fall in the price for Category 3 tallow. See Linergy’s submission dated 26 June 2015, which identified the following ‘negative’ ‘key assumptions [that] had changed’: ‘Reduction in Cat 3 intake; Increase in Cat 3 material costs; Reduction in Cat 3 tallow sales price’.

^{vii} Paragraph 51: the CMA clarifies that although the Parties did not initially produce plant level data in response to the CMA’s information requests, the Parties submitted certain plant level data following the issues meeting. Paragraph 51 describes the CMA’s reservations regarding this evidence.

^{viii} Paragraph 84: Linergy’s submission dated 13 March 2015. The Parties submitted that the CMA had misrepresented Linergy’s 13 March 2015 submission. The submission stated that a Scottish renderer and

a renderer in the North of England had 'processed in recent years material originating in Northern Ireland and the Republic of Ireland'. The Parties said this was not intended to imply that NI meat processors were sending materials to the North of England.

^{ix} Paragraph 111: the CMA clarifies that Envirocare is situated in Derrylin in County Fermanagh in NI, not in Omagh. The Derrylin site is approximately 40 to 50 miles from Linergy and 70 to 80 miles from UFBP.

^x Paragraph 171: the Parties submitted that this statement was inaccurate because Foyle Proteins also holds the relevant licence, and that the licence, for all holders, related to sampling of cattle over 48 months old.

^{xi} Paragraph 182: the CMA clarifies that Linergy told the CMA that Munster Proteins was in the process of establishing a new Category 3 plant at its site in Cahir, County Tipperary. Linergy told the CMA that this plant would operate in addition to the existing Category 3 plant on the same site but that, to its knowledge, the new plant was not yet operational. See Linergy's submission dated 15 March 2015.