

Anticipated acquisition by T&L Sugars Limited of certain assets of Tereos United Kingdom and Ireland Limited from Tereos SCA

ME 7074/23

SUMMARY

OVERVIEW OF THE CMA'S DECISION

1. The Competition and Markets Authority (**CMA**) believes that the acquisition by T&L Sugars Limited (**TLS**) of the UK packing and distribution site and business-to-consumer (**B2C**) activities (the **Target**) of Tereos United Kingdom and Ireland Limited (**TUKI**) from Tereos SCA (**Tereos**), gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to B2C customers in the UK.
2. On 26 July 2023, TLS agreed to acquire the Target. The CMA refers to the acquisition as the **Merger**. TLS, TUKI and Tereos are together referred to as the '**Parties**' and for statements relating to the future where TLS acquires the Target (if the Merger was to proceed), this is referred to as the '**Merged Entity**',
3. As the CMA believes that the Merger gives rise to a realistic prospect of an SLC, the Parties have until 15 March 2024 to offer undertakings in lieu of a reference to phase 2 (**UILs**) to the CMA that will remedy the competition concerns identified. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Enterprise Act 2002 (the **Act**).

Who are the businesses and what products/services do they provide?

4. TLS is a sugar producer which refines and distributes sugar and related products in the UK through two plants in London.
5. The Target packs and distributes sugar in the UK. The Target sources the sugar it packs from Tereos in France.
6. TLS and the Target overlap in the supply of various types of white and brown packed sugar to B2C customers. These customers include grocery customers (both retailers and wholesalers) and 'out of home' foodservice customers (such as restaurants, hotels and vending machine operators).

Why did the CMA review this merger?

7. The CMA's primary duty is to seek to promote competition for the benefit of consumers. It has a duty to investigate mergers that could raise competition concerns in the UK, provided it has jurisdiction to do so.
8. In this case, the CMA has concluded that it has jurisdiction to review this Merger because a relevant merger situation has been created. Each of TLS and the assets constituting the Target is an enterprise and as a result of the Merger, these enterprises will cease to be distinct. The CMA concluded that the share of supply test is met as TLS and the Target have a combined share of supply of over 25%, with an increment, by volume in the supply of various types of packed sugar to B2C customers in the UK, including the supply of packed white granulated sugar to B2C customers in the UK.
9. Tereos announced on 2 November 2023 that it had agreed to sell the Target, and that the Merger is conditional on receiving merger control clearance from the CMA.

What evidence has the CMA looked at?

10. In assessing this Merger, the CMA considered a wide range of evidence in the round.

11. The CMA received several submissions and responses to information requests from the Parties. The CMA gathered information about the Parties' reasons for pursuing the Merger, how competition works in the sector, and each of TLS' and the Target's market position in the various sugar products. The CMA also examined the Parties' internal documents that were created in the ordinary course of business.
12. The CMA spoke to, and gathered evidence from, other market participants, including customers and competitors (both current and potential), to better understand the competitive landscape, to get their views on the impact of the Merger and whether any had the intention to enter the markets in question.

What did the evidence tell the CMA...

...about what would have happened had the Merger not taken place?

13. In order to determine the impact that the Merger could have on competition, the CMA has considered what would have happened had the Merger not taken place. This is known as the counterfactual.
14. The Target has faced profitability challenges in recent years. The evidence indicates that Tereos considered various options for the UK business at the same time that they decided to investigate the possible sale of the business. The CMA considers that the appropriate counterfactual in this case is the prevailing conditions of competition (namely, that the Target would have continued to compete in the UK B2C markets as an independent competitor).

...about the effects on competition of the Merger?

15. The CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to UK B2C customers (specifically, granulated white sugar, white caster sugar, white vending sugar, standard icing sugar, fondant icing sugar, royal icing sugar, jam sugar, preserving sugar, white sugar blends, white sugar cubes, golden granulated sugar, golden caster sugar, demerara sugar, light soft brown sugar, dark soft brown sugar, light muscovado sugar and dark

muscovado sugar). In particular, in relation to all of these markets individually and overall:

- (a) The evidence indicates that the Merger will lead to a duopoly and remove an important competitive constraint in the Target. The Merged Entity would face competition from only one other competitor – British Sugar – post-Merger;
- (b) There is no evidence that EU suppliers would pose a competitive constraint post-Merger; and
- (c) Several third parties raised concerns about the loss of competition that would result from the Merger in markets that are already highly concentrated.

...about any entry or expansion?

- 16. The CMA has not received evidence to indicate that any entry or expansion in response to the Merger would be timely, likely and sufficient to prevent the SLC from arising.

What happens next?

- 17. As a result of these concerns, the CMA believes the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of multiple types of packed sugar to B2C customers in the UK. The Parties have until 15 March 2024 to offer an undertaking which might be accepted by the CMA to address the SLC. If no such undertaking is offered, or the CMA decides that any undertaking offered is insufficient to remedy its concerns to the phase 1 standard, then the CMA will refer the Merger for an in-depth phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.