EUROPEAN COMMISSION
DG Competition

Case M.7930 - ABP GROUP / FANE VALLEY GROUP / SLANEY FOODS

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 07/10/2016

In electronic form on the EUR-Lex website under document number 32016M7930

EUROPEAN COMMISSION

Brussels, 7.10.2016
C(2016) 6563 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying parties:

Dear Sir/Madam,

Subject: **Case M.7930 - ABP Group/Fane Valley Group/Slaney Foods Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]**

1 OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

Table of Contents

1. THE PARTIES ... 5
2. THE OPERATION ... 5
3. EU DIMENSION ... 6
4. RELEVANT MARKETS ... 6
   4.1. Introduction – The activities of the parties and general characteristics of the markets to which the Transaction relates ... 6
      4.1.1. The activities of the Notifying Parties ... 6
      4.1.2. The beef, lamb and sheep meat production process ... 7
      4.1.3. Procurement of live animals (cattle, lamb and sheep) ... 9
      4.1.4. Sale of fresh meat (beef, lamb and mutton) ... 16
      4.1.5. The Commission's investigation ... 18
   4.2. Purchase of live cattle for slaughter ... 18
      4.2.1. Product market definition ... 18
      4.2.2. Geographic market definition ... 21
   4.3. Purchase of live lambs and live sheep for slaughter ... 23
      4.3.1. Product market definition ... 23
      4.3.2. Geographic market definition ... 25
   4.4. Sale of fresh beef meat ... 26
      4.4.1. Product market definition ... 26
      4.4.2. Geographic market definition ... 30
   4.5. Sale of fresh lamb meat ... 32
      4.5.1. Product market definition ... 32
      4.5.2. Geographic market definition ... 35
   4.6. Sale of fresh mutton/sheep meat ... 36
      4.6.1. Product market definition ... 36
      4.6.2. Geographic market definition ... 36
   4.7. Sale of processed meat ... 37
   4.8. Animal by-products ... 37
      4.8.1. Product market definition ... 38
      4.8.2. Geographic market definition ... 39
5. COMPETITIVE ASSESSMENT – HORIZONTAL OVERLAPS ... 40
   5.1. Analytical framework ... 40
      5.1.1. Non-coordinated effects ... 40
      5.1.2. Coordinated effects ... 42
   5.2. Markets for purchase of live animals ... 43
      5.2.1. Non-coordinated effects on the market for the purchase of live cattle for slaughter ... 44
      5.2.2. Coordinated effects on the market for the purchase of live cattle for slaughter ... 58
      5.2.3. Non-coordinated effects on the market for the purchase of live lamb/ sheep for slaughter ... 63

5.2.4. Coordinated effects on the market for the purchase of live lamb/ sheep for slaughter 71
5.3. Markets for sale of fresh beef meat 75
5.3.1. Sale of fresh beef to industrial processors in the RoI 75
5.4. Markets for sale of fresh lamb meat 77
5.4.1. Sale of fresh lamb meat in the RoI 77
5.4.2. Sale of fresh lamb meat in Belgium 78
5.4.3. Sale of fresh lamb meat to industrial processors in the RoI 80
5.4.4. Sale of fresh lamb meat to supermarkets in Belgium 81
6. COMPETITIVE ASSESSMENT – VERTICAL RELATIONSHIPS 82
6.1. Analytical framework 82
6.2. Animal by-products 82
6.2.1. No input foreclosure effects 83
6.2.2. No customer foreclosure effects 84
7. ARTICLE 2(4) ASSESSMENT (POSSIBLE SPILL-OVER EFFECTS) 85
7.1. Activities of ABP, Fane Valley and Slaney JV in the purchase of live sheep and/ or lamb for slaughter in the IoI 85
7.2. Activities of ABP and Fane Valley in the purchase of live cattle in Northern Ireland 86
7.3. Activities of ABP, Fane Valley and Slaney JV in downstream markets relating to the sale of fresh meat 87
7.4. Activities of ABP and Fane Valley in downstream markets relating to the sale of fresh meat 87
7.5. Conclusion of Article 2(4) assessment 88
8. CONCLUSION 89

(1) On 2 September 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004[3] by which ABP Food Group ("ABP", Ireland), through a series of interrelated transactions, acquires joint control – within the meaning of Article 3(1)(b) of the Merger Regulation – over Slaney Foods Joint Venture ("Slaney JV", Ireland) and Slaney Proteins, together with Fane Valley Co-operative Society Limited ("Fane Valley", UK) (the "Transaction").[4] ABP and Fane Valley are hereafter collectively referred to as the "Notifying Parties". The Notifying Parties and the Slaney JV are collectively referred to as the "Parties".

1. THE PARTIES

(2) **Fane Valley** is a farmer-owned co-operative active in a variety of agribusiness sectors. Its activities include the slaughter and processing of beef and lamb in Northern Ireland and the UK via Linden Foods Limited ("Linden Foods"), over which it exercises sole control.[5] On the Island of Ireland ("IoI", comprising Northern Ireland ("NI") and Republic of Ireland ("the RoI"), Fane Valley has one plant located in NI processing beef and lamb.

(3) **ABP** is an agribusiness company. Its subsidiaries are active in meat processing, supplying a range of chilled, frozen and other meat products to retail, wholesale and foodservices markets worldwide. ABP is also active in pet food, renewable energy and proteins. On the IoI, ABP operates eight meat processing plants.

(4) The **Slaney JV** is currently a 50:50 JV between Fane Valley and Lanber Group (a non-affiliated, third party company). The Slaney JV comprises Slaney Foods International ("**SFI**", its cattle slaughter and beef meat business, located in the RoI) and Irish Country Meats ("**ICM**", the sheep and lamb slaughter and mutton and lamb meat business, with operating sites located in the RoI and Liège in Belgium). Slaney operates three meat processing plants on the IoI, one of which slaughters beef and two of which slaughter sheep and lamb. ICM also purchases lamb carcasses for further processing.

(5) **Slaney Proteins** is currently 100% owned and controlled by Lanber Group. Slaney Proteins operates a small Category 3 rendering facility which primarily processes Category 3 material generated by the Slaney JV.

2. THE OPERATION

(6) On 22 January 2016, ABP, Fane Valley, the Allen Family (which controls the Lanber Group) and Slaney JV entered into several agreements, whereby ABP acquires a 50% controlling interest in the Slaney JV through a series of interrelated and simultaneous transactions and whereby the Allen Family exits the JV. To this end, ABP will subscribe to as many new shares issued by the holding company of the Slaney JV – Slabridge Holdings Limited ("Slabridge") – as currently held by each of the Allen Family and Fane Valley so that each of ABP, Fane Valley and the Allen Family will temporarily hold a third of the then total shares. On the same

---

3 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation").

4 Publication in the Official Journal of the European Union No C 336 of 13.09.2016, p. 16.

5 Fane Valley holds a controlling stake of […]% in Linden Foods with the remaining […]% shares split between two non-controlling minority shareholders:[…] with […]% and […] with […]% respectively.

day, Slabridge will redeem all shares of the Allen Family which will result in Fane Valley and ABP each holding a 50% interest in the Slaney JV.

(7) The transactions described in the paragraph above are linked de jure, would not take place one without the other, and will be carried out at the same time with the aim of achieving a single unitary outcome in accordance with the ultimate economic aim of the Parties, that is, the acquisition of joint control of the Slaney JV by ABP and Fane Valley. Given the unitary nature of these transactions, their inter-conditionality and the fact that they will be carried simultaneously, these transactions, resulting in the acquisition of a joint controlling interest of ABP in the Slaney JV, are interrelated and interdependent thus constituting a single concentration in accordance with paragraph 38 of the Consolidated Jurisdictional Notice.

(8) In addition, at the same time and conditioned upon the acquisition of joint control of the Slaney JV by ABP, the Slaney JV will acquire via Slaney Foods indirect control over 100% of Slaney Proteins so that as a result of the Transaction Slaney Proteins will be jointly controlled by Fane Valley and ABP.

(9) Therefore, as a result of the Transaction, ABP will replace the Lanber Group as a shareholder in the Slaney JV and will, thereby, acquire joint control over the Slaney JV together with Fane Valley. Moreover, ABP and Fane Valley will, via the Slaney JV, also acquire joint control over Slaney Proteins.

(10) […].

(11) The Slaney JV is, and will continue to be, a full-function joint venture. The Slaney JV has sufficient resources to operate independently on the market. Both businesses of the Slaney JV, SFI and ICM, have their own day-to-day management, own assets, own capital and employ their own employees. The Slaney JV has not/will not take over specific functions for its parents but is rather an established business with its own market presence, operating on a lasting basis. Therefore, the Slaney JV is full-function.

3. EU DIMENSION

(12) The combined aggregate worldwide turnover of ABP, Fane Valley and Slaney JV exceeds EUR 2 500 million. The combined aggregate turnover of all these undertakings is more than EUR 100 million in France, Germany, Ireland, Italy, the Netherlands and the UK. In these Member States, the aggregate turnover of each of at least two of these undertakings exceeds EUR 25 million in France, Ireland, the Netherlands and the UK. Overall, the aggregate EU-wide turnover of the Parties exceeds EUR 100 million. Slaney JV achieves less than two-thirds of its turnover in the UK.

(13) The notified operation therefore has an EU dimension according to Article 1(3) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction – The activities of the parties and general characteristics of the markets to which the Transaction relates

4.1.1. The activities of the Notifying Parties

(14) **Fane Valley** is a farmer-owned co-operative active in a variety of agribusiness sectors. Its activities include the slaughter and processing of beef and lamb in NI

and the UK via Linden Foods Limited ("Linden Foods"), over which it exercises sole control. On the IoI, Fane Valley has one plant located in NI processing beef and lamb. Linden, which is controlled by Fane Valley, slaughters and processes beef and lamb from two primal processing locations, one in Dungannon, NI and the second in Burradon, England.

(15) **ABP** has 37 manufacturing plants in Ireland, UK, Denmark, Poland, Austria, Holland and Spain. It sells its products throughout the EU and further afield. ABP is a beef processor in Ireland, Poland and the UK. ABP Ireland specialises in beef processing, de-boning and retail packing. It operates factories supplying quality beef to European and worldwide retail and wholesale markets. ABP UK is a supplier of fresh and frozen meat and meat-free products. ABP Poland exports beef throughout Europe. In the IoI, ABP operates eight meat processing plants, six of which are located in the RoI and two in NI. In addition, ABP operates two rendering plants in the the IoI.

(16) The **Slaney JV** has two divisions. SFI is the beef division which is a beef processor, with a plant in Co. Wexford, RoI. Irish Country Meats is the sheep division, which operates two plants, one in Navan, Co. Meath, RoI and the other in Camolin, Co. Wexford, RoI. ICM's Lonhienne business in Liege Belgium purchases lamb carcasses and lamb primals for further processing. The end products are marketed across a range of wholesale and retail customers, predominantly in Belgium. The Slaney JV operates three meat processing plants in the above-mentioned locations on the IoI.

(17) **Slaney Proteins** is currently 100% owned and controlled by Lanber Group. Slaney Proteins operates a small Category 3 rendering facility which primarily processes Category 3 material generated by the Slaney JV.

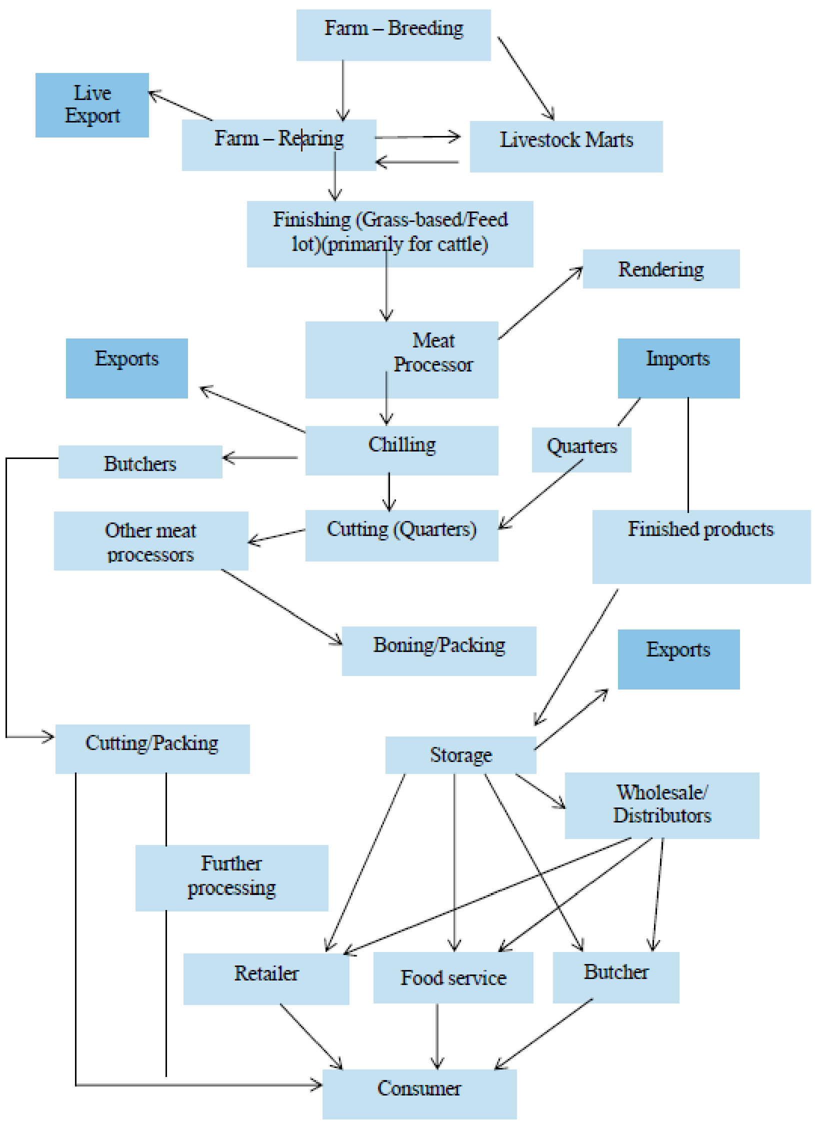
4.1.2. The beef, lamb and sheep meat production process

(18) The activities of Parties overlap in the slaughtering of live animals (cattle, lamb and sheep), and the processing ("de-boning") of carcasses to produce fresh beef, fresh lamb and processed meat for sale to retail (supermarkets and butchers), caterers and industrial processors. (The competitive analysis of the impact of the Transaction on these markets is outlined in Section 5 below). The Parties' activities also overlap in the supply of Category 3 fats and Category 3 processed animal proteins. This overlap is not discussed at length in this Decision for the reasons explained in paragraph (192) below. Finally, vertically, ABP and the Slaney JV overlap in the collection and processing of Category 1, Category 2 and Category 3 animal by-products.[6] (The competitive analysis of the impact of the Transaction in these markets is in Section 6 below).

(19) Figure 1 below, as submitted by the Notifying Parties, portrays the supply chain process for beef, sheep and lamb.

6 Animal by-products include all products other than meat generated from the slaughter of animals or from fallen stock, including offal, hides and skins, blood, bones, hair and meat pieces. According to EU legislation, animal by-products not fit for human consumption are divided into Category 1, Category 2 and Category 3 materials depending on the risk that they pose to public and animal health.

Figure 1: Indicative supply chain (cattle, sheep and lamb)



Source: Form CO

(20) Approximately 85-90% of the total cattle produced (i.e. born and reared) in the RoI are slaughtered in the RoI (i.e., approximately 1.5m heads of cattle). The remaining approximately 10-15% of cattle produced (i.e. born and reared) in the RoI are exported live.

(21) The Notifying Parties explain that the typical chain for production of beef meat and cattle by-products in the RoI is as follows.

(22) The process begins with farmers who maintain a breeding herd of cows that nurture calves every year. Cattle are bred and brought to an abattoir/slaughterhouse for slaughter. The carcass is then "de-boned" to produce cuts of beef as well as other material such as offal (so called "by-products").

(23) De-boning may take place at the same processing plant where cattle are slaughtered, if the plant is vertically integrated, or at another processor's plant or at a separate boning hall which does not slaughter cattle.

(24) Cuts of beef are sent to manufacturers of beef products for further processing, or are further processed into smaller cuts appropriate for catering or retail sale. Retail cuts may be prepared in-store at downstream levels (for example in a butcher's

shop) or by the primary processor, or by an intermediary on behalf of a retailer. The final step in beef production is when beef is shipped and sold in the RoI and abroad.

(25) Cattle by-product materials are the remains of an animal after meat has been removed for human consumption. Some cattle by-products can be used for non-human food uses, such as for pet food and leather, the remainder would then need to be disposed of. "Rendering" refers to the rendering of animal by-product materials through a process of heat and pressure treatment to produce fats as well as proteins (i.e. protein products resulting from the extraction of fat and moisture from the raw material) and tallow.

(26) Some animal by-product material is classed as high risk, and this material is rendered through approved processes and/or destroyed through incineration. Accordingly, cattle by-products are defined as Categories 1, 2 and 3 materials, according to their risk, and the different categories are required to be treated differently at all stages.

(27) The typical chain of production of lamb and sheep meat in the RoI is similar to that of beef meat. Lamb and sheep production begins with farmers who maintain a breeding flock.

(28) Sheep are kept on farm for breeding and production of lambs in the following season. They generally live for 6 or 7 years before slaughter at the end of their reproductive or economic life. Approximately 20% of the breeding ewes are slaughtered each season. Each ewe produces on average 1.7 lambs per season.

(29) Lamb and sheep are brought from the farm to a slaughter house, their carcass is de-boned, and cuts of lamb and sheep, such as legs, shoulders, chops, racks etc. are sent to manufacturers of lamb and sheep products for further processing, as is the case with cattle. The final step in meat production is when lamb and sheep meat is shipped and sold in the RoI and abroad.

(30) The parts of a sheep/lamb carcass that can be used for by-products are usually segregated during slaughter and include offal (liver, kidney, heart), intestines (castings), stomach, lungs, heads, hooves, manure, fats and skins. While some lamb and sheep by-products can be used for non-human food uses, those that remain need to be disposed of. As with cattle, Categories 1, 2 and 3, according to their risk, require to be treated differently at all stages (e.g. Category 1 materials such as spleen and ileum (part of the small intestine) of all animals; and the skull (including the brain and eyes), spinal cord and tonsils of animals aged over 12 months.

4.1.3. Procurement of live animals (cattle, lamb and sheep)

4.1.3.1. Source of supply of live animals

(31) As the Notifying Parties explain, **farmers** are the source of the vast majority (90-95%) of all cattle purchased by slaughterhouses in the RoI. ABP, the Slaney JV and Linden purchased 98% of lamb and sheep from independent farmers. Slaughterhouses purchase live animals directly from farmers, sometimes with an agent facilitating the transaction. Slaughterhouses typically have procurement teams which buy cattle directly from farmers who seek price quotes. The Notifying Parties submit that there are no written contracts between farmers and slaughterhouses. The purchase and sale of live animals is a spot business and prices can change daily.

(32) **Producer groups** are also active in the RoI. A producer group is a collection of individual farmers who sell live animals individually but have collectively agreed a bonus with a slaughterhouse. The individual supplier forecasts the amount of cattle, for instance, that he intends to supply per month for the coming year and in return the slaughterhouse agrees to pay a bonus for the cattle supplied […]. The individual farmers within a producer group are not contractually bound to sell to the slaughterhouse on the terms and conditions agreed, and negotiations are largely the same as with individual farmers.

(33) **Agents** act as the middle men in the supply chain. Agents are paid a fee by the slaughterhouse, usually on a per head basis. They perform the same function as procurement staff within slaughterhouses but on a self-employed basis. They assist farmers and slaughterhouses to reach an agreed price. Agents do not take ownership of /are not suppliers of live animals. [7] Agents may also arrange the transport between the farm and slaughterhouse. Some agents work exclusively for one slaughterhouse while others work for multiple slaughterhouses. No training is required for agents, according to the Notifying Parties.[8]

(34) The Notifying Parties submit that all cattle supplied to ABP and the Slaney JV are supplied by independent farmers.[9] ABP deals with one producer group in relation to cattle […] which supplied […] cattle in 2015 or [0-5]% of ABP's total supply. The Slaney JV does not deal with any producer groups in relation to cattle. In relation to lamb and sheep, ABP deals with no producer groups.

(35) In relation to agents, the Slaney JV has a total of […] agents, […] of which serve the Slaney JV's plant on an exclusive basis and […] of those […] supply […] cattle per week.[10] ABP has a total of […] agents, […] of which are exclusive. According to the Parties, the number of agents for ABP and Slaney JV has been largely consistent over the last 3 years and it is expected to remain the same post Transaction. There are no plans to reduce or rationalise the number of agents.[11] ABP does not use agents when purchasing sheep or lamb. Slaney JV via ICM uses the services of agents for procurement of lamb and sheep. Payments to agents are based on a per head basis for numbers supplied.[12]

(36) The Notifying Parties submit that […]% of ABP’s cattle are procured with the assistance of cattle agents. The remaining […]% are purchased and negotiated directly with individual suppliers. Approximately […]% of cattle purchased by the Slaney JV are purchased directly from individual farmers with the assistance of these self-employed cattle agents. The remaining […]% are purchased by the Slaney JV directly from farmers by procurement staff (buyers) who are full time

---

7 As agents do not buy cattle to own the cattle they do not have to be registered under the European Communities (Approval and Registration of Dealers of Bovine Animals and Swine) Regulations 2007 (S.I. No. 151 of 2007) and the European Communities (Approval and Registration of Dealers of Ovine Animals) Regulations 2008 (S.I.100 of 2008). Under these regulations, all "dealers" engaged in the buying and selling of animals must be registered. In the case of cattle, a dealer is defined as a person who purchases and sells to another person within a period of 30 days. A person who buys and resells within 30 days less than 100 cattle in any 12 month period will be excluded from the requirements to be approved as a dealer therefore the obligation to register would not apply to "agents" as referred to above. Form CO, paragraph 816.

8 Form CO, paragraph 829.

9 Form CO, paragraph 805.

10 Form CO, paragraph 819.

11 Form CO, paragraph 829.

12 Form CO, paragraph 1110.

employees in the Slaney JV.[13] In relation to ABP, the percentages per plant are set out in Table 1 below.

Table 1: Live cattle purchased by ABP directly from farmers as opposed to these bought via agents

ABP Plant	Percentage directly procured	Percentage procured using agents
Bandon	[…]%	[…]%
Cahir	[…]%	[…]%
Clones	[…]%	[…]%
Nenagh	[…]%	[…]%
Rathkeale	[…]%	[…]%
Waterford	[…]%	[…]%

Source: Form CO, paragraph 820

4.1.3.2. Negotiation on prices and price transparency

(37) The negotiation process between the supplier and the slaughterhouse is typically initiated by the farmer. A slaughterhouse would rarely turn away cattle, lamb or sheep once price can be agreed. Negotiations typically take place over the phone.

(38) Farmers will routinely call the slaughterhouse and enquire about the base price. Based on this information the farmer may decide to feed the cattle for another week or send them to slaughter. As regards the time window in which lamb and sheep have to be sold to slaughterhouses, these can be slaughtered every day of the year and there is no short time window within which they must be slaughtered. Farmers can negotiate prices with a number of plants for each sale. A farmer may reference a nearby competitor factory that is offering a higher price and negotiate on that basis. Farmers would also check prices being offered to their neighbouring farmers with those farmers to ensure that the Slaney JV's prices are competitive. The process usually takes a few hours where a decision is made by the slaughterhouse to procure or not at the price and the farmer to supply or not.

(39) There is a significant level of price transparency within the market and this is used by farmers to strike the best bargain with the processors for their live animals. As outlined in the Form CO, slaughterhouses are obliged to report their volumes and prices to the Department of Agriculture, Food and the Marine ("DAFM") on a weekly basis, which in turn is reported to the European Commission. This information is published and is publicly available. Bord Bia[14] also publishes live animal prices on its website on a weekly basis. The agri-press publishes quotes by factory for the current week (e.g. the Farmer’s Journal and the farming section of the Irish Independent and a web site called Agriland) and these may be updated more regularly on their websites. In addition, farmer representative organisations, such as the Irish Farmers' Association (IFA), publish the up to date quotes every

13 Form CO, paragraph 822.

14 Board Bia (Irish Food Board) is a is an Irish state agency with the aim of promoting sales of Irish food and horticulture both abroad and in Ireland itself.

other day on their website and these are also available through social media, the iFarm Information app and a number of other apps.[15]

4.1.3.3. Pricing of live animals for slaughter

(40) According to the Parties, ABP sets its base price and will negotiate bonuses with suppliers depending on supply and demand. [ABP Pricing Description].[16]

(41) [ABP Pricing Description]. Other determining and influencing factors for the price and supply of cattle will be discussed:

(42) [ABP Pricing Description].

(43) [Slaney JV Pricing Description].[17]

(44) [Slaney JV Pricing Description].

(45) This base price is applied by the Slaney JV (and all RoI beef processors) to grades representing the average animal within the EUROP grid (a standard obligatory classification system).[18] In addition to the EUROP grid, other bonuses may be applied by the Slaney JV, such as the Bord Bia Farm Quality Assured ("BBFQA") bonus and bonuses based on the weight (per kg) and age of the animal and various other commercial conditions.

(46) As described above, ABP establishes a base price on demand for meat, supply of live animals, inventory of meat available (stock in hand) and other conditions. The base price is then adjusted based on the confirmation grade (an indicator of red meat yield and flesh coverage of the carcass) and fat score of the animal. Fat Coverage is also scored by the automated system ranging from 1 (being the lowest) to 5 (highest).

(47) An animal which has a confirmation score of R= or R- and a fat score of 2+ or 3- or 3= or 3+ or 4- or 4= receives the base price. An animal one grade better i.e. a R+ will receive an extra 6 cents per kg and an animal one grade below an R-, i.e. an O+, is penalized 12 cents per kg (depending on fat score). The increments thereafter are 6 cents per kg.

---

15 Form CO, footnote 231.

16 Form CO, paragraphs 847-849.

17 Form CO, paragraph 856.

18 EUROP (the EUROP System) is a standard obligatory classification system. The criteria for classifying cattle into the EUROP classes are specified in an EU directive (EC 1208/1981). Grade is calculated and stored by an automated system whereby a digital photograph of the carcass is taken and an algorithm scores the carcass from a grade of E (being the best; E=most shape) to P (being the worst; P=least shape). The classification is based on a visual inspection of the carcass and the amount of visible fat on the meat using numbers one to five (one=least fat, five=most fat).

Table 2: Fat Coverage confirmation score

	U+	U=	U-	R+	R=	R-	O+	O=	O-	P+
2+	+24	+18	+12	+6	Base	Base	-18	-24	-30	-36
3	+24	+18	+12	+6	Base	Base	-12	-18	-24	-30
4-	+24	+18	+12	+6	Base	Base	-12	-18	-24	-30
4=	+24	+18	+12	+6	Base	Base	-12	-24	-30	-36
4+	+18	+12	+6	0	-6	-6	-18	-24	-30	-36
5	0	-6	-12	-18	-24	-24	-36	-42	-48	-54

Source: Form CO, paragraph 870

(48) [Slaney JV Pricing Description].

(49) As the Notifying Parties explain, the base price for sheep and lambs is calculated based on the market and can change weekly according to market conditions and seasonality. The pricing of lamb/sheep is based on deadweight output in all circumstances. The EUROP grid system, coupled with weight/fat cover parameters and quality assurance status, form the basis of all purchasing transactions.

(50) There is no fundamental difference in the structure of price application between independent farmers and other categories of suppliers. Individual price agreements are a function of routine transactions based on supply and demand on any given week. Price is agreed upon purchase and is negotiated on a bilateral basis. Lamb and sheep which are Bord Bia Farm Quality Assured attract a bonus of […] cents per kg.[19]

4.1.3.4. Seasonal Effects on pricing

(51) The Parties claim that cattle are available for slaughter all year round and there is no seasonal variation on the distance from which cattle are sourced, in comparison to lamb and sheep. There is a degree of seasonal variation in the volume of cattle slaughtered, in that there are higher volumes in the third quarter of the year. This is because cattle which are finished on grass are available to slaughterhouses during the third quarter.

(52) In the winter, indoor fed cattle cost more to produce and therefore prices are higher than during the other quarters of the year. Farmers' costs are lower for cattle during the third quarter. Seasonality is entirely at the discretion of farmers who decide when to breed and finish cattle and what season to have them ready for slaughter. The fact that more cattle are offered for slaughter in the second half of the year creates surpluses that processors have to deal with.

(53) According to the Parties, capacity is more than 50 000 head per week in the industry. Replies to the Market Investigation indicate that spare capacity amounts to approximately 25% to 50% in addition to the current numbers of processed

19 Form CO, paragraphs 1120-1121.

animals.[20] It therefore appears that there is ample capacity to deal with any seasonal peaks.[21]

(54) According to the Notifying Parties, animal availability in the sheep and lamb meat sector is highly seasonal in nature and in order to manage production output and market demand, meat processors must follow the pattern of production. For example weekly supplies to slaughterhouses in 2015 ranged from a low of […] sheep/lambs in January to a high of […] sheep/lambs in September representing a 100% production variance. Slaughterhouses may operate at maximum capacity during these seasonal highs and have significant spare capacity during the lows. Animal availability can be influenced by a number of different factors including the season, the lambing conditions, grass growth, etc. In general, new season "spring" lamb will attract the highest price.

(55) Slaughterhouses typically price the lambs/sheep on a weekly or daily basis. The price offered is based on the current level of demand in the downstream market and the current level of supply, both of which are equally important factors. This results in a degree of price variation based on season. Established ethnic and festive demand spikes are key factors in influencing price over the calendar year.[22]

4.1.3.5. Bonuses to farmers

(56) According to the Parties, slaughterhouses provide certain rebates, bonuses, or other price incentives (collectively referred to as "bonuses") as listed below.[23]

(a) **BBFQA animals** - a bonus (currently […] cents per kg) is paid to all BBFQA animals depending on the following criteria:

– Animal must be under 30 months at slaughter;

– Cattle must be from a Bord Bia quality assured farm (and satisfy the 70 day requirement on last farm); and

– Cattle must not have moved more than 3 times in lifetime (4 farm residencies).

These additional specifications operate in parallel with Quality Payment System ("QPS")[24], to reward farmers for offering cattle complying with supermarket specifications. These additional specifications apply to all RoI (and UK) cattle for these customers. They are not set unilaterally by the RoI processors.

(b) **Bonuses for breeds** - a bonus for certain breeds (e.g. Angus and Hereford) may be paid by factories (i.e. […] cents per kg). In general, whether and what amounts of bonuses are paid depends on the time of year the animal will be slaughtered and marketing requirements at the time.

---

20 See paragraphs (267) et seq. and (353) et seq.

21 Form CO, paragraph 129.

22 Form CO, paragraphs 1053-1054.

23 Form CO, paragraph 919.

24 The QPS is a payments system which uses the EUROP grid as a measure of the quality of the animal and certain bonuses applied by Slaney JV on a given week.

(c) **Scheduling bonuses** - scheduling bonuses of […] cents per kg may be paid if a supplier supplies cattle at a particular time of year in agreement with the processor.

(d) **Haulage** - from time to time a bonus of […] cents per kg may be paid to suppliers to attract cattle from further distances.

(e) **Discretionary bonuses** - a discretionary bonus up to […] cents per kg may be paid as part of bi-lateral negotiations to procure the cattle.

(f) **Age penalty** - a […] cent per kg penalty is levied on all animals over 36 months.

(g) A **weight penalty** may be levied on animals over 400 kg - specifications in relation to carcase weight limits are also outside the EUROP grid/QPS and arise as a result of downstream demand. These weight caps reflect the limited downstream customers these animals are suitable for. Price is typically reduced for animals over 400 kg. With heavier cattle, the individual cuts are too large to fit within a price range determined by retailers. For example a whole steak muscle may be too large in width dimension when sliced to fit within an individual steak pack. The width of the muscle determines the thickness to which it can be cut and if the muscle is too wide, the steak is not thick enough for retail sale. This may or may not lead to a different price per kg for carcasses over a given weight depending on the downstream demand for such carcasses on a plant by plant basis.

(57) Bonuses at (a) and (b) above are currently awarded if the animal fulfils certain criteria as outlined above. Marketing requirements as well as supply and demand dynamics within the market will determine bonuses (c)-(g). The Parties submit that in relation to the purchase of cattle in the last three years, […] of all prices are altered versus the base price.[25]

4.1.3.6. Capacity of slaughterhouses

(58) Capacity appears to be closely related to the extent of the slaughterhouses' chilling facilities as well as to customer specifications with regard to chilling. Capacity is calculated on the basis of chilling for 48 hours although it could be as short as 24 hours (increasing capacity) or as long as 72 hours (decreasing capacity). The Parties believe that 48 hours is the industry average.[26]

(59) Chilling the carcass post-slaughter is a key part of the slaughtering process, as a carcass must be below a specific temperature before it can be de-boned. The chilling facilities are the same for all animals within each species. Bovine and ovine animals can share the same facilities (i.e. "chills"), however ovine animals typically require less time (6/10 hours v 24 hrs minimum for bovine) and as they are smaller, larger numbers of ovine carcasses can chill at the same time. The chilling facilities are the same for both lamb and sheep.

(60) The Parties are of the view that there is spare capacity in all slaughterhouses in the RoI.[27] This is based on a DAFM report from 2009 stating that "*It is estimated that national capacity utilisation is about 60% and drops to below 50% during periods*

---

25 Form CO, paragraph 920.
26 Form CO, paragraph 673.
27 Form CO, paragraphs 173, 452.

of short supply. A particularly important characteristic in Ireland is that virtually no factory operates on a full 5-day week, with most operating between 3 and 4 days for every week of the year. The beef industry has a capacity to slaughter 3 to 3.5 million animals annually, while slaughterings range from only 1.5 to 2 million". ABP works […] shift per plant for between […] and […] days with the typical chilling being […] hours.[28]

(61) ABP slaughtered […] cattle in 2015 and has capacity for […]. If the dairy herd in the RoI does eventually increase by 300 000 and ABP retain their market share of approximately [20-30]%, the additional […] animals (corresponding to its [20-30]% share) are within ABP's capacity.[29]

(62) The Slaney JV slaughtered […] cattle in 2015 and has capacity for […]. If the dairy herd does eventually increase by […] and the Slaney JV retain their market share of the kill of approximately [5-10]%, the additional […] animals are within the Slaney JV's capacity.[30]

(63) The Parties submit that they do not have any plans in regard to plant closures; partial closures/mothballing of equipment; or other reduction of production, and this applies in particular also to the Slaney JV.[31]

(64) Similarly, post-transaction, none of the Parties have any plans (either standalone or for the JV post-transaction) to increase processing capacity.[32]

(65) As already indicated in paragraph (54), above availability of lambs and sheep is highly seasonal in nature and slaughterhouses follow the pattern of production (seasonal lows in January and highs respectively in September) operating at maximum capacity during seasonal highs and have significant spare capacity during the lows.

4.1.4. Sale of fresh meat (beef, lamb and mutton)

(66) According to the information submitted by the Notifying Parties, downstream customers set out their own specifications regarding the type of meat, shape, size, uniformity and how it is to be prepared and matured, which allows the customer to sell the product at a certain price point.

(67) Indicatively, retailers have demands in terms of quality, consistency, bio-security, and price. A typical customer specification would include requests in relation to country of origin; age/breed (e.g. certain products must come from animals under 30 or 36 months of age, anything labelled by breed must be meat from that breed); approval/eligibility (e.g. almost all customers require BBFQA animals); butchery information (e.g. size of cuts and fat cover); finished weight range; packaging (e.g. type of packaging, amount of cuts per tray); shelf life dates on delivery; and label information (e.g. what is required to be indicated on the label).

(68) Meat processors then assess the level of demand including current orders from downstream customers, expected changes to orders, estimated future orders and planned or forecasted promotions, and will calculate the amount of animals

---

28 Form CO, paragraph 691.
29 Form CO, paragraph 694.
30 Form CO, paragraph 695.
31 Form CO, paragraph 132.
32 Form CO, paragraph 133.

required. A meat processor may also buy cattle, slaughter it and put the meat in stock expecting the same or higher prices when the meat is sold out of stock.

(69) However, if one or more customer decides to promote a particular product at retail level, requirement for that product may change (e.g. increase substantially) during any such promotion period. In addition, there may be specific additional requirements of meat processors by customers in terms of quantity, quality, type of beef and the other factors listed above. The dynamic and changing demand outlined above needs to be mirrored or matched on the supply side.

(70) Beef produced in the RoI is homogenous in terms of quality. Customers demand that the product they purchase is of a certain specification. The ability for a meat processor to fulfil customer orders on time, within specification and in full is the key driver in maintaining relationships. Retailers and other customers (caterers/international processors) frequently tender for supply (some as often as every three weeks, others less frequently). Retailers and customers have demands in terms of quality, consistency, bio-security and price. Benchmarking may be used to assess value.

(71) In relation to lamb and sheep, retail multiples, in order to meet the demands of the final consumer, require product that meets a certain price point requirement. Some retailers tender every two to three months, while other use open book pricing or ongoing index pricing. Benchmarking may be used to assess value. Butchers tend to order in small volumes and some collect from the meat processing plant directly, while others have their orders delivered.

(72) Caterers have different requirements in terms of the cuts of meat required and the size and specification of those cuts (e.g., for supplying canteens, restaurants etc.) for lamb and sheep meat. The food service sector has very specific requirements which may vary from customer to customer and for each type of meat. Industrial processors have different requirements as the lamb/mutton which they buy is likely going to be an ingredient or component of their final product.

(73) A slaughterhouse's demand for live lambs/sheep is driven primarily by demand in the downstream retail market. The downstream markets in turn is heavily dependent on the export market as domestic consumption represents on average about 30% of production. Lamb and sheep are exported from the IoI to more than 30 international markets and count most major EU retail and foodservice groups as customers for lamb from the IoI.

(74) In relation to Irish cattle, the Parties submit that they attract some of the highest prices in Europe. Given the ongoing efforts in stimulating greater demand for Irish beef in new and existing markets, and in view of security and consistency of supply, this is expected to continue.[33]

(75) According to the information submitted by the Notifying Parties, the vast majority of beef produced in the RoI is exported to other EU Member States (521,000 tonnes or 84% of all production in 2014), within which the UK is the single largest export market, with 272,000 tonnes or 52% of all EU exports for the same year. Non-EU countries accounted for a very small proportion of Irish beef production in 2014 (9,000 tonnes or 1% of the total) and exports to non-EU countries appears to have declined over the years.

---

33 Form CO, paragraph 971.

4.1.5. *The Commission's investigation*

(76) During pre-notification as well as the first phase investigation, the Commission reviewed the Notifying Parties' submissions, sent several requests for information to the Notifying Parties and held several meetings and telephone interviews with the Notifying Parties.

(77) The Commission also sent several requests for information to third parties. More specifically, the Commission reached out to suppliers of live animals, competing slaughterhouses, industrial processors, renderers of animal by-products, supermarkets and caterers, both at EEA, as well as at national level.

(78) In particular, the Commission reached out to a number of associations of farmers in order to seek their views on market definition and potential impact of the transaction, namely: the Irish Farmers Association ("IFA") which has 75 000 farmer members, the Irish Creamery and Milk Suppliers Association which has 16 000 farmer members, the Irish Cattle & Sheep Farmers Association which has 10 000 farmer members, the Angus Society which has 8 864 farmer members, and the Irish Hereford Prime which has 3 233 farmer members. The Commission also addressed questionnaires to Bord Bia, Ireland's trade development & promotion body of Irish food, drink & horticulture, mostly known for its certification of Irish food products. Finally, the Commission obtained the views of the Department of Agriculture Food & Marine.

4.2. Purchase of live cattle for slaughter

4.2.1. *Product market definition*

(79) Cows are mature female bovines that have given birth to a calf. A heifer is a female bovine that has not yet had a calf or developed the mature characteristics of a cow. A steer is a male bovine that has been castrated. A bull is a male bovine used for breeding purposes. A calf is a male or female bovine animal under 12 months.

(80) Various cattle breeds exist (approximately 142 breed variants in total in Ireland) such as among others Angus and Hereford in Ireland and Shorthorn and Dexter in the UK.[34]

4.2.1.1. Previous Commission decisions and the Notifying Parties' views

(81) In the past, the Commission considered (on the basis of the absence of supply-side substitutability) the market for the purchase of live cattle for slaughter as constituting a separate market from the purchase of other live animals for slaughter and from the purchase of live calves for slaughter.[35] The Commission has not considered in the past further segmentation of the market for the purchase of live cattle for slaughter by type or by characteristics of cattle or by breed.

(82) Similarly, whilst not excluding the possibility of assessing market segments by type, age and grade of cattle, the Irish Competition Authority has in the past

---

34 Form CO, paragraphs 454 and 459.

35 Commission decision of 9 March 1999 in case M.1313 – *DanishCrown/ Vestjyske Slagterier*, recitals 20-21, Commission decision of 19 March 2004 in case M.3337 - *Best Agrifund/ Nordfleisch*, paragraph 17, Commission decision of 21 December 2005 in case M.3968 – *Sovion/ Südfleisch*, paragraph 12, Commission decision of 20 August 2010 in case M.5935 – *Vion/ Weyl*, paragraphs 10-11.

ultimately assessed a merger between beef processors on the basis of an overall market for the procurement of cattle for beef processing.[36]

(83) The Notifying Parties submit that the relevant product market is the market for the purchase of live cattle for slaughter and that segmentation of the market into calves and other cattle is not warranted as calves represent only 0.5% of all cattle purchased for slaughter in the RoI.[37] The Notifying Parties further submit that slaughterhouses active in the slaughter of cattle in the RoI slaughter all cattle types (cows, steers, heifers and young bulls) and that even from a downstream (beef meat) demand-side perspective, the identification of prime or premium cattle markets is not warranted.[38]

4.2.1.2. Results of the market investigation and the Commission's assessment

(84) From the supply-side perspective, the market investigation conducted in the present case indicated that the majority of farmers' associations in the RoI are of the opinion that it would take time and/or it would be costly for farmers to switch production from one breed of cattle to another. According to the Department of Agriculture Food & Marine "*Due to the prevalence of cross breeding in Ireland, production of cattle in Ireland in terms of breed type is determined by sire breed. The length of time to switch production as outlined would involve switching the sire breed used in a herd and then allowing for the natural cycle of production to remove all other cattle breeds from a holding to be sold in accordance with the prevailing system of production which could range from 9 months to 30 months or over depending on the system of production (the length of time to sale of weanlings or slaughter). The cost of this would vary from farm to farm depending on the costs of production on a farm*". Irish Cattle & Sheep Farmers Association as well as Irish Creamery and Milk Suppliers Association believe that it would take up to three years to switch breeds.[39] On the other hand, the majority of the farmers' associations who responded to the market investigation acknowledge that most farmers in the RoI tend to produce different breeds of cattle.[40]

(85) In relation to the different types of cattle (such as steers, heifers, young bulls), some farmers appear to be able to produce all types of cattle, where others specialise in one particular type, while still breeding cattle of other types. The Irish Farmers Association claims that "*The small scale family farm structure of Irish livestock farms coupled with the grass based production systems do not allow for the multiple management of different groups of animals. The majority of Irish farmers run one management group usually of similar type. Some farmers run steers and heifers or more specialised producers run bulls*".[41]

(86) The IFA has submitted a substantiated price correlation analysis regarding market definition in relation to cattle procurement markets. On the basis of this price

---

36 M/03/029p2 - *Galtee Meats/ Dawn Meats*, recitals 2.6 to 2.9.

37 Combined market shares of ABP and Slaney JV on such a hypothetical market were below [0-5]% over 2013-2015 at RoI level and this potential market is therefore not considered further for the purposes of the assessment of the Transaction.

38 Form CO, section 6.1.1.

39 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - questions 2 and 2.1.

40 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - question 4.

41 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - questions 3 and 3.1.

correlation analysis which the IFA has commissioned to its economic consultant, [42] the IFA has submitted that the Transaction should not only be assessed on the basis of an overall market for the purchase of live cattle for slaughter but also on the basis of possible narrower market definitions, including markets for: (i) prime cattle comprising young bulls, steers and heifers; (ii) premium cattle comprising steers and heifers; (iii) premium cattle comprising steers and heifers meeting the grades of the Meat Industry Ireland ("MII"); (iv) premium cattle comprising steers and heifers meeting the MII grade and weight specifications. The IFA also claims that a potential market for specialty cattle breeds, like Angus and Hereford, may also warrant assessment, but do not provide any price correlation analysis or other evidence supporting this claim.

(87) In particular, the analysis submitted by the IFA shows price correlations above 0.87 for all pairs of cattle types and grades in Ireland included in the analysis. While correlation in price trends is therefore remarkable in all cases, the IFA shows some differences across pairs. On the basis of these differences, the IFA considers that "*there is likely to be a market for premium cattle (all the correlation coefficients among steers and heifers are above the benchmark). There is also likely to be a market for prime cattle consisting of young bulls, steers and heifers – although the correlation coefficients among the lower grades of young bull (O2 and O3) and each of steers and heifers are below the reference value of 0.95. It is also observed that the lower grades of cows (O2, O3, O4, P2 and P3) are less highly correlated with steers and heifers (prime cattle) than the higher grades of cows (R3 and R4).*"

(88) The IFA uses a benchmark of 0.95 to distinguish between pairs of cattle types and grades belonging to the same or to distinct product markets. Although differences in the level of price correlation can indeed be indicative of some degree of product segmentation, it is difficult to establish a benchmark that could be mechanically interpreted as delineating product markets. As the IFA's submission acknowledges, "*there is no threshold or critical value above which the correlation coefficient can be said to indicate that products or regions lie in the same relevant market but benchmarks are sometimes applied in practice*". In this case, for instance, correlation coefficients remain remarkably high for all pairs of cattle and vary around the proposed 0.95 benchmark. The somewhat lower price correlations observed between the more distant pairs of cattle in terms of quality rating (e.g. cows and steers, cows and heifers) might be consistent with some degree of vertical differentiation and segmentation. However, this is hardly conclusive regarding the absence of competitive constraints between those cattle types and grades, especially taking into account the moderate variation in the coefficients. As the IFA's economic consultant explains regarding price correlation analysis, *"it alone does not provide definitive evidence of relevant market definition."* Overall, therefore, the Commission considers that the price correlation analysis is inconclusive and the Commission has considered other factors to be able to conclude on product market definition.

(89) From the demand-side perspective, the market investigation has indicated that all slaughterhouses which slaughter cattle are able to process and market all the different types (cows, young bulls, steers, heifers) and all breeds of cattle (Angus, Hereford, etc.). Furthermore, in practice, all such slaughterhouses purchase cattle

---

42 See the "Submission to the Directorate-General for Competition (DG COMP) regarding a Proposed Transaction in the Irish Meat Processing Sector. M.7930 – ABP Group/Fane Valley Group/Slaney Foods." prepared by Dr. Pat McCloughan (PMCA Economic Consulting), on 17 June 2016.

of all types, breeds and specifications, such as cattle having different weight, quality of carcasses, fat, grade/MII grade.[43] The market investigation indicated that slaughterhouses do not need special equipment for the finishing and processing of different types of cattle or for the finishing and processing of different breeds of cattle. The market investigation also indicated that slaughterhouses switch from finishing and processing of one type/breed to another very often, without significant cost or delays.[44]

(90) The results of the market investigation were inconclusive as regards the possible switching of a substantial part of slaughterhouses' production to another type or breed of cattle in the event of a 5% to 10% price increase of a given type or breed of live cattle.[45]

(91) Moreover, as explained in paragraph (143) below, beef meat quality appears to be a function of a number of interlinked factors and is not just determined by the type and grade of cattle. Consequently, as will be explained further in paragraphs (146) and (148), no separate market has been defined for the sale of certain quality segments of fresh beef meat. This suggests that different types and grades of live cattle are, to a significant extent, substitutable inputs from the slaughterhouses' perspective, regarding the production of fresh beef meat for sale in downstream markets.

(92) As discussed in paragraph (89) above, slaughterhouses do not differentiate between types, breeds and specifications of cattle, such as cattle having different weight, quality of carcasses, fat, grade/MII grade. Based on the above, the Commission considers that segmentation of an overall product market for the purchase of live cattle for slaughter on the basis of weight is not appropriate.

(93) The Commission considers, in light of the above that the results of the market investigation appear to support the same delineation of the market as in precedent cases, that is, a relevant market comprising all types and breeds of cattle.[46] In any event, the Commission will also assess, for the purposes of this Decision, potential segmentation of an overall cattle market by type and by breed as the Commission considers that the outcome of the competitive assessment would remain the same even in relation to such segmentation.

4.2.2. Geographic market definition

4.2.2.1. Previous Commission decisions and the Notifying Parties' views

(94) Slaney JV has only one slaughtering plant for bovine animals located in Bunclody, Wexford. ABP's six plants are located in Bandon (Cork), Cahir (Tipperary), Clones (Monaghan), Nenagh (Tipperary), Waterford (Waterford) and Rathkeale (Limerick).

(95) In the past, the Commission left the potential geographic scope of markets for the purchase of live cattle for slaughter open, assessing the transactions on a regional (on the basis of catchment areas for the delivery of cattle / cattle transportation radii

---

43 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 11-13.

44 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 15-18.

45 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 19-20.

46 The inclusion or exclusion of calves in such an overall market does not materially impact the outcome of the assessment in this case as calves represent only 0.5% of all cattle purchased for slaughter in the RoI.

of 300-450 km) and national level and, in one instance, even on an EU-wide level.[47]

(96) In a past case relating to the merger of two slaughterhouses active in the procurement and processing of cattle, whilst referring to the potential local nature of the market/catchment areas of processing plants' procurement on the basis of 30 and 60 mile radii, the Irish Competition Authority acknowledged that the market/catchment area of a particular plant may be national in light of potential chain of supply effects resulting from overlapping catchment areas and the lack of systematic differential in cattle prices across localities.[48]

(97) Whilst submitting that the market may be wider, the Notifying Parties consider that the narrowest relevant geographic scope of the market for the purchase of live cattle for slaughter is the RoI. The Notifying Parties submit that cattle prices in NI are higher than in the RoI and whilst transport of cattle across the border between the RoI and NI is feasible, it is limited as a result of labelling requirements in terms of origin and national customer preferences. Moreover, the Notifying Parties indicate that imports of cattle into the RoI amounts to less than 1%.[49]

4.2.2.2. Results of the market investigation and the Commission's assessment

(98) The majority of farmers' associations responding to the market investigation indicated that their members do not sell cattle outside the RoI. This appears to be due mainly to veterinary restrictions and labelling requirements and also appears to be the case for imports of live cattle into the RoI. If prices of cattle for slaughter outside the RoI increased by 5-10%, while prices in the RoI remained stable, farmers' associations consider that no farmer would switch to selling cattle for slaughter outside the RoI.[50]

(99) In light of this, the Commission does not consider that the relevant market is wider than the RoI and accordingly will not, for the purposes of this decision, consider a market wider than the RoI.

(100) Within the RoI, according to all farmers' associations responding to the market investigation, prices for the purchase of live cattle do not differ more than 5% from one locality to another.[51] The majority of farmers' associations indicated that their member farmers in the RoI would be prepared to switch to selling to slaughterhouses located within another locality within the RoI, if prices for cattle offered by the slaughterhouse(s) that their member farmers normally sell to would drop by 5-10%.[52]

---

47 Commission decision of 9 March 1999 in case M.1313 – *DanishCrown/ Vestjyske Slagterier*, recitals 66 to 73, Commission decision of 19 March 2004 in case M.3337 – *Best Agrifund/ Nordfleisch*, paragraphs 18 to 21, Commission decision of 21 December 2005 in case M.3968 – *Sovion/ Südfleisch*, paragraphs 35/ 36, Commission decision of 20 august 2010 in case M.5935 – *Vion/ Weyl*, paragraphs 14 to 19.

48 M/03/029p2 - *Galtee Meats/ Dawn Meats*.

49 Form CO, sections 6.1.2-6.1.3.

50 See replies to Q01 Questionnaire to associations of suppliers of live animals of 5 September 2016 - questions 6 and 7.

51 See replies to Q01 Questionnaire to associations of suppliers of live animals of 5 September 2016 - question 12.

52 See replies to Q01 Questionnaire to associations of suppliers of live animals of 5 September 2016 - question 14.

(101) All farmers' associations, including IFA, also indicate that cattle typically travel from 30 to 60 miles to be sold to slaughterhouses.[53] Indeed, according to all the farmers' associations, farmers in practice sell the majority of their cattle within a 30-60 miles radius.[54]

(102) This is also confirmed by slaughterhouses active in the slaughter of cattle. These have indicated that they purchase cattle with a radius of 30 and 60 miles from their plants, the maximum distance within which plants tend to purchase live cattle being 150-200 miles.[55]

(103) The market investigation indicated that a 60 miles radius is not contradicted by the cost of transport (borne generally by the farmers; transportation is arranged by the farmers or their agents) which is up to 1.5% of the price of the live animal or 25-35c/km, according to most farmers' associations and the slaughterhouses.[56]

(104) The IFA in its submission argues for an assessment based on a 60-mile (approximately 100 km) radius from the Slaney JV's plant at Bunclody on the basis of a past Irish NCA merger review decision.[57]

(105) If one were to consider 60 mile radii, various catchment areas in the RoI would appear to be overlapping. This fact together with the indication resulting from the market investigation that prices across localities in the RoI do not appear to differ significantly, appear to point towards a market definition which may be national (the RoI) in scope.

(106) However, based on the results of the market investigation, for the purposes of this decision and particularly in light of the fact that Slaney only has one plant in the RoI (located in the South East region of the RoI), the Commission will assess the transaction applying a 60 miles radius from cattle processing plants in the RoI.

4.3. Purchase of live lambs and live sheep for slaughter

4.3.1. *Product market definition*

4.3.1.1. Previous Commission decisions and the Notifying Parties' views

(107) The Commission has not, to date, assessed the potential market/s for the purchase of live lambs and/or sheep for slaughter.

(108) The Notifying Parties submit that separate markets exist for the purchase of live lambs for slaughter and for the purchase of live sheep (including both ewes and rams) for slaughter, on the basis of age. The Notifying Parties state that it is generally accepted that lamb meat comes from ovine animals of 1 year or less (lambs) and mutton meat from ovine animals over one year (sheep).

(109) From a supply perspective, the Notifying Parties submit that a separate market exists for the purchase of live lambs for slaughter, on the basis of a significant price

---

[53] See replies to Q01 Questionnaire to associations of suppliers of live animals of 5 September 2016 - question 10.

[54] See replies to Q01 Questionnaire to associations of suppliers of live animals of 5 September 2016 - question 15.

[55] See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 46.

[56] See replies to Q01 Questionnaire to associations of suppliers of live animals of 5 September 2016 - question 11; Q02 Questionnaire to slaughterhouses of 5 September 2016 – questions 47-49.

[57] M/03/029p2 - *Galtee Meats/ Dawn Meats*.

difference of 30-40% between the purchase of lamb and sheep for slaughter, with lamb attracting higher prices. The Notifying Parties also state that while the same supplier can sell both lamb and sheep this is influenced by both seasonality and the nature of the supplier. There is a degree of specialisation at the supply stage with some suppliers (including farmers and traders) specialising in the production or trading of lambs.

(110) From the demand side, the Notifying Parties claim that there is very limited demand-side substitutability, in that consumers typically view lamb as a separate and distinct product from sheep (mutton).

4.3.1.2. Results of the market investigation and the Commission's assessment

(111) The two farmers' associations whose members produce lamb for slaughter are the Irish Cattle & Sheep Farmers Association and Irish Creamery and Milk Suppliers Association. The responses of the Irish Farmers Association, Bord Bia and the Department of Agriculture Food & Marine are also relevant since the latter represent all Irish farmers. According to the Irish Cattle & Sheep Farmers Association, half (50%) of its members sell live lamb for slaughter. In relation to Irish Creamery and Milk Suppliers Association, this percentage is 10%.[58]

(112) The large majority of slaughterhouses state that they are able to process and market effectively all different types of live sheep (ewes and ram) and live lambs, without adjusting significantly their assets, making additional investment or strategic decisions, or incurring in significant time delays.[59] All slaughterhouses also indicated that the production line and equipment to process lambs are the same and that they switch production between lambs and sheep very often, or extremely often. All slaughterhouses confirmed that such switching does not take long, and in a scale of 1 to 4 with 1 being not costly, and 4 being extremely costly, slaughterhouses stated that switching between the two is "not costly" (1) or "somewhat costly" (2).[60] Should prices rise by 5-10% on a permanent basis in either live sheep or live lamb, with the price of the other remaining constant, the majority of slaughterhouses would switch their production.[61] Only one slaughterhouse considered that the two animals may belong to different markets: "*sheep and lambs must both be processed to service the producer and they are 2 distinctly different markets*".[62]

(113) The IFA refers in its submission to both an overall (sheep and lamb) and a narrower procurement market comprising only lambs.

(114) For the purposes of this Decision, the exact product market definition can be left open since the Transaction does not raise serious doubts in relation to any of the plausible alternative product market definitions relevant to this case; that is, in relation to: (i) an overall market comprising the purchase of live lamb and live sheep for slaughter; (ii) a market comprising the purchase of live lamb for slaughter only; and (ii) a market comprising the purchase of live sheep for slaughter only.

58 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - question 1.3.
59 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 21.
60 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 22-23.
61 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 24.
62 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 24.

4.3.2. Geographic market definition

4.3.2.1. Previous Commission decisions and the Notifying Parties' views

(115) The Commission has not, to date, assessed the potential market/s for the purchase of live lambs and/or sheep for slaughter.

(116) The Notifying Parties consider that the geographic scope of the markets for the purchase of live lambs and the purchase of live sheep for slaughter is the IoI on the basis of commonality of prices for sheep and lamb on the IoI and trade flows between the RoI and NI. The Notifying Parties also claim that labelling requirements[63] and customer preferences, would not act as barriers to cross-border movement.

4.3.2.2. Results of the market investigation and the Commission's assessment

(117) From the supply side, while some farmers' associations suggest that farmers do not sell sheep and lamb outside the RoI, the Department of Agriculture Food & Marine and IFA state the opposite.

(118) According to the Department of Agriculture Food & Marine data, the total number of sheep slaughtered in the RoI in 2015 was 2 590 109 and the total number of sheep exported in 2015 was 30 583.[64]

(119) According to the farmers' associations, prices for the purchase of live lambs and sheep for slaughter in the South Leinster/Wexford/Waterford area[65] do not differ more than 5% when compared to other areas in the RoI.[66]

(120) Furthermore, according to the Irish Cattle & Sheep Farmers Association, farmers' sales of live lambs for slaughter are usually made within a radius greater than 60 miles.[67] It further specified that usually 60% of lambs are sold outside of a 60-mile radius.[68] The Irish Farmers Association considers that lambs are usually sold within a 30 to 60 mile radius.[69]

(121) The two farmers' associations whose members produce lamb and sheep for slaughter, as well as IFA indicated that prices for the purchase of fresh lambs for slaughter do not differ significantly between the RoI and NI.[70]

---

63 The labelling requirements as to origin (Commission Implementing Regulation (EU) No 1337/2013 as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry) require that the indication of "Ireland" or "UK" (there is no separate designation for NI) can only be used on the meat where it has been obtained from animals born, reared and slaughtered in one single Member State (or third country) however in practice this does not act as a barrier to the cross-border movement of lamb. NI lamb is marked as UK lamb. See Form CO, paragraph 314.

64 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - question 6.

65 The IFA defines the South Leinster area as the spatial area arising from a 60-mile radius drawn in respect of Slaney's beef processing plant at Bunclody, Co. Wexford.

66 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - question 13.1.

67 Response of the Irish Cattle & Sheep Farmers Association to question 10 of questionnaire Q1 to associations of suppliers of live animals.

68 Response of the Irish Cattle & Sheep Farmers Association to question 15 of questionnaire Q1 to associations of suppliers of live animals.

69 Response of the Irish Farmers Association to question 10 of questionnaire Q1 to associations of suppliers of live animals.

70 See replies to Q01 Questionnaire to suppliers of live animals of 5 September 2016 - question 19.

(122) From the demand point of view, half of the slaughterhouses slaughter live lamb and live sheep supplied by farmers based in the RoI, and the other half slaughter live lamb and live sheep supplied by farmers based both in the RoI and in NI.[71]

(123) Based on the results of the market investigation, the Commission considers, for the purposes of this Decision, that the geographic scope of the market(s) for the purchase of live sheep and/lamb for slaughter is the IoI.

4.4. Sale of fresh beef meat

4.4.1. Product market definition

4.4.1.1. Previous Commission decisions and the Notifying Parties' views

(124) In the past, the Commission has concluded that fresh meat includes both fresh and frozen meat (including minced meat) which is not further processed in any way, i.e. no other ingredients or spices have been added, nor has the meat been cooked, smoked or dried.[72] The Commission has, in previous decisions, defined separate product markets for the sale of various types (pork, veal, etc.) of fresh meat, including fresh beef.[73]

(125) The Commission has previously assessed the market for the sale of fresh beef meat on the basis of the following segmentation by distribution channel: (i) sales to retailers, further divided into sales to (a) supermarkets and (b) butchers[74]; (ii) sales to caterers (such as restaurants, government institutions and ship and airport handlers); and (iii) sales of fresh beef to industrial processors (such as producers of sausages, hamburgers and canned food).[75]

(126) With reference to the possible further segmentations (discussed in detail below in paragraphs (135) to (140)) of the markets for fresh beef meat compared to the product market delineations defined in its previous decisions, the Commission hasn't considered in the past any such distinctions or further splitting of the relevant market/s based on origin, breed, type of cattle or premium.

(127) The Notifying Parties agree with these product definitions and segmentation.

(128) The Notifying Parties do not consider that a market for the sale of premium fresh beef meat – whether "Irish" beef/beef from Irish origin or otherwise (such as “premiumised” beef[76]) – exists.

(129) The Notifying Parties submit that whereas Irish beef is marketed as a quality product, the quality requirements of downstream customers can be satisfied by

---

71 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 55.

72 Commission decision of 9 March 1999 in case M.1313 - *Danish Crown/ Vestjyske Slagterier*, paragraph 34; Commission decision of 20 August 2010 in case M.5935 - *Vion/ Weyl*, paragraphs 36 and 39.

73 Commission decision of 19 March 2004 in case M.3337 - *Best Agrifund/ Nordfleisch*, paragraph 23; Commission decision of 8 December 2004 in case M.3535 - *Van Drie/ Schils*, paragraphs 18 and 19; Commission decision of 20 August 2010 in case M.5935 - *Vion / Weyl*, paragraph 36.

74 The Slaney JV does not sell any fresh beef meat to butchers (see Form CO, paragraph 365) so there is no overlap and therefore the segment of fresh beef meat to butchers will not be discussed any further in this decision.

75 Commission decision of 21 December 2005 in case M.3968 - *Sovion/ Südfleisch*, paragraph 62; Commission decision of 19 March 2004 in case M.3337 - *Best Agrifund/ Nordfleisch*, paragraph 24, Commission decision of 20 August 2010 in case M.5935 - *Vion/ Weyl*, paragraph 37.

76 Hanged or dry or wet aged to improve meat quality.

other beef products that have the same level of quality as Irish beef. With respect to industrial processors in particular, the Notifying Parties claim that industrial processors consider beef a commodity and beef from Irish origin is substitutable with domestically produced or imported beef of the same quality. As to the premiumising processes the Notifying Parties submit that such processes of improving the quality of the meat are not costly or difficult to run and other slaughterhouses are capable of replicating.

(130) The Notifying Parties also consider that the specific breed of the cattle is not of importance in relation to fresh meat (i.e. Angus breed meat or Hereford breed meat) that is further processed. The Notifying Parties claim that there is no functional difference between the different breeds and that farmers can switch without cost between breeds.

4.4.1.2. Results of the market investigation and the Commission's assessment

(131) The results of the market investigation conducted in the present case have confirmed the product market definition derived from the Commission's past decisional practice in relation to fresh meat, which as explained in paragraph (124) above, includes meat that has not undergone further processing.[77]

(132) The large majority of respondents to the market investigation also support the view that, in line with previous precedents, a market for the sale of fresh beef meat exists, which is separate from other fresh meat such as pork. Respondents consider that beef and pork come from different species and have very low demand-side substitutability due to their different characteristics such as taste and meat structure for example.[78]

(133) As regards the distinction between sale of fresh meat for direct human consumption on the one hand and sale of fresh meat for further processing, most respondents consider such distinction into separate product markets to be valid, including in relation to the sale of fresh beef meat, mainly due to the different way of use.[79]

(134) The majority of respondents to the market investigation also support the further division of the market for sale of fresh beef meat according to distribution channel: (i) sales to retailers, further split into (a) sales to supermarkets and (b) sales to

---

[77] See replies to Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 7; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 5; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 6; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 6.

[78] See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 25; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 16; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 6; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 7; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 7.

[79] See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 26; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 8; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 9; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 10; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 10.

butchers; (ii) sales to caterers, such as restaurants, canteens, government institutions, etc.; and (iii) sales into industrial processors.[80]

(135) As regards the possible distinction of fresh beef meat according to country of origin, most retailers consider the origin of the fresh beef meat for direct human consumption to be a relevant factor for the following reasons: different quality standards (between EEA countries and countries outside the EEA), labelling requirements (country of origin should be indicated for transparency towards the customers) and traceability.[81] In this respect however, according to most respondents (retailers, supermarkets and caterers), fresh beef for direct human consumption from Irish origin competes with beef from other countries such as UK, France, Belgium, Italy and beef coming from South America (certain respondents explain also that some countries such as UK and France have domestically-sourced beef with which Irish beef would compete).[82]

(136) The majority of industrial processors also consider the origin of the fresh beef meat for further processing to be of importance for largely similar reasons as the ones listed by retailers: difference in the European vs non-European beef quality and traceability of the meat back and forth in the supply chain.[83] As to the potential differences in the price paid to suppliers of fresh beef for further processing depending on the origin (nationally/domestically sources vs foreign origin) the majority of industrial processors are of the view that such difference exists, explaining that national/domestic origin carries some premium or is more expensive whereas imported meat tends to be cheaper (foreign origin being a bigger market with generally lower costs). However some respondents also note that when the quality of the meat is the same in general there will not be a significant price difference per country of origin. One respondent also points out that in certain cases the quality of the meat can be linked to the origin (Irish or French beef is more expensive than Dutch beef due to the fact that most Dutch cows are dairy cows).[84]

(137) The results of the market investigation were inconclusive as regards the possible switching to beef from different origin in case of a 5% to 10% price increase for the currently sourced beef meat of foreign origin as respondents explain this depends heavily on the customer's demands and requirements/specifications and the availability (in terms of volumes) as price is not the only factor of consideration.[85]

---

80 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 27; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 18; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 10; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 11; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 11.

81 See replies to Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 12 and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 12.

82 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 30 and Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 21.

83 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 11.

84 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 13.

85 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 14; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of

(138) The majority of the respondents to the market investigation (industrial processors and retailers – supermarkets and caterers) consider that the breed of the cattle is a distinctive characteristic for fresh beef meat for both direct human consumption as well as for further processing. Respondents state that breed and quality/taste of the meat are interlinked, explaining that dairy breeds should be differentiated from meat breeds. Quality beef meat from certain breeds would attract a price premium and according to some respondents there seems to be a certain level of customer awareness about the different breeds. Such well-known breeds or breeds attracting a higher price because of their better eating qualities that were mentioned by respondents include Angus and Hereford but also Kobe Style, Charolais, Aberdeen angos, Blonde d'Aquitaine, and Dutch breeds like Lakenvelder and MRIJ, thus suggesting that different quality breeds compete with each other.[86]

(139) Results of the market investigation as regards potential switching by caterers and retailers between specific breeds in case of a 5% to 10% price increase in a given breed were inconclusive for fresh beef meat for direct human consumption. As regards potential switching between breeds in relation to fresh beef meat for further processing most respondents (industrial processors), that provided a meaningful answer to the relevant question, consider that they will not switch in case of such price increase but explain that switching depends on the customer and the specific customer requirements which may entail certain kinds of breeds to maintain a certain quality.[87]

(140) In relation to another possible distinction of fresh beef meat **by type of cattle** (e.g. steers, heifers, young bulls, etc.) most respondents to the market investigation consider that differences exists between these types of cattle mainly because of the varying quality linked to the age change, tenderness and fat change. These differences according to the majority of industrial processors and retailers (supermarkets and caterers) are reflected by differences in the price paid for the fresh beef (due to difference in quality and age).[88]

(141) Most respondents (slaughterhouses and supermarkets) are of the opinion that **premium or "premiumised"** fresh beef meat exists, although the results of the market investigation did not provide a clear and conclusive picture as to what this possible premium/premiumised fresh beef market would exactly include: some respondents point out to premiumising techniques such as aging and/or dry aging, others to specific race/breed of the animal or cuts (such as ribs, fillets, striploins, rumps), or even specific growing farms conditions.[89] As to the percentage of sales

---

fresh meat) of 5 September 2016 - question 15 and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 15.

86 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - questions 15 and 16; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - questions 16 and 17; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - questions 16 and 17.

87 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 17; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 18; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 18.

88 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - questions 18 and 19; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 19; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 19.

89 Nor whether such possible market would be applicable to one or more of the distribution channels (supermarkets, caterers, industrial processors) for the sale of fresh beef meat.

that premium/premiumised fresh beef represents out of total beef sales respondents have diverging views having pointed to a very large range from 1% to 30%.[90]

(142) The Commission considers that while the results of the market investigation have provided certain indications that characteristics such as country of origin, certain breeds, types of the animal and premiumising techniques are of importance for the sale of fresh beef meat, these indications alone do not, for the reasons which will be explained further below, appear to be sufficiently strong to warrant further sub-segmentation of the fresh beef meat markets on that basis.

(143) Based on the results of the market investigation, it seems that all these characteristics relate to the quality of the fresh beef meat (and consequently to the price paid for a certain quality). However, as evident from the statements of the respondents to the market investigation (see paragraphs (136) to (140) above), beef meat quality appears to be a function of a number of interlinked factors: such as breed but also characteristics of the meat that are not related solely to the breed or the country of origin, for example tenderness and fat which relate also to the age and type of the animal, etc.

(144) Furthermore beef from Irish origin (including Irish breeds) appears to compete with beef from other countries. Also, even if some countries of origin would attract higher prices not all beef coming from the same country might be considered as being of equal quality due to the influence of other factors (including fat content, tenderness, application of a premiumising technique, etc.).

(145) As regards premium/premiumised beef would include a number of breeds rather than only premium Irish breeds such as Angus and Hereford and dry aged beef from Ireland would seem to compete with dry aged beef from other countries.

(146) Whereas higher beef quality would in general attract a higher or premium price in light of the above assessment, the evidence collected during the market investigation in the current case does not seem sufficient to support the possible existence of separate market/market segment based on any of these characteristics (including "premium/premiumises").

(147) In particular, as explained in more detail in paragraph (89) above the market investigation provided clear indications about the existence of supply-side substitutability on the side of slaughterhouses which process all types and breeds of cattle and can easily and at no cost switch between processing different types or breeds of bovine animals.

(148) In light of the above, the Commission therefore considers that, for the purposes of this Decision, the product markets that are relevant for the assessment for the present case consist of the market for sale of fresh beef meat to supermarkets, the market for sale of fresh beef meat to caterers and the market for sale of fresh beef meat to industrial processors.

4.4.2. *Geographic market definition*

4.4.2.1. Previous Commission decisions and the Notifying Parties' views

(149) In the past, the Commission has considered three possible alternative geographic market definitions for the sale of fresh beef to supermarkets: (i) national; (ii) cross-

90 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 29 and 31 and Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - questions 20 and 22.

border regional (such as including the Benelux, Denmark, France and Germany); and (iii) EEA-wide, leaving the question about the exact geographic scope open.[91]

(150) The Notifying Parties claim that the sale of fresh beef meat to supermarkets is EEA-wide based on the following: significant imports/exports, limited transport costs (estimated to be around 2% of the average sales prices), packaging techniques allowing long shelf-life of meat products[92], international sourcing by supermarkets and uniform European quality standards.

(151) With regard to the sale of fresh beef to caterers and to industrial processors, in its previous decisions the Commission considered the relevant geographic scope of the market to be wider than national, leaving however the exact geographic market definition open.[93]

(152) The Notifying Parties submit that both the markets for sale of fresh beef to caterers and to industrial processors are EEA-wide in scope. The Parties submit that caterers and industrial processors source beef from abroad and use EU beef and beef imported from third countries interchangeably. Around 90% of beef meat produced in Ireland is exported: an estimated 560,000 tonnes (carcass weight equivalent "CWE") of Irish beef was produced in 2015, of this an estimated 524,000 tonnes CWE of beef was exported.[94] The largest market for beef exports from Ireland is the UK, which accounts for approximately 57% of total Irish beef exports (272,000 tonnes of beef).[95] The imports of beef from non-EU countries (including Brazil, Uruguay, Argentina, Australia, USA and New Zealand, accounting together for nearly 90% of the imports) to the EU in 2015 amount to 332 723 tonnes.[96]

4.4.2.2. Results of the market investigation and the Commission's assessment

(153) As regards the sale of fresh beef meat for direct human consumption to supermarkets, the results of the market investigation did not yield a clear picture in this respect as respondents appear to have diverging views: most slaughterhouses consider the market for sale of fresh beef to retailers/supermarkets to be EEA-wide whereas most retailers/supermarkets consider it to be of a national scope. Few respondents also state that, in their view, there are no legal, commercial, veterinary or other barriers to export fresh beef for direct human consumption to other EEA counties.[97]

---

91 Commission decision of 20 August 2010 in case M.5935 - *Vion / Weyl*, paragraphs 40 and 42; Commission decision of 21 December 2005 in case M.3968 - *Sovion/ Südfleisch*, paragraph 65; Commission decision of 21 December 2004 in case M.3605 - *Sovion/HMG*, paragraphs 68-70.

92 The Parties submit that fresh meat can be stored for 90 days in long life bags so could travel anywhere in the world provided the right storage and transit conditions are ensured (FormCO, footnote 102).

93 Commission decision of 21 December 2005 in case M.3968 - *Sovion/ Südfleisch*, paragraph 63; Commission decision of 9 March 1999 in case M.1313 - *Danish Crown / Vestjyske Slagterier* paragraph 94; Commission decision of 20 August 2010 in case M.5935 - *Vion / Weyl*, paragraphs 43 and 44.

94 Form CO, paragraph 993.

95 Agriculture & Horticulture Development Board UK data, Form CO, paragraph 943.

96 Table 6R, Form CO.

97 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 62; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 26; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 22.

(154) Similarly, the results of the market investigation in relation to the geographic scope of the market for sale of fresh beef meat to caterers were inconclusive: the views expressed by slaughterhouses, most of which consider the market to be EEA-wide, differ from the opinion expressed by most caterers that replied to the relevant question who consider the market to be national in scope. As mentioned already in paragraph (153) above, several respondents consider that there are no legal, commercial, veterinary or other barriers to the export of fresh beef for direct human consumption to other EEA counties.[98]

(155) With respect to the market for sale of fresh beef meat to industrial processors the majority of the respondents (both slaughterhouses and industrial processors) are of the view that the relevant geographic scope of the market is wider than national (cross-border regional or EEA-wide). Couple of respondents indicate that industrial processors can switch from Irish to for instance French or German beef, provided this is allowed by the customer requirements.[99] Indeed industrial processors appear to source fresh beef meat for further processing from a number of countries: Ireland, France, the Netherlands, UK, Germany, Italy, Scotland, and Poland.[100] In addition, half of the industrial processors that responded to the market investigation confirm to have switched (either rarely or occasionally) a supplier of fresh beef from one country with a supplier in another country.[101]

(156) Based on the results of the market investigation, the Commission considers that the exact geographic market definition of the relevant markets for sale of fresh beef to each of (i) retailers/supermarkets, (ii) caterers; and (iii) industrial processors can be left open since the Transaction does not raise competition concerns under any possible geographic delineation of the relevant markets.

4.5. Sale of fresh lamb meat

4.5.1. *Product market definition*

4.5.1.1. Previous Commission decisions and the Notifying Parties' views

(157) The Commission has not, in the past, assessed potential markets for the sale of fresh lamb or mutton meat.

(158) With regard to meat from the same animal species (bovine species), the Commission has previously defined separate markets for veal meat (from calves) and beef meat (from cattle).[102]

(159) As regards to ovine animals, male and female ovine animals under 12 months are designated as lamb whereas male and female ovine animals over 12 months are designated as sheep.

---

98 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 63; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 22.

99 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 64; and Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 21.

100 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 23.

101 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 25.

102 Commission decision of 20 August 2010 in case M.5935 - *Vion / Weyl*, paragraphs 57 and 58; Commission decision of 8 December 2004 in case M.3535 - *Van Drie / Schils*, paragraphs 18, 19, 26 and 27.

(160) The Notifying Parties submit that there is a distinct market for the sale of fresh lamb, separate from the markets for sale of fresh beef or other meat such as fresh pork meat for example. The Parties further submit that the further segmentation of the market for fresh beef meat by sales channel into (i) retailers, further divided into supermarkets and butchers; (ii) caterers and (iii) industrial processors is also representative for the sale of fresh lamb meat.

(161) The Notifying Parties consider that no distinct market for premium fresh lamb exists claiming that lamb is a premium quality product while in certain instances individual cuts may be marketed as "premium" (i.e. frenched lamb racks) but the added value is introduced purely through the butchery and trimming of the lamb meat.

(162) The Notifying Parties also submit that as the meat is further processed into a finished product before being sold to customers, the origin of the meat is likely to be of less importance to the final consumer.

4.5.1.2. Results of the market investigation and the Commission's assessment

(163) The large majority of respondents to the market investigation (slaughterhouses, retailers – supermarkets and caterers, and industrial processors) share the view that the sale of fresh[103] lamb and mutton meat constitutes a distinct market, separate from the markets for other meat such as pork or beef. Respondents consider that lamb, pork and beef are very different products with very low demand-side substitutability because the characteristics of each of these types of meat (taste, meat structure, etc.) are very different. Respondents also explain that there is price differentiation between lamb and mutton (as well as between lamb meat compared to pork meat, with lamb being up to 3 times more expensive than pork).[104]

(164) The results of the market investigation as to whether fresh lamb meat and fresh mutton meat belong to the same product market or to separate markets were not conclusive, although statements of the respondents indicate that lamb meat on the one hand and mutton meat on the other hand might belong to separate markets in view of the different seasonality of each (fresh lamb and fresh mutton primarily supplied at different times of the year), the differences in quality and taste (age difference between lamb and sheep), the indications about limited demand-side substitutability by the end-consumer, as well as the price differentiation between the two (mutton being cheaper).[105]

(165) As regards the further segmentation of the possible separate market for fresh lamb meat by analogy to beef between (i) fresh meat for direct human consumption and

---

103 The definition of fresh meat, mentioned in paragraph (124), in relation to beef is applicable also in relation to lamb and mutton/sheep meat.

104 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 32; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 5; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 7; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 8; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 8.

105 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 33; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 6; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 8; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 9; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 9.

fresh meat for further processing; and (ii) by distribution channel: retailers (further split between supermarkets and butchers), caterers and industrial processors respectively, the results of the market investigation suggest that such segmentation appears to be appropriate for lamb meat. Indeed respondents state these distribution channels require different packaging formats, involve different clients, and the meat is treated and used in different ways.[106]

(166) Concerning a possible distinction of fresh lamb for direct human consumption by origin (between imported fresh lamb and domestically/nationally sourced lamb) most retailers and caterers consider that the country of origin is a characteristic of distinction due to the difference in quality depending on the origin, impact of the feeding regimes and breeds, the labelling requirements (origin of the meat needs to be indicated for customer transparency) and the fact that some customers have preferences for lamb sourced locally/regionally for sustainability reasons. According to one respondent all origins have their own advantage, including seasonality.[107]

(167) Most retailers that replied to the relevant question from the market investigation consider that there is a price difference for fresh lamb for human consumption from foreign origin compared to nationally/domestically sourced lamb without providing further information.[108] The market investigation results did not provide a clear picture as to the possible switching of retailers between fresh lamb meats of different origins in case of a 5% to 10% increase in price.[109] The results obtained during the market investigation suggest that supermarkets in Belgium source fresh lamb meat from a number of countries: New Zealand, Australia, England/UK, Ireland, Belgium and France.[110]

(168) As regards fresh lamb for further processing most industrial processors that provided a meaningful reply to the respective question from the market investigation, consider, similarly to retailers, that the origin of fresh lamb meat plays a role mainly for the same reasons of quality and specifications which are connected to the origin.[111] Industrial processors also consider that there is a price difference by origin for the similar reasons outlined for beef (see paragraph (136) above): one respondent explains that lamb meat from Ireland has a lower price than lamb meat from France, presumably due to lower production costs (lamb from

106 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 36 and 37; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - questions 8 and 9; Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - questions 10.3; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 11.2; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 11.2.

107 See replies to Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 10; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 13; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 13.

108 See replies to Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 11; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 14.2; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 14.2.

109 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 73; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 12.

110 See replies to Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 23.

111 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 12.

foreign origin being a larger market compared to domestic markets with respectively lower costs in general).[112]

(169) Based on the results of the markets investigation outlined above, the Commission considers that there are certain indications suggesting the existence of a separate market for the sale of fresh lamb as well as the further segmentation of this possible market, by analogy to beef, into fresh lamb for direct human consumption and fresh lamb for further processing as well as by distribution channel (retailers – split between supermarkets and butchers, caterers and industrial processors).

(170) As regards a possible distinction of fresh lamb meat according to the country of origin, the Commission considers that the results of the market investigation, although conveying the importance of origin in relation to the sale of fresh lamb meat, do not appear sufficient to conclude on the possible existence of a separate market or market segment for fresh lamb based on origin.

(171) For the purposes of this decision, the Commission considers that the relevant markets for the assessment of the Transaction are: the possible overall market for fresh lamb and fresh mutton meat, the possible market for sale of fresh lamb meat and concludes that the exact product market definition with regard to possible further segmentations by distribution channel can also be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definitions in relation to lamb and mutton meat.

4.5.2. *Geographic market definition*

4.5.2.1. Previous Commission decisions and the Notifying Parties' views

(172) As indicated in paragraph (157) above, the Commission has not previously considered potential markets for the sale of fresh lamb or mutton meat.

(173) The Notifying Parties submit that the possible markets for sale of fresh lamb to supermarkets, butchers, caterers and industrial processors respectively are wider than national, with an EEA-wide geographic dimension.

4.5.2.2. Results of the market investigation and the Commission's assessment

(174) The majority of the respondents consider the possible markets for sale of fresh lamb to retailers and caterers to have a national scope, although a respondent explains that various suppliers are able to provide fresh lamb meat originating from different European countries and another sees these possible markets as EEA or wider because of the important volumes of fresh lamb meat available from New Zealand and Australia.[113] Respondents to the market investigation haven't flagged any legal, commercial, veterinary or other barriers to exporting fresh lamb for direct human consumption to other EEA countries, including Belgium.[114]

---

112 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - question 13.2.

113 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 66 and 67; Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 24; Q06 Questionnaire to retailers and supermarkets in EEA (for sale of fresh meat) of 5 September 2016 - question 23; and Q07 Questionnaire to caterers in EEA (for sale of fresh meat) of 5 September 2016 - question 23.

114 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 69 and 70; and Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 25.

(175) As regards the geographic dimension of the possible market for sale of fresh lamb for further processing, most respondents to the market investigation (industrial processors and slaughterhouses) consider it to be EEA-wide. Industrial processors appear to source lamb from a number of countries including Ireland, France, UK, New Zealand, Spain, Greece and Romania.[115]

(176) Based on the results of the market investigation, for the purposes of this Decision, the Commission considers that the exact geographic scope of the possible markets for sale of fresh lamb and mutton meat, sale of fresh lamb, sale of lamb meat to retailers, caterers and industrial processors can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any of alternative geographic market definition (national or EEA-wide).

4.6. Sale of fresh mutton/sheep meat

4.6.1. *Product market definition*

(177) As already indicated in paragraph (157) above, the Commission has not, in the past, assessed potential markets for the sale of fresh lamb or mutton meat.

(178) The Notifying Parties submit that given the small fraction that mutton represents (approximately 10%) of all meat from ovine animals sold, no separate market for the sale of fresh mutton should be defined.

(179) As indicated in paragraph (164) above, the results of the market investigation as to whether fresh lamb meat and fresh mutton meat belong to the same product market or to separate markets were not conclusive, although there are indications that mutton meat might belong to separate markets in view of the different seasonality of each lamb and mutton, the differences in quality and taste (age difference between lamb and mutton), limited demand-side substitutability by the end-consumer, as well as the price differentiation between the lamb and mutton (mutton being cheaper).

(180) For the purposes of this Decision, the Commission considers that the exact product market definition with regard to sale of fresh mutton meat can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any alternative product market definition.

4.6.2. *Geographic market definition*

(181) The results of the market investigation as regards to the geographic dimension of the possible market for sale of fresh mutton meat were inconclusive although the majority of slaughterhouses consider that they compete with suppliers from other EEA and non-EEA countries for the sale of fresh mutton meat to retailers, caterers and industrial processors in the EEA.[116]

(182) For the purposes of this Decision, the Commission considers that the question about the geographic delineation of the possible market for the sale of fresh mutton meat can be left open as the Transaction does not raise serious doubts as to its

115 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 68; and Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016 - questions 22 and 23.

116 See replies to Q02 Questionnaire to slaughterhouses of 5 September 2016 – questions 75, 76 and 77.

compatibility with the internal market under any alternative geographic market definition (national or EEA-wide).

(183) Slaney is active in the sale of mutton meat to the following EEA countries: Austria, Belgium, Germany, Denmark, France, UK, Ireland, Italy, the Netherlands, Poland and Sweden. Slaney sells mutton to retail customers only in France, UK and Ireland and the vast majority of its sales are to industrial processors. ABP has only limited sales of mutton in Ireland, UK and continental Europe. Based on Parties' estimates[117] the Transaction will not give rise to any affected markets in relation to sale of fresh mutton under any plausible product and geographic market definition (segmenting the possible market for sale of fresh mutton by distribution channel into (i) retailers, further split into (a) supermarkets and (b) butchers; (ii) caterers; and (iii) industrial processors on a national, regional or EEA-level).[118]

(184) Therefore the possible markets for sale of fresh mutton meat are not discussed any further in this decision.

4.7. Sale of processed meat

(185) The Commission has in previous cases[119] defined a market for processed meat products, which is separate from the markets for sale of fresh meat. Processed meat products have been defined as pork, beef or poultry meat containing external ingredients such as salt or spices, being raw, dried smoked or cooked. Processed meat products include a wide range of different products that differ in terms of the raw material used (i.e. pork, beef, poultry), ingredients used (spices, water content), heat treatment (smoked or boiled), portion, packaging and temperature (chilled or canned). In terms of the geographic scope of the market for processed meat products the Commission has previously considered national as well as wider than national delineation of the market, ultimately leaving the exact geographic market definition open.

(186) The Parties are primarily producers of fresh meat (beef and lamb) with very limited sales of processed meats even under the narrowest plausible geographic market definition. ABP and Slaney JV's activities overlap in the sale of processed meat in the RoI but the combined market share of the Parties is minimal (around [5-10]% by value and [0-5]% by volume). As the proposed transaction does not give rise to any affected market in relation to the sale of processed meat products under any plausible product or geographic market definition, the markets for processed meat will not be further discussed in this decision.

4.8. Animal by-products

(187) Animal by-products include all products other than edible meat originating from the slaughter of animals or from fallen stock, including products such as blood, intestines, bones, fats and skins. Such by-products can be supplied by slaughterhouses to rendering companies for further processing or for disposal.

---

117 Paragraph 529 of the Form CO.

118 For the definition of horizontally or vertically affected markets, see Annex 1 point 6.3 of Commission Implementing Regulation 802/2004, as last amended by Commission Regulation 1269/2013.

119 Commission decision of 19 March 2004 in case M.3337 - *Best Agrifund / Nordfleisch*, paragraphs 39-40, 44 and 46; Commission decision of 17 July 2015 in case M.7565 - *Danish Crown / Tican*, paragraphs 21-25 and 32.

4.8.1. Product market definition

(188) Animal by-products can generally be divided into animal by-products that can be further processed for human consumption and those only fit for other uses.[120] According to previous Commission decisions, animal by-products not fit for human consumption can further be divided into Category 1 (highest risk), Category 2 (high risk) and Category 3 (low risk) materials depending on the risk that they pose to public and animal health.[121] The Commission has further considered numerous possible further segmentations of the markets, for instance according to different organs of the animals[122], but ultimately left the exact market definition open.[123] In previous cases, the Commission has also defined distinct markets for the *collection of animal by-products* and the *sale of processed animal by-products*.[124]

(189) The Parties do not contest these definitions, but note that there are no Category 2 plants on the IoI or in the UK. Therefore, the Category 2 material is downgraded and is rendered in Category 1 facilities.

(190) In the past[125] the Commission has considered further segmentation of the market for sale of processed animal by-products, derived from Categories 1, 2 and 3: (i) sale of meat and bone meal ("MBM")[126] derived from Category 1 animal by-products; (ii) sale of fats derived from Category 1 animal by-products[127]; (iii) sale of fats derived from Category 3 animal by-products[128]; and (iv) sale of processed animal proteins ("PAP")[129] derived from Category 3 animal by-products. However, the Commission confirmed in previous decisions only the existence of a separate market for fats with a possible further distinction between Category 3 fats and food grade fats.

(191) Slaney Proteins operates only a Category 3 rendering facility in the RoI and is not active in the collection or processing of Category 1 and 2 animal by-products hence

---

120 Commission decision of 29 June 2012 in case M.6285 - *Saria/ Danish Crown/Daka JV*, paragraph 14; Commission decision of 21 December 2005 in case M.3968 - *Sovion/ Südfleisch*, paragraph 84.

121 See, for instance Commission decision of 29 June 2012 in case M.6285 - *Saria/ Danish Crown/ Daka JV*, paragraph 15. See also Commission decision of 14 February 2002 in case M.2662 - *Danish Crown/ Steff-Houlberg*, Article 9 decision, paragraphs 85-87; and Commission decision of 9 March 1999 in case M.1313 - *Danish Crown / Vestjyske Slagterier*, recitals 45-48.

122 See, for instance Commission decision of 20 August 2010 in case M.5935 - *Vion / Weyl*; Commission decision of 21 December 2004 in case M.3605 - *Sovion/ HMG*, Commission decision of 19 March 2004 in case M.3337 - *Best Agrifund/ Nordfleisch* paragraphs 102-107, 115-117, 124-126, 132-133, 138-139, 140-141, 144-145, 146-147; and Commission decision of 2 July 2003 in case M.3175 - *Best Agrifund/ Dumeco*.

123 Commission decision of 29 June 2012 in case M.6285 - *Saria/ Danish Crown/ Daka JV*, paragraph 26.

124 Commission decision of 29 June 2012 in case M.6285 - *Saria/ Danish Crown/ Daka JV*, paragraph 19.

125 Commission decision of 29 June 2012 in case M.6285 - *Saria/ Danish Crown/Daka JV*, paragraphs 17, 30-33, 35-38.

126 MBM is a dry, powdery product used as substitute fuel in energy intensive industries such as concrete plants (Form CO, paragraph 590).

127 Fats derived from Category 1 animal by-products are used in the olio-chemical industry, as substitute fuels and increasingly for the production of bio-diesel (Form CO, paragraph 590).

128 Fats derived from Category 3 animal by-products are to a considerable extent used for the same purposes as Category 1 fats but due to their lower risk level they may be used in petfood production and fertilisers (Form CO, paragraph 590).

129 PAP are mainly used for pet food production and in the fertiliser industry (Form CO, paragraph 590).

there is no horizontal overlap or vertical links[130] between Slaney Proteins' and ABP's activities in relation to the possible markets for Category 1 and 2 processed animal by-products. Therefore the possible downstream markets for Category 1 MBM and Category 1 fats will not be further discussed in this decision.

(192) With respect to Category 3 processed animal by-products, Slaney Proteins' Category 3 facility renders primarily Category 3 animal by-products generated by the Slaney JV and is active in the sale of processed Category 3 fats ([…] MT in 2015) and PAP ([…] MT in 2015) downstream. ABP is also active in the sale of sale of processed Category 3 fats ([…] MT in 2015) and PAP ([…] MT in 2015). Given that Slaney Protein's activities in this regard would represent only a modest increment[131] to the existing activities of ABP in Category 3 processed animal by-products the possible downstream markets for Category 3 processed animal by-products will not be further discussed in this decision.

(193) The results of the market investigation support the differentiation between food grade and non-food grade animal by-products and that non-food grade animal by-products can be further segmented into the previously identified in paragraph (188) three categories.[132] The market investigation yielded more mixed results in relation to the differentiation of animal by-products by type of animal.[133]

(194) For the purpose of this decision, the exact product market definition with regard to animal by-products can be ultimately left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible product market definition.

4.8.2. Geographic market definition

(195) In past decisions concerning animal by-products, the Commission concluded that the relevant market for the collection of high-risk animal by-products is at most national but left the exact market definition for other by-products open.[134] In more recent decisions, including *Saria/ Danish Crown/ Daka JV*, the Commission has found indications of the geographic scope of animal by-products markets being as national in scope but has in many instances left the exact market definition open.[135]

(196) The Parties submit that the market for the collection of Category 1 & 2 and Category 3 materials is at a minimum the IoI and that it may extend to Scotland and further to other parts of the UK.

---

130 Category 1 and 2 animal by-products generated in the Slaney JV's plants are currently disposed solely […] and […] (Table 7A17 of Form CO).

131 Under a possible narrower geographic scope of the possible markets for Category 3 processed animal by-products at national level (i.e. the RoI), although exact market shares of the Parties are not available, if their respective shares in the collection of Category 3 by-products is used as a conservative proxy (as such approach would not take into account the possible imports of Category 3 processed products in the RoI), the increment brought by the Transaction would amount at most to [0-5]% to the existing [30-40]% share of ABP. Furthermore no concerns have been raised by renderers in the RoI during the market investigation in the present case in relation to the sale of Category 3 processed animal by-products.

132 See Q05 Questionnaire to renderers of animal by-products of 5 September 2016 - questions 5, 6 and 8; Q02 Questionnaire to slaughterhouses of 5 September 2016 - questions 39-40.

133 See Q05 Questionnaire to renderers of animal by-products of 5 September 2016 - question 7; Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 41.

134 See, for instance M.2662 - *Danish Crown / Steff-Houlberg*, Article 9 decision, paragraphs 88; and M.1313 - *Danish Crown / Vestjyske Slagterier*, paragraphs 98-99.

135 See, for instance M.6285 - *Saria / Danish Crown / Daka JV*, paragraph 46.

(197) The market investigation did not provide conclusive evidence about the exact geographic market definition; it nonetheless provided some indications that the geographic scope of the market may include the UK in addition to the RoI.[136] However, information provided by the Parties show that: (i) their (rendering) facilities in the RoI render almost exclusively for slaughterhouses based in the RoI[137] and (ii) that the vast majority of animal by-products generated by their slaughtering activities in the RoI is actually rendered within the territory of the RoI.[138]

(198) For the purpose of this Decision, the exact geographic market definition with regard to animal by-products can ultimately be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible geographic market definition.

5. COMPETITIVE ASSESSMENT – HORIZONTAL OVERLAPS

5.1. Analytical framework

(199) The Horizontal Merger Guidelines distinguish between two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition, namely non-coordinated and coordinated effects.

5.1.1. Non-coordinated effects

(200) Under Article 2(2) and (3) of the Merger Regulation, the Commission must assess whether a proposed concentration would significantly impede effective competition in the internal market or in a substantial part of it, in particular through the creation or strengthening of a dominant position.

(201) In this respect, a merger may entail horizontal and/or vertical effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[139]

(202) For the assessment of the Transaction, it should in particular be recalled that the Horizontal Merger Guidelines describe horizontal non-coordinated effects as follows: "*A merger may significantly impede effective competition in a market by removing important competitive constraints on one or more sellers who consequently have increased market power. The most direct effect of the merger will be the loss of competition between the merging firms. For example, if prior to the merger one of the merging firms had raised its price, it would have lost some sales to the other merging firm. The merger removes this particular constraint. Non-merging firms in the same market can also benefit from the reduction of competitive pressure that results from the merger, since the merging firms' price*

---

136 See Q05 Questionnaire to renderers of animal by-products of 5 September 2016 - question 10; Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 78.

137 See, for example, Tables 7A20, 7A30 and 7A31 of the Form CO.

138 See, for example, Tables 7A17 and 7A29 of the Form CO.

139 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), OJ C 31, 05.02.2004.

increase may switch some demand to the rival firms, which, in turn, may find it profitable to increase their prices. The reduction in these competitive constraints could lead to significant price increases in the relevant market."[140]

(203) Under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may be incompatible with the internal market. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[141] This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition"*.[142]

(204) The Horizontal Merger Guidelines list a number of factors which may influence whether or not significant horizontal non-coordinated effects are likely to result from a merger, such as the large market shares of the merging firms, the fact that the merging firms are close competitors, the limited possibilities for customers to switch suppliers, or the fact that the merger would eliminate an important competitive force. That list of factors applies equally regardless of whether a merger would create or strengthen a dominant position, or would otherwise significantly impede effective competition due to non-coordinated effects. Furthermore, not all of these factors need to be present to make significant non-coordinated effects likely and it is not an exhaustive list.[143]

(205) In addition, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of the merger on competition, including the likelihood of buyer power, entry and efficiencies.

(206) Finally, the Horizontal Merger Guidelines mention factors specifically relevant for assessing mergers creating or strengthening buyer power in upstream markets. According to the guidelines, harm to competition would in particular incur if the merged firm may be in a position to obtain lower prices by reducing its purchase of inputs which could, in turn, lead to lower levels of output in the final product market, thereby harming consumer welfare.[144] However, the Horizontal Merger Guidelines also state that increased buyer power may be beneficial for competition if it lowers input costs without restricting downstream competition or total output as in such case a proportion of these cost reductions are likely to be passed onto consumers in the form of lower prices.[145]

---

140 Horizontal Merger Guidelines, paragraph 24.

141 Merger Regulation, recital 25.

142 Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines.

143 Horizontal Merger Guidelines, paragraph 26.

144 Horizontal Merger Guidelines, paragraph 61.

145 Horizontal Merger Guidelines, paragraph 62.

5.1.2. Coordinated effects

(207) Coordination implies that firms on a given market adopt, on a sustainable basis, a parallel conduct to limit their rivalry. Coordination can involve a parallel strategy to sell at increased prices, reduce output, choice and quality, diminish innovation, share markets or influence negatively any other parameter of competition.

(208) Coordinated conduct can arise without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU.[146] Such coordination is often referred to as "tacit collusion" or "conscious parallelism", indicating that coordinating firms do not necessarily have illegal contacts and that rather than competing they consciously choose to align themselves with the competition in relation to pricing, output, product quality or variety or any other parameter of competition.

(209) In assessing the possibility of coordinated effects the Commission should examine, first, whether it would be possible to reach terms of coordination and, second, whether the coordination would be likely to be sustainable.[147]

(210) As regards the possibility of reaching coordination, coordination is more likely to emerge in markets where it is relatively simple to reach a common understanding on the terms of coordination.[148] Generally, the less complex and more stable the economic environment, the easier it is for the firms to reach a common understanding on the terms of coordination. For example, it is easier to coordinate among few firms than many.[149] The analysis in this regard focuses therefore on market characteristics such as the number of market players, the symmetry of their market position, the level of product differentiation, stability of demand, transparency etc.[150] In addition to such structural characteristics, behavioural factors are also taken into account.

(211) As regards the sustainability of coordination, three conditions need to be fulfilled for the coordination to be sustainable.[151] First, the coordinating firms must be able to monitor to a sufficient degree whether the terms of coordination are being adhered to. This condition requires a sufficient degree of transparency of the important parameters of competition.[152] Second, discipline requires that there is a credible deterrent mechanism that can be activated if deviation is detected. A simple deterrent mechanism can be a temporary price war[153] or a return to competitive price levels[154], if the circumstances are such that such consequences are sufficiently detrimental to convince the coordinating firms that it is in their best interest to adhere to the terms of coordination.[155] Third, the reactions of outsiders, such as current and future competitors not participating in the coordination, as well as customers or suppliers, should not be able to jeopardise the results expected from the coordination.

---

146 Horizontal Merger Guidelines, paragraph 38.
147 Horizontal Merger Guidelines, paragraph 42.
148 Horizontal Merger Guidelines, paragraph 41.
149 Horizontal Merger Guidelines, paragraph 45.
150 Horizontal Merger Guidelines, paragraphs 45-48.
151 Horizontal Merger Guidelines, paragraph 41.
152 Horizontal Merger Guidelines, paragraph 49.
153 Horizontal Merger Guidelines, paragraph 54.
154 Horizontal Merger Guidelines, paragraph 52, footnote 70.
155 Horizontal Merger Guidelines, paragraph 52.

(212) In analysing the likelihood of coordinated effects the Commission takes into account all available relevant information from the markets concerned, both structural and behavioural.[156] Past examples of coordination and examples of coordination from other markets can also be relevant.[157]

5.2. Markets for purchase of live animals

(213) The Parties to the Transaction are active in the markets for the purchase of live animals as buyers. Therefore, the Commission's market investigation has assessed whether the concentration could confer significant buyer power on the merged entity in the markets for the purchase of live cattle, lamb and sheep for slaughter.

(214) A merger that leads to increased buyer power is liable to significantly impede effective competition only under specific circumstances. The merged entity may be in a position to obtain lower prices by reducing its purchase of inputs. This may, in turn, lead it also to lower its level of output in the final product market, and thus harm consumer welfare. Competition in the downstream markets could also be adversely affected if the merged entity were likely to use its buyer power vis-à-vis its suppliers to foreclose its rivals.[158]

(215) In the light of the market investigation and the Commission's assessment in relation to the downstream markets (see Sections 5.3 and 5.4), the first risk mentioned above is unlikely to materialise due to the level of competition which can be expected to remain also following the Transaction in the downstream markets for the sale of fresh meat (as discussed in further detail below). The second risk, namely a potential foreclosure of rivals seems highly unlikely in the present case as it would require the Parties to purchase substantial higher numbers of live animals for slaughter than currently procured. (Incidentally, such actions would likely rather increase prices paid to farmers). In addition, there are generally no long-term or exclusivity contracts between farmers and slaughterhouses according to responses to the Market Investigation. [159]In any event, the Commission has conducted an analysis of the competitive conditions in upstream markets and an evaluation of the possible positive and negative effects of the proposed merger.

(216) ABP operates 8 processing plants for which it procures live cattle for slaughter. Of these, 6 are located in the RoI and 2 are based in NI. All of these plants slaughter cattle whilst only one plant in NI also slaughters sheep/lambs. Fane Valley (through Linden Foods) operates 1 processing plant for cattle, lamb and sheep in NI. All 3 plants of Slaney JV are situated in the RoI. Two of these plants slaughter only sheep and lambs, the remaining slaughters only cattle. Therefore, both the market for the purchase of live cattle and the market for the purchase of live sheep and lambs will be assessed.

(217) The Commission assessed different theories of harm in relation to the markets for the purchase of live animals for slaughter.

(218) First, the Commission examined whether the Transaction could eliminate important competitive constraints that the Parties currently exercise on each other as well as

---

156 Horizontal Merger Guidelines, paragraph 43.

157 Horizontal Merger Guidelines, paragraph 43.

158 Horizontal Merger Guidelines, paragraphs 61-63.

159 Questionnaire Q1 to associations of suppliers of live animals, question 26.

reduce the competitive pressure on the remaining competitors.[160] In a market in which the Parties procure live animals for their processing plants, higher concentration on the demand side could be a source of additional buyer power potentially leading to reduced inputs and lower prices paid by the Parties to farmers.

(219) Second, the Transaction could result in coordinated effects if the Parties together with the remaining competing slaughterhouses were post-merger more likely to coordinate to jointly exert buyer power vis-à-vis their suppliers. In the market for the purchase of live animals, this coordination could potentially lead to reduced inputs and lower prices for farmers. In both cases, the potential effect on final consumers' welfare has been assessed.

5.2.1. Non-coordinated effects on the market for the purchase of live cattle for slaughter

5.2.1.1. Market Structure

(220) As regards the market for the purchase of live cattle for slaughter, the Transaction results in combined market shares at RoI level of around [20-30]% by volume and value.

Table 3: market shares for the purchase of live cattle for slaughter

	volume in 2015	value in 2015	volume in 2014	value in 2014
ABP	[20-30]	[20-30]	[20-30]	[20-30]
Slaney	[5-10]	[5-10]	[5-10]	[5-10]
Parties combined	***[20-30]***	***[20-30]***	***[20-30]***	***[20-30]***
Dawn	[10-20]	[10-20]	[20-30]	[20-30]
Kepak	[10-20]	[10-20]	[10-20]	[10-20]
Liffey	[5-10]	[5-10]	[5-10]	[5-10]
Kildare	[5-10]	[5-10]	[5-10]	[5-10]
Dunbia	[5-10]	[5-10]	[5-10]	[5-10]
Others	[20-30]	[20-30]	[20-30]	[20-30]

Source: Parties' estimates

(221) Competitors on this market include Dawn ([20-30]%); Kepak ([10-20]%); Liffey, Kildare and Dunbia ([5-10]% each).

(222) In terms of capacity, the Notifying Parties estimate that ABP holds [20-30]% of the overall capacity within the RoI whereas Slaney JV holds [5-10]%. In total, the Transaction would thus result in combined capacity shares of [20-30]% at RoI level.

160 See Merger Regulation, recital 25 and Horizontal Merger Guidelines, paragraph 25.

(223) If one were to assume separate markets for the purchase of Angus and/ or Hereford breeds in The RoI, the market shares of the Parties in terms of volume in 2015 would be higher:

Table 4: market shares on the possible markets for purchase of Angus and/or Hereford cattle breeds

	Angus	**Hereford**	**Angus + Hereford**
ABP	[20-30]	[30-40]	[20-30]
Slaney	[5-10]	[10-20]	[10-20]
Parties combined	***[30-40]***	***[40-50]***	***[30-40]***
Kepak	[10-20]	[10-20]	[10-20]
Dawn	[10-20]	[10-20]	[10-20]
Kildare	[0-5]	[0-5]	[0-5]
Liffey	[0-5]	[5-10]	[0-5]
Dunbia	[0-5]	[0-5]	[0-5]
Others	[20-30]	[20-30]	[20-30]

Source: Commission's calculations based on estimates provided by the Parties

(224) Assuming separate markets for different types of cattle, the market shares of the Parties in the RoI in terms of volume in 2015 are above their overall market shares in relation to steers and heifers.

Table 5: markets shares on the possible markets for purchase of live cattle, 2015

	ABP	**Slaney**	***Parties combined***
Young Bulls	[10-20]	[0-5]	***[10-20]***
Steers	[20-30]	[5-10]	***[30-40]***
Heifers	[20-30]	[5-10]	***[30-40]***
Cows	[10-20]	[0-5]	***[10-20]***
Other	[5-10]	[0-5]	***[10-20]***
Steers, Heifers and Young Bulls	[20-30]	[5-10]	***[30-40]***
Steers and Heifers	[20-30]	[5-10]	***[30-40]***

Source: Commission's calculations based on estimates provided by the Notifying Parties

(225) Looking at slaughterhouses around the cattle plant of Slaney, there are 6 other slaughterhouses within a 30-mile radius (ABP Waterford, Ballon Meats, Dawn Meats Grannagh, Emerald Isle Foods, Kavanagh Meats and Liffey Meats) and an additional 7 slaughterhouses within a 60-mile radius (ABP Cahir, Ashbourne Meat Processors, Dawn Meats (Meadow Meats), Kapek (Clonee), Kepak Kilbeggan, Kildare and Moyvalley Meats). The 60-mile radius around the Slaney plant exceeds to some degree the South Leinster area consisting of Wicklow, Kilkenny, Carlow, Laois, Kildare, Waterford, Offaly and Wexford but can be taken as a reasonable proxy for such potential market definition.

(226) The Notifying Parties estimated the market shares of plants in the South Leinster area as well as the shares of plants in the processing of cattle originating in the South Leinster area. For the latter, the Notifying Parties provided estimates for shares in the South Leinster area as well for all slaughterhouses within 60-mile radius around the Slaney plant. The Notifying Parties assume that approx. 81% of the cattle in the South Leinster area are slaughtered in plants located in South Leinster while the rest is slaughtered outside this area.

(227) Based on these estimates of the Notifying Parties, the Commission calculated market shares if one were to assume a local geographic market for plants in South Leinster and for cattle purchased in South Leinster as follows:

Table 6: market shares for plants in South Leinster and cattle purchased in South Leinster

	Plants in South Leinster	**Plants in South Leinster for cattle purchased in S.L.**	**Plants in 60-mile radius for cattle purchased in S.L.**
ABP	[10-20]	[10-20]	[10-20]
Slaney	[10-20]	[10-20]	[10-20]
Parties combined	***[20-30]***	***[20-30]***	***[20-30]***
Dawn	[20-30]	[30-40]	[20-30]
Kildare	[10-12]	[10-20]	[10-20]
Liffey	[5-10]	[5-10]	[5-10]
Moyvalley	[5-10]	[10-20]	[5-10]
Others	[10-20]	[5-10]	[20-30]

Source: Commission's calculations based on estimates provided by the Notifying Parties

(228) On the market for the purchase of live cattle for slaughter in the RoI, the Parties face a large number of suppliers. In 2015, ABP procured cattle from […] farmers. At the same time, the Slaney JV bought cattle from […] farmers. The top ten suppliers of cattle in the RoI for each of ABP and Slaney jointly represent only around [10-20]% of their total purchases. The supply side of the market is therefore fragmented.

5.2.1.2. Notifying Party's views

(229) The Notifying Parties point out that the Parties do not have large market shares and that the Transaction would only increase these market shares to a limited extent. The Notifying Parties further refer to comparable overlaps in other meat-related cases which did not give rise to concerns of a significant impediment to effective competition.[161]

(230) In addition, the Notifying Parties submit that there are a number of slaughterhouse competitors which would represent strong and clear alternatives after the

161 With reference to M.5935 - Vion/ Weyl; M.1313 - Danish Crown/ Vestjyske Slagterier; M.5204 - VION/ Grampian; M.6285 SARIA/ Danish Crown/ Daka JV; M.7565 - Danish Crown/ Tican.

Transaction. According to the Notifying Parties, farmers will continue to have significant choice in terms of slaughterhouses in Ireland.

(231) Furthermore, the Notifying Parties argue that they are not close competitors. Instead, all slaughterhouses would be in the same position in terms of the product they purchase from farmers.

(232) Similarly, the Notifying Parties state that ABP and the Slaney JV play no maverick role in the market.[…]. In particular, it would not be able to benefit from its successful lamb business because the two markets would be very different.

(233) Moreover, the Notifying Parties take the view that farmers can switch with ease between numerous slaughterhouses as there are only little switching costs and no long term contracts. Switching happens on a daily basis in ABP's supplier base. The Parties further argue that they would swiftly lose volumes if they attempted to reduce prices. Any such reduction in the number of animals procured would be readily offset by competing processors which have in total, according to the estimates of the Notifying Parties, a spare capacity that is almost double the entire combined purchasing volume of ABP and Slaney. According to the Notifying Parties, low margins of slaughterhouses and the fact that prices paid for cattle vary from processor to processor on a weekly basis would also show that competition between slaughterhouses is fierce.

(234) Finally, the Notifying Parties argue that even if the Parties would find it profitable to decrease prices, other slaughterhouses would have an incentive not to follow such price decrease but rather to purchase more cattle and to sell more beef downstream. In addition to the already available spare capacity, rivals are also able to further increase their capacity.

5.2.1.3. Market Investigation and Commission's assessment

(235) Starting the assessment by looking at the market shares of the Parties as a proxy of their likely market power[162], the Commission notes that the combined market share of [20-30]% on an overall market for the purchase of live cattle in the RoI as well as the increment of [5-10]% brought by the Transaction are not in themselves a strong indication of likely competition concerns.

(236) The combined market shares of [20-30]% are only […] above the 25% threshold at which, in terms of the Horizontal Merger Guidelines, an indication exists that, by reason of the market shares of the undertakings involved, concentrations are not liable to impede effective competition. The first indications, based on market shares therefore would in itself not suggest that the Transaction would likely result in a significant impediment to effective competition.

(237) The analysis in this regard for a potential market for the purchase of premium live cattle comprising steers, heifers and young bulls only does not substantially differ. The Commission notes that the combined market share of approximately [30-40]% with an increment of approximately [5-10]% brought by the Transaction is not in itself a strong indication of likely competition concerns. Dawn Meats enjoys a market share in the RoI approximately […] times larger than the market share of Slaney (approximately [10-20]%). Kepak's market share which was approximately [10-20]% in 2015 is more than […] that of the Slaney JV. Liffey, Kildare and Dunbia have market shares […] close to that of Slaney.

162 See HMG, paragraph 27.

(238) The same applies for a potential geographic market definition of a 60-mile radius around the plant of Slaney JV. Only with regard to potential markets delineations by breed, ABP and Slaney JV have relatively higher market shares in an area between [40-50]% and [50-60]%.

(239) Other than on potential markets for the purchase of Angus and/or Hereford cattle, the first indication therefore, based on market shares would in itself not suggest that the Transaction would raise serious doubts as to effective competition in a potential market for premium live cattle for slaughter in the RoI.

(240) A non-exhaustive list of other factors that could influence the finding of significant, non-coordinated effects are listed in paragraphs 28 et seq. of the Horizontal Merger Guidelines. Several of these factors assume a concentration between suppliers of goods or services. They can, however, also been taken as indication of factors that can influence the finding of significant, non-coordinated effects in case of a concentration between purchasers of goods or services.

(241) Accordingly, such relevant factors therefore include the closeness of competition between the merging firms, possibilities of suppliers to switch, likeliness of competitors to increase demand if prices decline, ability of the merged entity to hinder expansion by competitors or the elimination of an important competitive force.

Complaint by the IFA and reaction of the Notifying Parties

(242) The IFA submits that the Parties would be close competitors in the market for the purchase of live cattle for slaughter. ABP, already the largest processor, would become even larger. If one were to look at a premium cattle market comprising steers and heifers meeting the MII grade and weight specifications at DAFM export-approved plants in the South Leinster area, ABP and the Slaney JV would be the two largest processors with estimated market shares of [20-30]% and [20-30]% respectively whereas other competitors would only have market shares of [10-20]% (Kepak), [10-20]% (Moyvalley), [5-10]% (Dawn), [5-10]% (Meadow Meats) and [5-10]% (Kildare Chilling).

(243) In this regard, the Notifying Parties claim with regard to the geographic location of their plants that the plant located closest to the Slaney JV's plant is the Liffey Meats plant in Carlow, situated at 39 km. The distance to the next ABP plant in Waterford amounts to 63 km. For the ABP plant in Waterford, the closest other plant would also not be a Slaney plant. Instead, a beef slaughtering plant operated by Dawn (Dawn Meats Grannagh)[163] would be only 7.5 km away.

Parties do not seem to be particularly close competitors

(244) The Commission found no evidence in the submissions of either the Parties or of third parties in the Market Investigation that would indicate that ABP and the Slaney JV are particularly close competitors on the market for the purchase of live cattle for slaughter. As indicated in Section 4.2.1 above, all slaughterhouses purchase the same types and breeds of live cattle. None of the Parties slaughter only specific types or breeds of live cattle. Demand for specific types or breeds of

---

163 Dawn Meats Grannagh's estimated annual slaughtering for 2015 stands at […] heads of cattle compared to the […] heads estimated annual slaughtering in ABP's Waterford plant (Form CO, Table 6B2).

cattle by slaughterhouses is driven by corresponding demand of downstream customers.

(245) Also looking at the competitive dynamics based on the location of their plants, ABP and Slaney do not appear to be particularly close competitors for two reasons. First, the responses to the market investigation indicate that live cattle can travel more or less throughout the entire The RoI and that even small price differences of 1-2% could incentivise a farmer to bring his animals to another slaughterhouse. Then, however, geographic proximity becomes less of a defining factor for closeness of competition.

(246) In addition, even if one were to assume that the closeness of competition between two plants would be proportional to their distance, conclusions based on the proximity of one of ABP's plant to the Slaney JV plant would also need to take into account that other plants are closer to both of the plants of the Slaney JV and ABP.

(247) The plant closest to the Slaney JV plant is located just a few miles away in Ballon (Ballon Meats). Also, Kavanagh Meats in Enniscorthy, Liffey Meats in Hacketstown and Emerald Isle Foods in Thomastown are closer to the Slaney JV plant than the ABP plant in Waterford. Similarly, the plant closest to the ABP plant in Waterford is the plant of Dawn Meats in Grannagh. Emerald Isle Foods in Thomastown and Kavanagh Meats in Enniscorthy are also closer to the ABP plant in Waterford than the Slaney JV plant.

(248) The relatively higher market shares on potential markets for the purchase of steers, heifers and young bulls or on potential markets for specific breeds can be seen as an indication, assuming an overall market for the purchase of live cattle, of a certain closeness of competition. There are however no indications that the Parties would be particularly close competitors if one were to only look at markets for specific breeds.

Possibilities of farmers to switch

(249) The Market Investigation indicates that farmers can switch easily and frequently do switch between different slaughterhouses.

(250) The responses to the Market Investigation confirmed that farmers can switch easily, within a short timeframe and with limited costs between competing slaughterhouses for sales of live cattle for slaughter in the RoI. All but one respondent stated that farmers can switch easily.[164] The Irish Creamery and Milk Suppliers Association explained that "*a farmer is free to move slaughterhouse provided the slaughterhouse is willing to buy a farmers' animal at a particular point in time which depends on the available supply of cattle at that time*".[165]

(251) The Irish Cattle & Sheep Farmers Association stated that "[a]*s there are generally no contracts involved, switching at the last minute is possible, but the likelihood of significant price difference is not great*".[166] The Irish Farmers Association, however, answered that switching is not easily possible and submitted that switching would "*affect the overall price achievable and access to slaughter for*

164 Questionnaire Q1 to associations of suppliers of live animals, question 34.

165 Response of the ICMSA to question 34.1 of questionnaire Q1 to associations of suppliers of live animals.

166 Response of the ICSFA to question 34.1 of questionnaire Q1 to associations of suppliers of live animals.

their animals" and further explained that farmers who do not have an established relationship with the slaughterhouse are often offered a lower price or may be forced into significant delays which could result in significant price penalties.[167]

(252) The Commission considers that even in case slaughterhouses do grant such a bonus to farmers who decide not to switch to competitors offering higher prices in times of short supply, which would consist of being able to sell their cattle at shorter notice once supply exceeds the demand, such bonus would be unlikely to severely limit the possibilities of farmers to switch. First, in times of structural, long-term price differences, farmers could establish a relationship with other slaughterhouses and, once established, expect to receive similar benefits. Second, with regard to occasional sales to other slaughterhouses, it seems highly unlikely that a slaughterhouse would be able to monitor the loyalty of all its suppliers given the fragmented supplier base.

(253) During the Market Investigation, almost all slaughterhouses indicated that farmers can easily switch.[168] Only one respondent considers that this depends on the part of the RoI adding that switching might be harder in the west of Ireland, that is in a region in which Slaney is not present.[169] Others explain their view by stating that switching would be "*simple as a phone call*"[170] or that "*farmers will tend to go with the best price*"[171].

(254) The answers are ambiguous concerning the question whether switching would affect which bonus farmers receive for their animals. An equal number of respondents to questionnaire Q1 stated that switching would affect the bonuses and that switching would not affect the bonuses.[172]

(255) The Irish Cattle & Sheep Farmers Association further substantiated its view that switching does affect bonuses by differentiating based on the overall supply of cattle. According to the association, "*being aggressive in shopping around works when cattle are scarce. When they are plentiful, loyal suppliers fare better*".[173] The Irish Creamery and Milk Suppliers Association reasoned its negative reply similarly. It explains that "*depending on schemes operated by individual meat plants, a higher bonus may be available in one meat plant*".[174]

(256) Switching gets more difficult when farmers attempt to switch to slaughterhouses outside the RoI. Only one slaughterhouse considers switching to a slaughterhouse outside the RoI as being easy for farmers whereas most others replied that switching outside of the RoI would only be easy in case of a slaughterhouse in

---

167 Response of the IFA to question 34.1 with reference to question 31.1 of questionnaire Q1 to associations of suppliers of live animals. IFA also claims that the pattern of cattle prices falling around the third quarter of the year is reflects weak competition in the relevant cattle procurement market in the RoI. However, any price fluctuation resulting from the seasonal nature of cattle production is not in itself indication of weak competition or coordination. These topics are discussed in detail in Sections 5.2.1 and 5.2.2.

168 Questionnaire Q2 to slaughterhouses, question 87.

169 Response of Ballon Meats to question 87 of questionnaire Q2 to slaughterhouses.

170 Response of Eurofarm Foods to question 87 of questionnaire Q2 to slaughterhouses.

171 Response of Dawn Meats to question 87 of questionnaire Q2 to slaughterhouses.

172 Questionnaire Q1 to associations of suppliers of live animals, question 31.

173 Response of the ICSFA to question 31.1 of questionnaire Q1 to associations of suppliers of live animals.

174 Response of the ICMSA to question 31.1 of questionnaire Q1 to associations of suppliers of live animals.

NI.[175] To the contrary, almost all respondents to questionnaire to slaughterhouses consider switching from selling live animals to slaughterhouses in the RoI to selling live animals otherwise, like in livestock marts or export, as easy.[176]

(257) A majority of respondents to questionnaire to associations of suppliers of live animals also regard switching outside the RoI as difficult.[177] Only one respondent states that switching would be easy and explains that "*there is be no difficulty in switching from ROI to Northern Ireland*".[178] Others take the view that "*the absence of a live export market for finished cattle/sheep is a major weakness from an Irish farmers' perspective and labelling regulations/ retailer specifications in the UK is preventing the development of a live export trade to the UK*".[179]

(258) Asked to rank the importance of the factors "price", "convenience of location of plant" and "long-term relationship with slaughterhouse" for selling cattle, the respondents to the questionnaire to associations of suppliers of live animals regarded a long-term relationship with slaughterhouses and price as more or less equally important[180] and also as more important than the convenience of the location of a plant.[181]

(259) The question whether farmers switch often between competing slaughterhouses in the RoI has been answered with "yes" by most respondents to the questionnaire to associations of suppliers of live animals.[182] One respondent explains that "*many farmers in our organisation would switch processing plants*" and that "*some slaughterhouses specialise in bulls and these farmers would sell their bulls to these plants but would then sell their steers and heifers to other plants*".[183] The Irish Creamery and Milk Suppliers Association states that "*competition for cattle is critical and if a better price is available from a neighbouring meat plant, a farmer will obviously switch*" since "*in such a tight margin business, every cent per kg counts*".[184] One respondent that stated that switching does not occur often, reasons that the "*base price is usually the same in all slaughter houses*".[185] Slaughterhouses responding to the Market Investigation indicated that farmers switch "regularly" or "frequently".[186]

(260) The Parties provided examples of farmers switching between selling to one of their plants to not selling any cattle in another year. According to estimates of ABP, out

---

175 Questionnaire Q2 to slaughterhouses, question 88.

176 Questionnaire Q2 to slaughterhouses, question 89.

177 Questionnaire Q1 to associations of suppliers of live animals, question 39.

178 Response of the Angus Society to question 39.1 of questionnaire Q1 to associations of suppliers of live animals.

179 Response of the ICMSA to question 39.1 of questionnaire Q1 to associations of suppliers of live animals

180 Out of 5 responses, 2 put price first, 2 put price second and 1 put price last. Long-term relationship with slaughterhouses has been chosen 3 times as most important, 0 times as second most important and 2 times as least important.

181 Questionnaire Q1 to associations of suppliers of live animals, question 35.

182 Questionnaire Q1 to associations of suppliers of live animals, question 38.

183 Response of the Angus Society to question 38.1 of questionnaire Q1 to associations of suppliers of live animals.

184 Response of the ICMSA to question 38.1 of questionnaire Q1 to associations of suppliers of live animals.

185 Response of Irish Hereford Prime to question 38.1 of questionnaire Q1 to associations of suppliers of live animals.

186 Questionnaire Q2 to slaughterhouses, question 87.3.

of […] farmers that supplied its plant in Cahir with […] cattle in 2013, […] farmers that previously supplied […] cattle supplied no cattle in 2014, […] farmers did not supply cattle in 2015 and […] farmers that did not supply cattle in 2014 returned in 2015 and supplied […] cattle.

(261) Similarly, the Slaney JV indicates that out of […] farmers that supplied its plant with […] cattle in 2013, […] farmers that previous supplied […] cattle did not supply any cattle in 2014, […] farmers did not supply any cattle in 2015 and […] farmers that did not supply any cattle in 2014 returned in 2015 supplying the Slaney JV with […] cattle.

(262) The Commission notes that these figures only depict cases in which one farmer stopped selling to ABP or Slaney JV entirely. The farmer, however, can decide for each individual sale to which slaughterhouse he will sell. Therefore, there are likely many more instances of switching that are not included in the above numbers because the respective farmers continued to make occasional sales to ABP or the Slaney JV. On the other hand, some farmers might not sell cattle each and every year.

(263) Overall, the responses to the Market Investigation indicate that farmers are free to switch to other slaughterhouses in the RoI and that switching is easy and frequent. Contracts are usually entered into at the time the farmers want to sell their animals. As regards further options, the Commission notes that the number of live animals exported from Ireland amounts to more than 10% of the amount of live animals slaughtered in the RoI according to the Department of Agriculture Food & Marine.[187] However, the DAFM also stated that only 1.7% of the total cattle is sold to slaughterhouses in NI and that less than 1% is sold to slaughterhouses outside the RoI or NI. In addition, market participants consider that there are legal, commercial veterinary or other barriers to exporting live cattle for slaughter.[188] Therefore, export seems to be a limited out-of-market constraint.

(264) There are also marts in which animals are regularly traded. However, the Commission understands that the transactions in marts are mostly made between farmers. Farmers specialised in raising cows or bulls from a certain age would purchase the animals they are looking for at marts. Selling in a mart would therefore only be an alternative as long as other farmers are confident that they will be able to sell the animal at a later stage to a slaughterhouse. For this reason, the trading at marts might exercise a limited competitive constraint on the Parties.

(265) The Commission notes that the ability of farmers to switch between different slaughterhouses would also apply to potential other market definitions. As all slaughterhouses can slaughter all types and breeds of cattle, smaller market definitions do not affect the ability of farmers to switch. If one were to assume a limited geographic market definition of a 60-mile radius around the Slaney plant, the responses to the Market Investigate indicate not only that farmers can switch between slaughterhouses within the relevant geographic market but that there are also significant out-of-market constraints by slaughterhouses located outside such market but within the RoI.

---

187 Response of the DAFM to question 6.1 of questionnaire Q1to associations of suppliers of live animals.

188 Questionnaire Q1 to associations of suppliers of live animals, question 20.

(266) Based on the elements described above, overall, the Commission considers that farmers have the ability to switch between different slaughterhouses under all potential market definitions. Switching between slaughterhouses within the RoI does occur frequently and there are no significant hurdles to do so. Switching to slaughterhouses outside the RoI is more difficult but, in particular in case of NI, possible. The possibility to switch therefore is an indication that the loss of competition between ABP and Slaney JV is unlikely to result in serious doubts in relation to the overall market for the purchase of live cattle for slaughter in the RoI, in a potential smaller area or in relation to the purchase of steers, heifers and young bulls or of specific breeds.

Spare capacity by competitors

(267) Concerning the availability of spare capacity for the slaughtering of cattle, lamb and sheep, most respondents to the questionnaire to associations of suppliers of live animals replied that they assume that spare capacity is available.[189] The Irish Cattle & Sheep Farmers Association states that "*beef factories often only work three day weeks*".[190] The answers of the two participants that responded that no spare capacity is available, seem to be based on a reasoning that does not necessarily indicate that there is indeed no spare capacity. The respective respondents point out that farmers can experience significant delays in getting cattle slaughtered in times of high supply.[191]However, this could also be the case if the supply of live cattle for slaughter exceeds the downstream demand of fresh beef and slaughterhouses are therefore unwilling to purchase more cattle. Asked for the reasons of the overcapacity, two respondents to questionnaire Q1 explained that, as phrased by one of them, "*traditionally supply patterns were irregular characterised by an autumn glut. This is no longer such a facet of the trade and supply is relatively even throughout the year*".

(268) No respondent to the questionnaire to slaughterhouses indicate that spare capacity would not be readily available.[192] One respondent indicated that "*cattle slaughterhouses are operating at 70% capacity*".[193]

(269) In response to the question under what conditions slaughterhouses would increase their capacity, no respondent excluded increasing capacity categorically. Instead, slaughterhouses answered they would increase capacity "*in response to customer demand*", "*when supply is sufficient to allow a profit margin*", "*if there were more cattle, lamb and sheep available*" or "*market demand, cattle availability*".[194]

(270) Most respondents to the questionnaire to associations of suppliers of live animals stated that they did not know whether capacity of slaughterhouses will increase over the next years. However, the respondents that took a view on this question responded that they expect the capacity to increase.[195] These respondents link the expected increases in capacity to merger activities. One of them states that "*meat*

189 Questionnaire Q1 to associations of suppliers of live animals, question 40.

190 Response of the ICSFA to question 40.1 of questionnaire Q1 to associations of suppliers of live animals.

191 Responses of the ICMSA and the IFA to question 40.1 of questionnaire Q1 to associations of suppliers of live animals

192 Questionnaire Q2 to slaughterhouses, question 91.

193 Response of Eurofarm Foods to question 91.1 of questionnaire Q2 to slaughterhouses.

194 Questionnaire Q2 to slaughterhouses, question 92.

195 Questionnaire Q1 to associations of suppliers of live animals, question 54.

processors will expand their business in the coming years by acquiring current processing facilities and upgrading them".[196]

(271) Looking at the individual capacity utilisation for the slaughter of live cattle submitted by slaughterhouses in their responses to the Market Investigation, the overall capacity utilisation is mostly between 60% and 80%.[197] This also applies to slaughterhouses located near the plant of Slaney JV. Half of the respondents state that their overall capacity is limited by their chilling capacity whereas the other half is not limited by their chilling capacities.[198] Two slaughterhouses plan to increase their chilling capacity and the same number of slaughterhouses plans to increase their slaughtering capacity.[199] Of these, both respondents that plan to increase their slaughtering capacity operate a plant within a 60-mile radius around the Slaney plant as well as one of the respondent planning to increase chilling capacity.

(272) Overall, based on the responses to the Market Investigation, the Commission considers that slaughterhouses in the RoI are not capacity constrained but rather have spare capacities. Even assuming that the current capacity utilisation would amount to the upper end of the 60%-80% corridor which most of the responses indicated, the additional available capacity would amount to 25% of the current total capacity utilisation. Assuming a current utilisation rate of 66% would increase the additional capacity to 50% of the current killings. In addition, several slaughterhouses already plan to increase their capacities or answered that they would increase their capacity if they could procure more cattle.

(273) If one were to assume a market including only steers, heifers and young bulls or including only specific cattle breeds, such additional capacity becomes even higher in relation to the respective total market size.

(274) Taking into account that the combined market shares of the Parties amount to [20-30]%, the Commission considers based on the responses submitted during the Market Investigation that competitors could procure significantly more cattle if the Parties offered lower prices to farmers and farmers wished to switch.

(275) In addition to having available spare capacity, the Market Investigation has not revealed any reasons for competitors to follow potential price decreases by the Parties. In particular, respondents to the questionnaire to associations of suppliers of live animals indicated that farmers are normally willing to sell all animals to the same slaughterhouse.200 Therefore, competitors of the Parties would be able to benefit if the Parties were to offer lower prices to farmers.

View of other market participants regarding the transaction

(276) Overall, a majority of respondents to questionnaire Q1 expect a negative impact of the Transaction on the business of farmers, pointing out that "*the dominant position of ABP would be further consolidated*" or that "*the result will be one less competitor for cattle and sheep in what is already a very concentrated market with limited competition*".

---

196 Response of the Angus Society to question 54.1 of questionnaire Q1 to associations of suppliers of live animals.

197 Questionnaire Q2 to slaughterhouses, question 5.1.

198 Questionnaire Q2 to slaughterhouses, question 6.

199 Questionnaire Q2 to slaughterhouses, question 7.

200 Questionnaire Q1 to associations of suppliers of live animals, question 27.

(277) Specifically asked for the impact on the markets for the purchasing of live animals for slaughtering, the Irish Cattle & Sheep Farmers Association submits that Slaney JV has paid higher prices for steers, heifers and bulls and that ABP could reduce their prices to the national average as well as that the Slaney plant was specialised in traditional beef breeds and that despite the demand by supermarkets for this type of beef the merger could eliminate competition for these animals. However, no such concerns were raised by downstream customers. The Irish Creamery and Milk Suppliers Association explains that at present, a farmer has the option of getting a quote from two slaughterhouses and will receive two independent price quotes. With ABP having a say over the business of Slaney JV, competition would be reduced.[201]

(278) The Angus Society does not believe that the Transaction "*will influence prices negatively within that geographical area as it is my experience over the past 20 years that animals in Ireland when necessary will move to obtain the maximum value*". Irish Hereford Prime states that "*ABP have been the front runner in securing the best markets and this will continue*".[202]

(279) Competing slaughterhouses expect no impact of the Transaction on the prices proposed to farmers by Irish slaughterhouses[203], on the volume of live animals purchased by Irish slaughterhouses[204], on their business in general[205] or on the purchase of live cattle for slaughtering.[206]

Factors relating particularly to buyer power in upstream markets

(280) The Horizontal Merger Guidelines state in paragraph 61 that mergers creating or strengthening buyer power may in particular impede effective competition if the merged firm would enjoy a dominant position and could obtain lower prices by reducing its purchase of inputs, thereby reducing the overall output in the final product market and harm consumer welfare. Buyer power could also adversely affect competition in downstream markets if the merged entity were likely to use its buyer power vis-à-vis suppliers to foreclose its rivals.

(281) On the basis of ABP's and Slaney JV's combined market shares of [20-30]%, the fact in particular of the availability of spare capacity in the RoI as well as within a 60-mile radius around the Slaney JV plant by competitors and farmers' practice of switching purchaser easily and frequently, the proposed transaction is unlikely to significantly increase the degree of buyer power in the market.

(282) Moreover, any concerns over the potential stronger buyer position of the merged entity must be assessed in the context of the Commission's findings about competition in the downstream markets. As explained in the Horizontal Merger Guidelines state that increased buyer power may be beneficial for competition if it lowers input costs without restricting downstream competition or total output because in such case a proportion of these cost reductions are likely to be passed onto consumers in the form of lower prices.[207]

---

201 Questionnaire Q1 to associations of suppliers of live animals, question 57.
202 Questionnaire Q1 to associations of suppliers of live animals, question 57.
203 Questionnaire Q2 to slaughterhouses, question 93.
204 Questionnaire Q2 to slaughterhouses, question 94.
205 Questionnaire Q2 to slaughterhouses, question 113.
206 Questionnaire Q2 to slaughterhouses, question 114.
207 Horizontal Merger Guidelines, paragraph 62.

(283) In the present case, such a scenario seems much more likely than potential adverse effects of buyer power. As concluded in Section 5.3, the proposed Transaction does not raise concerns in terms of increased market power downstream. Neither a reduction of total output nor a reduction of competition in downstream markets are likely results of the Transaction. Instead, in light of the absence of significant adverse effects of the transaction on competition in downstream markets, if the transaction were to lead to lower input prices paid by the Parties, such input prices would likely lead to lower prices to consumers. According to the responses in the Market Investigation, downstream customers have significant degree of buyer power and are thus likely to demand from the Parties to pass-on benefits of lower input prices that are relatively easy to monitor. This would also contribute to the pass on of any reduction in input prices to consumers.

(284) No concern of foreclosure has been identified either. As stated in Section 4.4, beef of Irish origin competes with beef of other origins. Moreover, because of the fragmented supplier base, the Parties would also be unable to foreclose other slaughterhouses. Therefore, a negative impact on downstream markets seems unlikely.

Assessment of potential smaller geographic markets

(285) The IFA complains that the Transaction would affect in particular the south-west area of south Leinster, consisting of Carlow, Kildare, Kilkenny, Laois, Wexford and Wicklow, which roughly corresponds to a 60-mile radius around the plant of Slaney JV. Therefore, the Commission included also smaller slaughterhouses in the Market Investigation that are only active in this area.

(286) The responses received from these slaughterhouses do not distinguish themselves in any relevant aspect from the overall responses outlined above. Respondents stated that "*Suppliers can change easily in our area*"[208] and all respondents stated that they have spare capacity.

(287) Furthermore, the Commission notes that there would remain several other EU approved beef abattoirs within a 60-mile radius for all farmers around the Slaney JV plant. As stated in paragraph 0, there are 13 other EU approved slaughterhouses within a 60-mile radius around the Slaney JV plant. Farmers located in the northern or western regions of this area might have even more choices within a 60-mile radius around their farms as there are additional slaughterhouses to the north and west of a 60-mile radius around the Slaney JV plant. But even farmers in the south-eastern, coastal areas of South Leinster would be able to sell to several other slaughterhouses within a 60-mile radius around their farms, notably Kavanagh Meats in Emniscorthy, Dawn Meats Grannagh, Ballon Meats, Liffey Meats in Hacketstown and Emerald Isle Foods in Thomastown in addition to the plants of ABP and Slaney JV.

(288) Regarding the market shares provided by the IFA in relation to the South Leinster area, the Commission notes that it does not consider that there is a separate market for premium cattle comprising steers and heifers meeting the MII grade and weight specifications at DAFM export-approved plants.

(289) For these reasons, the competitive assessment of a potential smaller geographic market for the purchase of live cattle for slaughter in the south-west of the RoI is

[208] Response of Ballon Meats to question 87.2 of questionnaire Q2 to slaughterhouses.

not materially different from the assessment of an overall market including the entire the RoI.

(290) In particular, the ability of farmers to switch easily to other slaughterhouses within the entire RoI provides an indication of strong out-of-market constraints if one were to assume such limited geographic market.

Negligible vertical integration

(291) For completeness, the information submitted by the Parties indicates that ABP keeps own live-cattle stock ("feedlot cattle") which totals to approximately […] heads of cattle. These cattle are reared in two farms in the RoI […] and are sold for slaughter exclusively to ABP. These cattle represent a negligible proportion (approximately [0-5]% in total) of the total deadweight of all live cattle slaughtered and processed by ABP in the RoI. Slaney JV does not keep any feedlot cattle. Fane Valley operates via Linden a small feedlot (Linden Foods Feedlot) of approximately […] cattle in NI (therefore outside of the geographic scope of the market).

(292) In light of the limited degree of vertical integration described above, the fact that ABP feedlot cattle is already used sold for slaughter exclusively to ABP, the reliance to a significant degree of ABP and the Slaney JV on external supply of cattle (rather than self-supply), as well as, therefore the negligible changes in terms of vertical integration resulting from the Transaction, this limited vertical integration is unlikely to lead to changes in the ability or in the incentives of the merged entity to extract lower prices from farmers by reducing its purchase of inputs. In any event, the fact that the entirety of ABP's feedlot cattle is already, pre-merger, exclusively slaughtered and processed by ABP itself means that no changes transpire from the Transaction in this regard.

Conclusion

(293) Assuming an overall market for the purchase of live cattle in the RoI, the combined market shares of the Parties is moderate. There are some indications that they may be competing more closely for the same kind of cattle than suggested by their market shares. However, the significant spare capacity of competitors in combination with the ability of farmers to switch between slaughterhouses will likely limit any potential negative effects on this market.

(294) Based on the reasons above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to non-coordinated effects on the market for the purchase of live cattle or for steers, heifers and young bulls or for specific breeds for slaughter in the RoI or within a 60-mile radius around the Slaney JV plant or within the South Leinster area.

5.2.2. Coordinated effects on the market for the purchase of live cattle for slaughter

(295) Even though the Transaction is unlikely to give rise to non-coordinated competition concerns, it could significantly impede effective competition if it were to make coordination between all competitors more likely.

5.2.2.1. Notifying Party's views

(296) The Notifying Parties argue that the asymmetric market shares of slaughterhouses would make coordination highly unlikely. In addition, the existing asymmetry would be further increased by the Transaction.

(297) The Notifying Parties further state that of the features mentioned by the Court of First Instance in the Airtours decision, namely product homogeneity, low demand growth, low price sensitivity of demand, similar cost structures of the main suppliers, a high degree of transparency, interdependence and commercial links between the main suppliers, substantial barriers to market entry and insignificant buyer power of consumers[209], only the product homogeneity would be present at the market for the purchase of live cattle for slaughter.

(298) In addition, the Notifying Parties reiterate that switching by farmers between different slaughterhouses is very common and occurs on a daily basis.

5.2.2.2. Commission`s assessment

(299) The possibility of reaching terms of coordination will be analysed by assessing the relevant factors outlined in Section 5.1.2. First, the Commission will review whether the Transaction will increase the possibility of coordination and then discuss whether it will increase the sustainability of coordination.

(300) In theory, slaughterhouses could coordinate in two differences ways. First, they could agree on a price they pay to farmers and, second, they could divide the farmers by their geographic location and agree to only deal with farmers in their own region.

(301) As to the latter, the Commission considers coordination based on the geographic location of farmers unlikely, in particular in light of the frequent switching of farmers[210], the moderate cost for bringing own cattle to more distant slaughterhouses[211] and the availability of price quotes to all farmers.

Complaint by the IFA

(302) The IFA submits that there are already possibilities for coordinated behaviour in the market and that the Transaction would make coordination more likely. The IFA points out that the prices in the markets would be transparent and that the competitors would also have contacts in the rendering market. They would meet regularly at meetings of the MII and the Beef Industry Development Society (BIDS) agreement represents a previous attempt of coordination.[212]

(303) Furthermore the IFA refers to a decision of the Irish Competition Authority which states that "there are a number of factors that might suggest the possibility for coordinated behaviour in the Irish retail market."

(304) The Notifying Parties claim that there is no history of coordination that would indicate an increased risk of coordinated effects. In particular the establishment of the BIDS could not be taken as an example of previous coordination since the creation of BIDS had been prompted by the Irish Government and the fact that the member of BIDS notified the arrangements to the Irish Competition Authority would show that they made significant efforts to comply with competition law.

---

209 Case T-342/99, Airtours v Commission [2002], paragraph 121.

210 See, for example, Section 5.2.1.3.

211 See, for example, the replies to Questionnaire Q1 to associations of suppliers of live animals, question 11 and to questionnaire Q2 to slaughterhouses, question 49 as indicated in paragraph (103) above.

212 IFA submission, page 88.

Possibility of coordination

Market concentration levels

(305) The Transaction will reduce the number of independent undertakings purchasing live cattle for slaughter. Looking only at competitors with a nationwide market share of at least 5%, there are currently seven undertakings which purchase almost 80% of the total live cattle sold. The remaining 20% are purchased by a number of smaller slaughterhouses.

(306) Out of these seven competitors, three are considerably larger compared to the others: ABP ([20-30]%), Dawn ([10-20]%) and Kepak ([10-20]%). The other four competitors have a market share of roughly 6%: Liffey ([5-10]%), Kildare Chilling ([5-10]%), Dunbia ([5-10]%) and Slaney JV ([5-10]%).

(307) Inference can also be made from the HHI levels and their increase following the Transaction. According to paragraph 20 of the Horizontal Merger Guidelines, concentrations leading to an HHI level of less than 1000 or to an HHI level between 1000 and 2000 with a delta of less than 250 or to an HHI level above 2000 with a delta of less than 150 are unlikely to raise horizontal competition concerns.

(308) On the basis of the market shares mentioned above, the HHI level after the transaction would amount to less than 1500 and the increase would amount to […].[213]

(309) Admittedly, the second figure is […] referred to in paragraph (307) in case of an HHI level between 1000 and 2000. Nevertheless, while these figures do not preclude nor establish the finding of competition concerns, they can be taken into account in assessing whether the Transaction could raise competition concerns.

Symmetry

(310) As mentioned in paragraph (210) above, firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetric, especially in terms of market shares among other elements.[214]

(311) As stated above, currently the two largest slaughterhouses have roughly similar market shares of [20-30]% and [10-20]% followed by Kepak with [10-20]% and four competitors with market shares around [5-10]% as well as several other slaughterhouses with market shares below 5%. The Transaction would increase the share of the already largest competitor to [20-30]%, putting ABP clearly ahead of the second largest slaughterhouse Dawn.

(312) Therefore, the Transaction would not increase symmetry between market participants. To the contrary, it would decrease symmetry for two reasons. First, it would make ABP larger (nearly [20-30]% by volume and value post-Transaction compared to around [20-30]% pre-Transaction) than the runner-up Dawn ([20-30]% by volume and value). Second, it would reduce a group of medium-sized slaughterhouses with relatively symmetric market shares around [5-10]% from four to three.

---

213 […].

214 Horizontal Merger Guidelines, paragraph 48.

Product differentiation and price complexity

(313) Reaching terms of coordination is easier in the case of homogenous products than on hundreds of prices in a market with many differentiated products.[215] However, coordinating firms may find other ways to overcome problems stemming from complex economic environments. They may, for instance, establish pricing rules that reduce the complexity of coordinating on a large number of prices.[216]

(314) There are many factors influencing the final price for a specific bovine animal. These may include its type (steer, heifer, young bull, cow), its breed, its fat grade or health. While in theory these differences could result in a very large number of different price points, this complexity is significantly reduced by the establishment of a base price that each slaughterhouse quotes and common rules for measuring the overall quality of cattle by the MII grades. Remaining differences on the basis of type and breed are less complex.

(315) However, there is a further complexity to the prices that lies in their evolution over time. Each slaughterhouse has to assess each week how many cattle it will need to refill its stock of fresh meat to be able to supply the demand of downstream customers. Prices are set on the basis of assumptions relating to the amount of supply available but also the demand in the future. While the first factor is common for all slaughterhouses, the latter is highly individual. Coordination would therefore require very regular contacts between all undertakings involved[217] to agree on an adopted coordinated price level.

(316) Ultimately, since the demand of slaughterhouses on the market for the purchase of live cattle for slaughter is driven by the demand of downstream customers, coordination on prices in the upstream market would only make sense for slaughterhouses if they would be faced with a constant downstream demand. Absent of such constant demand, they would need to coordinate their sales on the downstream markets as well to ensure an alignment of interest in the upstream market by maintaining their shares of sales in the downstream market. Such coordination on the downstream markets appears, however, highly unlikely.[218]

Transparency

(317) While transparency is mainly relevant for the sustainability of coordination, it also plays a role in the possibility of reaching terms of coordination as the focal points of coordination need to be observable.

(318) Prices paid by slaughterhouses to farmers are very transparent. Quotes are published on a regular basis, the MII grades are used by all slaughterhouses and bonuses or maluses for certain breeds, types, fat grades or combinations thereof are

---

215 Horizontal Merger Guidelines, paragraph 45.

216 Horizontal Merger Guidelines, paragraph 47.

217 In this regard the Commission considers that the acquisition by […] (see paragraph (10) above) does not appear to facilitate contacts between the Parties as being […] in […] will not have access to nor receive any commercially sensitive information […].

218 This is the case for several reasons. First, on the downstream markets, beef of Irish origin competes with beef of other origins (see Section 4.4). If Irish beef processers were to try to raise prices on the downstream markets through coordination, they would risk losing market shares to beef processors of other countries. Coordination on bids would be equally difficult because of competition by outsiders. Second, unless meat processors from other countries also join such coordination, any attempt of Irish slaughterhouses to coordinate their behaviour would easily be disrupted by meat processors from other countries.

made available[219] to suppliers of live animals as well. In addition, since this information is transmitted to a large number of potential suppliers, it would probably only take a call for a competitor to verify whether the price quotes are actually applied.

Stability of Supply and Demand

(319) As indicated in the Horizontal Merger Guidelines, it is easier to coordinate on a price when demand and supply conditions are relatively stable than when they are continuously changing.[220] As to the stability of supply, the Notifying Parties and participants in the Market Investigation stated that the supply of cattle is relatively stable.[221]

(320) The demand of slaughterhouses is in turn driven by the demand of retailers, industrial processors and caterers downstream. According to the Notifying Parties, the level of orders of fresh meat is "influenced by a huge variation of factors including for example the weather and factors such as the price of beef versus poultry and pork and the outlook for prices in the future". In addition, the Notifying Parties explain that orders of customers for a particular product might double or triple within a short period if the customer decides to include such product in a promotion. Such changing demand on the downstream markets would need to "be mirrored or matched exactly on the supply side".

(321) Such changes in demand make coordination on price more difficult. If a customer orders higher volumes, the respective slaughterhouse would have an incentive to purchase more cattle. The incentives to engage in price fixing would therefore be limited since the volatility of demand is experienced by all slaughterhouses.[222]

Conclusion on the possibility to reach terms of coordination

(322) Based on the above, the Commission considers that the Transaction is unlikely to increase the possibility of slaughterhouses to enter into coordination. In a market that is moderately concentrated, the Transaction further decreases the extent of symmetry between the leading competitors. While price complexity is considerably reduced by joint standards and there is a considerable transparency of prices, the need for regular new agreements of a coordinated price level and the fluctuations in demand on the downstream markets are likely to discourage slaughterhouses from agreeing to prices or to price caps for the procurement of live cattle.

Sustainability of coordination

(323) Since the Transaction does not increase the possibility of coordination, coordinated effects as a result of the Transaction are already unlikely. However, in addition, the Transaction does also not result in an increase of the sustainability of coordination.

---

219 When suppliers contact the respective slaughterhouse for a quote the base prices and bonuses on offer will be communicated to them. The Farmers Journal will usually comment on the bonuses available to suppliers and the Irish Farmers Association will tweet information or make information available via their farm app. (Form CO, paragraphs 871 and 872).

220 Horizontal Merger Guidelines, paragraph 45.

221 See, for example, paragraph 949 of the Form CO.

222 See the example given in footnote n. 263.

This is the case because the reaction of outsiders could jeopardise the expected outcome.[223]

(324) According to the Horizontal Merger Guidelines, the reaction of outsiders, such as current and future competitors not participating in the coordination, as well as of customers, should not be able to jeopardise the results expected from the coordination.[224]

(325) In the present case, there would be several avenues by which the reaction of outsiders could endanger the benefits from coordinating. If slaughterhouses would try coordinating on the downstream markets, slaughterhouses in other countries could capture some of the market shares currently held by Irish slaughterhouses. Moreover, the level of transparency on the upstream market for the procurement of live cattle for slaughter in which the prices for animals are publicly available, can be used by downstream customers as leverage to demand that slaughterhouses pass through the benefit of lower costs for supplies.

Factors relating to buyer power in upstream markets

(326) Similar as described in the assessment of non-coordinated effects, coordination between purchasers in an upstream market may in particular impede effective competition if such coordination would lead to a reduction of the overall output or an increase in price in the final product market, thereby harming consumer welfare. Increased buyer power can be beneficial to consumers if the reduction in input prices is passed on to consumers.

(327) Because beef of Irish origin competes with beef of other origin, as stated in Section 4.4, potential reductions in the purchase of inputs are unlikely to result in an overall reduction of output or higher prices in the final product markets. Even though Ireland is a large exporter of beef, any reduction of output of Irish beef would be limited since the slaughterhouses have an interest themselves to rather increase their market shares in the downstream markets than to decrease their share. Such result would not lead to a reduction in consumer welfare.

5.2.2.3. Conclusion

(328) For the reasons outlined above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to coordinated effects on the market for the purchase of live cattle for slaughter in the RoI.

5.2.3. Non-coordinated effects on the market for the purchase of live lamb/ sheep for slaughter

(329) Non-coordinated effects on the market for the purchase of live lamb and/ or sheep for slaughter can only materialise if the relevant geographic market comprises the IoI as ABP and Fane Valley procure no live lamb/ sheep for slaughter in the RoI and Slaney JV has no such activities in NI. An affected market for the purchase of live/sheep only arises in relation to the IoI.

223 See Horizontal Merger Guidelines, paragraph 56.
224 Horizontal Merger Guidelines, paragraph 56.

5.2.3.1. Market Structure

(330) The market shares of the Parties on the potentials markets for lamb and/ or sheep in the IoI by volume for 2015 are as follows:

Table 7: market shares on the possible market for purchase of live lamb and sheep in the IoI, 2015

	ABP	**Slaney JV**	**Fane Valley**	***Combined***
Lamb	[5-10]%	[30-40]%	[0-5]%	***[40-50]%***
Sheep	[0-5]%	[20-30]%	[0-5]%	***[30-40]%***
Lamb & Sheep	[5-10]%	[30-40]%	[0-5]%	***[40-50]%***

Source: Commission's calculations based on estimates provided by the Notifying Parties

(331) The market shares are highest on a potential market for the purchase of live lambs for slaughter with a combined market share of almost [40-50]%. The combined market share would amount to only [30-40]% if a separate market for sheep is considered. Since the overall market size for lamb is much higher than for sheep, on a combined market for lamb and sheep the Parties would have a combined market share of [40-50]%. However, the increment brought by the Transaction amounts to [5-10]% for lamb and to [0-5]% for sheep. The largest competitors of the Parties on this market are Kepak (with a market share by volume of [20-30]% in 2015), Kildare ([10-20]%) and Dawn ([5-10]%).

5.2.3.2. Notifying Party`s views

(332) The Notifying Parties submit that the Transaction will increase the market share of the Slaney JV and Fane Valley only with a limited increment of around [5-10]%. The Notifying Parties further submit that there are a number of slaughterhouse competitors active on the market which will continue to be available alternatives to farmers post-Transaction.

(333) Similarly to the market for purchase of cattle, the Notifying Parties argue that they are not close competitors for the purchase of live ovine animals (lambs and sheep) and all slaughterhouses purchasing and slaughtering ovine animals would be in virtually the same position in relation to live lambs and sheep procured from farmers.

(334) In addition, the Notifying Parties argue that suppliers of lambs and sheep can easily switch between slaughterhouses as there are in general no long-term contractual relationships between suppliers and customers for the provision of live ovine animals (be it lambs or sheep). Switching slaughterhouses is according to the Notifying Parties facilitated by the existing price transparency and suppliers of ovine animals can easily compare the prices of different competing slaughterhouses.

5.2.3.3. Market Investigation and Commission`s assessment

(335) Starting the assessment by looking at the market shares of the Parties[225], the Commission notes that their combined volume market share amount to [30-40]% for sheep and [40-50]% for lamb, with an increment of about [5-10]% brought by the Transaction.

(336) A combined market share of around [40-50]%, does not, by itself, represent a sufficiently strong indicator that the Transaction would likely raise competition concerns. This should be assessed together with a non-exhaustive list of other factors that could influence the finding of significant, non-coordinated effects, which are listed in paragraphs 28 et seq. of the Horizontal Merger Guidelines. Such relevant factors include the closeness of competition between the merging firms, possibilities of suppliers to switch, likeliness of competitors to increase demand if prices decline, ability of the merged entity to hinder expansion by competitors or the elimination of an important competitive force.

(337) In assessing these elements, the Commission took in particular note of the responses submitted during the Market Investigation.

IFA complaint

(338) With regard to non-coordinated effects on the market for the purchase of live lambs for slaughter, the IFA submits that the Transaction would give ABP insight about an important competitor with possible ramifications in the lamb processing markets. The IFA mentions as an example that ABP and Slaney could coordinate with potential adverse effects for consumer in the UK and EU markets.

Parties do not seem to be close competitors

(339) The Commission found no evidence in the submission of either the Parties or of third parties in the Market Investigation that would indicate that ABP and Slaney JV are close competitors on the market for the purchase of live lambs/sheep for slaughter.

(340) Looking at the competitive dynamics based on the location of their plants, ABP and Slaney do not appear to be particularly close competitors for two reasons. First, the responses to the market investigation indicate that live lamb/sheep can travel more or less throughout the entire IoI and that even small price differences of 1-2% could cause a farmer to select a bring his animals to another slaughterhouse.

(341) In addition, even if one were to assume that the closeness of competition between two plants would be proportional to their distance, the plant slaughtering lamb and sheep of ABP is located in NI whereas both plants of Slaney are located in the RoI. The plant of Fane Valley is located closer to the plant of ABP but also next to a plant operated by Dunbia.

Possibilities of farmers to switch

(342) The responses during the Market Investigation confirmed that farmers can switch easily, within a short timeframe and with limited costs between competing

---

225 See Horizontal Merger Guidelines, paragraph 27.

slaughterhouses for sales of lamb and sheep for slaughter in the IoI. All but one respondent to questionnaire Q1 stated that farmers can switch easily.[226]

(343) The Irish Cattle & Sheep Farmers Association stated that "[a]*s there are generally no contracts involved, switching at the last minute is possible, but the likelihood of significant price difference is not great*".[227] Only the Irish Farmers Association answered that switching is not easily possible and submitted that switching would "*affect the overall price achievable and access to slaughter for their animals*". IFA further explained that farmers who do not have an established relationship with the slaughterhouse are often offered a lower price or may be forced into significant delays which could result in significant price penalties.[228]

(344) In the Commission's view, such alleged "bonus" for farmers who decide not to switch to competitors offering higher prices in times of short supply – who can in turn then expect to sell their lamb/sheep at shorter notice once supply exceeds the demand – would be unlikely to severely limit the possibilities of farmers to switch. First, in times of structural, long-term price differences, farmers could establish a relationship with other slaughterhouses and, once established, expect to receive similar benefits. Second, with regard to occasional sales to other slaughterhouses, it seems highly unlikely that a slaughterhouse would be able to monitor the loyalty of all its suppliers.

(345) During the Market Investigation, almost all slaughterhouses answered that farmers can easily switch.[229] Only one respondent considers that this depends on the part of the RoI where the farmer is located.[230] However, others explain their view by stating that switching would be "*simple as a phone call*"[231] or that "*farmers will tend to go with the best price*"[232].

(346) The answers are ambiguous concerning the question whether switching would affect which bonus a farmers receives for his animals. An equal number of respondents to questionnaire Q1 stated that switching would affect the bonus and that switching would not affect the bonus.[233] To this point, the Irish Cattle & Sheep Farmers Association reasoned its negative reply similarly. It explains that "*depending on schemes operated by individual meat plants, a higher bonus may be available in one meat plant*".[234]

(347) Switching gets more difficult to slaughterhouses outside the RoI. Only one slaughterhouse considers switching to a slaughterhouse outside the RoI as being easy for farmers whereas most others replied that switching outside of the RoI would only be easy in case of a slaughterhouse in NI.[235] To the contrary, almost all respondents to questionnaire Q2 consider switching from selling live animals to

226 Questionnaire Q1 to associations of suppliers of live animals, question 34.

227 Response of the ICSFA to question 34.1 of questionnaire Q1 to associations of suppliers of live animals.

228 Response of the IFA to question 34.1 with reference to question 31.1 of questionnaire Q1 to associations of suppliers of live animals.

229 Questionnaire Q2 to slaughterhouses, question 87.

230 Response of Ballon Meats to question 87 of questionnaire Q2 to slaughterhouses.

231 Response of Eurofarm Foods to question 87 of questionnaire Q2 to slaughterhouses.

232 Response of Dawn Meats to question 87 of questionnaire Q2 to slaughterhouses.

233 Questionnaire Q1 to associations of suppliers of live animals, question 31.

234 Response of the ICMSA to question 31.1 of questionnaire Q1 to associations of suppliers of live animals.

235 Questionnaire Q2 to slaughterhouses, question 88.

slaughterhouses in the RoI to selling live animals otherwise, like in marts or export, as easy.[236] Others take the view that "*the absence of a live export market for finished cattle/sheep is a major weakness from an Irish farmers' perspective and labelling regulations/ retailer specifications in the UK is preventing the development of a live export trade to the UK*".[237]

(348) Asked to rank the importance of the factors "price", "convenience of location of plant" and "long-term relationship with slaughterhouse" for selling lamb/sheep, the respondents to questionnaire Q1 to farmers' associations regarded price and convenience of the location of a plant as more important than the long-term relationship with slaughterhouses.[238]

(349) The question whether farmers switch often between competing slaughterhouses in the RoI has been answered with "yes" by two thirds of the respondents to the questionnaire Q1.[239] One respondent explains that "*many farmers in our organisation would switch processing plants*".[240] One respondent that stated that switching does not occur often, reasons that the "*base price is usually the same in all slaughter houses*".[241] Slaughterhouses indicated that farmers switch "regularly" or "frequently".[242]

(350) Overall, the responses to the Market Investigation indicate that farmers are free to switch to other slaughterhouses in the RoI and NI and that switching is easy and frequent. As regards further options, the Commission notes that the number of live lambs exported from Ireland amounts to only 1% of the total lamb born and reared in the RoI and that live sheep are not exported at all. In addition, market participants consider that there are legal, commercial veterinary or other barriers to exporting live cattle for slaughter.[243] Therefore, export seems to be a limited out-of-market constraint.

(351) There are also marts in which animals are regularly traded. However, the Commission understands that the transactions in marts are mostly made between farmers. Selling in a mart would therefor only be an alternative as long as other farmers are confident that they will be able to sell the animal at a later stage to a slaughterhouse. For this reason, the trading at marts might exercise a limited competitive constraint on the Parties.

(352) Based on these responses, the Commission considers that farmers have the ability to switch between different slaughterhouses. Switching between slaughterhouses within the RoI and NI is frequent and there are no significant hurdles to do so. The possibility to switch therefore is an indication that the loss of competition between ABP and Slaney JV is unlikely to result in competition concerns on the overall market for the purchase of live lamb/sheep for slaughter.

---

236 Questionnaire Q2 to slaughterhouses, question 89.

237 Response of the ICMSA to question 39.1 of questionnaire Q1 to associations of suppliers of live animals

238 Questionnaire Q1 to associations of suppliers of live animals, questions 36 and 37.

239 Questionnaire Q1 to associations of suppliers of live animals, question 38.

240 Response of the Angus Society to question 38.1 of questionnaire Q1 to associations of suppliers of live animals.

241 Response of Irish Hereford Prime to question 38.1 of questionnaire Q1 to associations of suppliers of live animals.

242 Questionnaire Q2 to slaughterhouses, question 87.3.

243 Questionnaire Q1 to associations of suppliers of live animals, question 20.

Spare capacity by competitors

(353) Concerning the availability of spare capacity for the slaughtering of cattle, lamb and sheep, most respondents to the questionnaire Q1 replied that they assume that spare capacity is available.[244] The Department of Agriculture Food & Marine in Ireland states that "There is additional slaughter capacity for both cattle and sheep in Ireland".[245] Asked for the reasons of the overcapacity, respondents to questionnaire Q1 explained that in the past the supply of live animals was much more seasonal than today and therefore over capacity was built to handle large volumes of animals coming for sale at particular times of the year.[246] To this point, Bord Bia observed "Seasonal production patterns require peak capacity availability and future proofing for business expansion". Another respondent to questionnaire Q1 explained that "traditionally supply patterns were irregular characterised by an autumn glut. This is no longer such a facet of the trade and supply is relatively even throughout the year".

(354) This assessment of the respondents to questionnaire Q1 matches the responses of slaughterhouses during the Market Investigation. No respondent to the questionnaire Q2 said that spare capacity would not be readily available.[247]

(355) In response to the question under what conditions the slaughterhouses would increase their capacity, no respondent excluded increasing capacity categorically. Instead, slaughterhouses answered they would increase capacity "in response to customer demand", "when supply is sufficient to allow a profit margin", "if there were more cattle, lamb and sheep available".[248]

(356) Looking at the individual capacity utilisation for the slaughter of live lamb/sheep submitted by slaughterhouses in their responses to the Market Investigation, the overall capacity utilisation is mostly between 62 and 76%.[249] This also applies to slaughterhouses located near the plant of Slaney JV. Half of the respondents state that their overall capacity is limited by their chilling capacity whereas the other half is not limited by their chilling capacities.[250] Two slaughterhouses plan to increase their chilling capacity and the same number of slaughterhouses plans to increase their slaughtering capacity.[251]

(357) Overall, based on the responses to the Market Investigation, the Commission considers that slaughterhouses in the RoI have significant spare capacities. Even assuming that the current capacity utilisation would amount to the upper end of the 62-76% corridor which most of the responses indicated, the additional available capacity would amount to a third of the current total capacity utilisation. Assuming a current utilisation rate of 66% would increase the additional capacity to half of the current killings. In addition, several slaughterhouses already plan to increase their capacities or answered that they would increase their capacity if they could procure more lamb/sheep.

---

244 Questionnaire Q1 to associations of suppliers of live animals, question 40.

245 Response of the ICSFA to question 40.1 of questionnaire Q1 to associations of suppliers of live animals.

246 Questionnaire Q1 to associations of suppliers of live animals, question 40.3.

247 Questionnaire Q2 to slaughterhouses, question 91.

248 Questionnaire Q2 to slaughterhouses, question 92.

249 Questionnaire Q2 to slaughterhouses, questions 5.2 and 5.3.

250 Questionnaire Q2 to slaughterhouses, question 6.

251 Questionnaire Q2 to slaughterhouses, question 7.

(358) Taking into account the responses submitted during the Market Investigation, the Commission considers that competitors could procure significantly more lamb/sheep if the Parties offered lower prices to farmers and farmers wished to switch.

View of other market participants regarding the Transaction

(359) Overall, a majority of respondents to questionnaire Q1 expect a negative impact of the Transaction on the business of farmers, pointing out that "the dominant position of ABP would be further consolidated" or that "the result will be one less competitor for cattle and sheep in what is already a very concentrated market with limited competition".

(360) Competing slaughterhouses expect no impact of the Transaction on the prices proposed to farmers by Irish slaughterhouses[252], on the volume of live animals purchase by Irish slaughterhouses[253], on their business in general[254] or on the purchase of live lamb/sheep for slaughtering.[255]

Factors relating to buyer power in upstream markets

(361) The Horizontal Merger Guidelines state in paragraph 61 that mergers creating or strengthening buyer power may in particular impede effective competition if the merged firm would enjoy a dominant position and could obtain lower prices by reducing its purchase of inputs, thereby reducing the overall output in the final product market and harm consumer welfare. Buyer power could also adversely affect competition in downstream markets if the merged entity were likely to use its buyer power vis-à-vis suppliers to foreclose its rivals.

(362) On the basis of the fact that the parties are not close competitors, the availability of spare capacity by competitors and farmers' practice of switching purchaser easily and frequently, the proposed transaction is unlikely to significantly increase the degree of buyer power in the market.

(363) Moreover, any concerns over the potential stronger buyer position of the merged entity must be assessed in the context of the Commission's findings about competition in the downstream markets. As explained in the Horizontal Merger Guidelines state that increased buyer power may be beneficial for competition if it lowers input costs without restricting downstream competition or total output because in such case a proportion of these cost reductions are likely to be passed onto consumers in the form of lower prices.[256]

(364) In the present case, such a scenario seems much more likely than potential adverse effects of buyer power. As concluded in Section 5.3, the proposed Transaction does not raise concerns in terms of increased market power downstream. Neither a reduction of total output nor a reduction of competition in downstream markets are likely results of the Transaction. Instead, in light of the absence of significant adverse effects of the transaction on competition in downstream markets, if the transaction were to lead to lower input prices paid by the Parties, such input prices would likely lead to lower prices to consumers. According to the responses in the Market Investigation, downstream customers have significant degree of buyer power and are thus likely to demand from the Parties to pass-on the benefits of lower input prices that are easy to monitor. This would also contribute to the pass on of any reduction in input prices to consumers.

---

252 Questionnaire Q2 to slaughterhouses, question 93.
253 Questionnaire Q2 to slaughterhouses, question 94.
254 Questionnaire Q2 to slaughterhouses, question 113.
255 Questionnaire Q2 to slaughterhouses, question 114.
256 Horizontal Merger Guidelines, paragraph 62.

(365) No concern of foreclosure has been identified either. As stated in Section 4.5, ovine meat of Irish origin competes with lamb/mutton of other origins. Moreover, because of the fragmented supplier base, the Parties would also be unable to foreclose other slaughterhouses. Therefore, a negative impact on downstream markets seems unlikely.

5.2.3.4. Conclusion

(366) Based on the reasons above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to non-coordinated effects on the market for the purchase of live lamb/ sheep for slaughter in the IoI. Furthermore and in any event, the Commission considers that the Transaction is unlikely to have a detrimental effect in the final product market that would harm consumer welfare.

5.2.4. Coordinated effects on the market for the purchase of live lamb/ sheep for slaughter

5.2.4.1. Notifying Party`s views

(367) The Notifying Parties argue that the asymmetric market shares of slaughterhouses would make coordination highly unlikely, that the existing asymmetry would be further increased by the Transaction and that most of the features mentioned by the Court of First Instance in the Airtours decision would not be present at the market for the purchase of live lamb/sheep for slaughter.

5.2.4.2. Market Investigation and Commission`s assessment

(368) The assessment of coordinated effects on the market for the purchase of live lamb/ sheep for slaughter is not significantly different from that for the purchase of live cattle for slaughter. First, the Commission will review whether the Transaction will increase the possibility of coordination and then discuss whether it will increase the sustainability of coordination.

Possibility of coordination

<u>Market concentration levels</u>

(369) The Transaction will reduce the number of independent undertakings purchasing live live/sheep for slaughter. Looking only at competitors with a market share of at least 5%, there are currently six undertakings which purchase almost 90% of the total lamb sold. The remaining 10% are purchased by a number of smaller slaughterhouses. Out of these six competitors, three are considerably larger compared the others: the Slaney JV ([30-40]%), Kepak ([20-30]%) and Kildare Chilling ([10-20]%).The other three competitors have market shares of [5-10]%: Dawn ([5-10]%), ABP ([5-10]%) and Fane Valley ([5-10]%).

(370) On the basis of the market shares mentioned above, the HHI level after the transaction would be above […] and the increase would amount to […].

(371) If live sheep are considered, considering only competitors with a market share of at least 5%, there are currently four undertakings which purchase about 75% of the total sheep sold. The remaining 25% are purchased by a number of smaller slaughterhouses. Out of these four competitors, three are considerably larger compared the others: the Slaney JV ([20-30]%), Kepak ([20-30]%) and Kildare

Chilling ([10-20]%) and another one is somewhat smaller Dawn ([5-10]%). ABP is not even mentioned among the competitors with a market share above 5%.

(372) While the market concentration figures may be taken in themselves as risk factor for coordination, there are a number of elements that point towards the absence of significant competitive concerns due to coordination among slaughterhouses.

Symmetry

(373) As stated above, currently the two largest slaughterhouses have market shares for lamb of [30-40]% and [20-30]% followed by Kildare Chilling with [10-20]% and three competitors with market shares of [5-10]% as well as several other slaughterhouses with market shares below 5%. The Transaction would increase the share of the already largest competitor to [40-50]%, putting the Slaney JV clearly ahead of the second largest slaughterhouse Kepak. The market share of the Slaney JV for sheep is also due to increase due the present Transaction, though to a lower extent.

(374) Therefore, the Transaction would not increase symmetry between market participants. To the contrary, it would decrease symmetry for two reasons. First, it would make the Slaney JV notably larger than the runner-up. Second, it would reduce a group of medium-sized slaughterhouses with relatively symmetric market shares from three to one (Dawn).

Product differentiation and price complexity

(375) Reaching terms of coordination is easier in the case of homogenous products than on hundreds of prices in a market with many differentiated products.[257] However, coordinating firms may find other ways to overcome problems stemming from complex economic environments. They may, for instance, establish pricing rules that reduce the complexity of coordinating on a large number of prices.[258]

(376) There are many factors influencing the final price for a specific ovine animal, including the weight, the age profile, the quality assurance status, the provenance and aging. While in theory these differences could result in a very large number of different price points, this complexity is significantly reduced the establishment of a base price that each slaughterhouse quotes and common rules for measuring the overall quality of lamb/sheep by the EUROP grid classification system as specified in the EU directive EC 1208/1981 and supplemented by national regulations.

(377) However, there is a further complexity to the prices that lies in their evolution over time. Each slaughterhouse has to assess each week how many lamb/sheep it will need to refill its stock of fresh meat to be able to supply the demand of downstream customers. Prices are set on the basis of assumptions relating to the amount of supply available but also the demand in the future. While the first factor is common for all slaughterhouses, the latter is highly individual. Coordination would therefore require very regular contacts between all undertakings involved[259] to agree on an adopted coordinated price level.

257 Horizontal Merger Guidelines, paragraph 45.

258 Horizontal Merger Guidelines, paragraph 47.

259 In this regard the Commission considers that the acquisition by […](see paragraph (10) above) does not appear to facilitate contacts between the Parties as being […] in […] will not have access to nor receive any commercially sensitive information[…].

(378) Ultimately, since the demand of slaughterhouses on the market for the purchase of live lamb/sheep for slaughter is driven by the demand of downstream customers, coordination on prices in the upstream market would only make sense for slaughterhouses if they would be faced with a constant downstream demand. Absent of such constant demand, they would need to coordinate their sales on the downstream markets as well to ensure an alignment of interest in the upstream market by maintaining their shares of sales in the downstream market. Such coordination on the downstream markets appears, however, highly unlikely.[260]

Transparency

(379) While transparency is mainly relevant for the sustainability of coordination, it also plays a role in the possibility of reaching terms of coordination as the focal points of coordination need to be observable.

(380) Prices paid by slaughterhouses to farmers are very transparent. Quotes are published on a regular basis, the EUROP grades are used by all slaughterhouses and bonuses or maluses for certain weight, fat grades, quality assurance status or combinations thereof are made available as well. In addition, since this information is transmitted to a large number of potential suppliers, it would probably only take a call for a competitor to verify whether the price quotes are actually applied.

Stability of Supply and Demand

(381) As indicated in the Horizontal Merger Guidelines, it is easier to coordinate on a price when demand and supply conditions are relatively stable than when they are continuously changing.[261] As to the stability of supply, the Notifying Parties submit that the supply of lamb/sheep is highly seasonal, with a production variability across seasons that can reach even 100%.[262]

(382) The demand of slaughterhouses is in turn driven by the demand of supermarkets, industrial processors and caterers downstream. According to the Notifying Parties, the level of orders of fresh meat is influenced by a huge variation of factors including for example the weather and factors such as the price of ovine meat vis-à-vis other types of meat. In addition, the Notifying Party explains that orders of customers for a particular product might double or treble within a short period if the customer decides to include such product in a promotion. Similarly, festive, cultural and religious periods may cause a substantial increase in the volumes purchased. Such changing demand on the downstream markets would need to "be mirrored or matched exactly on the supply side".

(383) Such changes in demand make coordination on price more difficult. If a customer orders higher volumes, the respective slaughterhouse would have an incentive to

---

260 This is the case for several reasons. First, on the downstream markets, ovine meat of Irish origin competes with ovine meat of other origins (see Section 4.5). If Irish lamb/sheep processors were to try to raise prices on the downstream markets through coordination, they would risk losing market shares to processors of other countries. Coordination on bids would be equally difficult because of competition by outsiders. Second, unless meat processors from other countries also join such coordination, any attempt of Irish slaughterhouses to coordinate their behaviour would easily be disrupted by meat processors from other countries.

261 Horizontal Merger Guidelines, paragraph 45.

262 See Form CO, paragraph 1053.

purchase more cattle. The incentives to engage in price fixing would therefore be limited since the volatility of demand is experienced by all slaughterhouses.[263]

<u>Conclusion on the possibility to reach terms of coordination</u>

(384) Based on the above, the Commission considers that the Transaction is unlikely to increase the possibility of slaughterhouses to enter into coordination. The Transaction decreases symmetry between the leading competitors. In addition, while price complexity is considerably reduced by joint standards and there is a considerable transparency of prices, the need for regular new agreements of a coordinated price level and the fluctuations in demand on the downstream markets are likely to discourage slaughterhouses from agreeing to prices or to price caps for the procurement of live lamb/sheep.

Sustainability of coordination

(385) Since the Transaction does not increase the possibility of coordination, coordinated effects as a result of the Transaction are already unlikely. However, in addition, the Transaction does neither result in an increase of the sustainability of coordination. This is the case because the reaction of outsiders could jeopardise the expected outcome.[264]

(386) According to the Horizontal Merger Guidelines, the reaction of outsiders, such as current and future competitors not participating in the coordination, as well as customer, should not be able to jeopardise the results expected from the coordination.[265]

(387) In the present case, there would be several avenues by which the reaction of outsiders could endanger the benefits from coordinating. If slaughterhouses would try coordinating on the downstream markets, slaughterhouses in other countries could capture some of the market shares currently held by Irish slaughterhouses. Moreover, the level of transparency on the upstream market for the procurement of live lamb/sheep for slaughter in which the prices for animals are publicly available, can be used by downstream customers as leverage to demand that slaughterhouses pass through the benefit of lower costs for supplies.

Factors relating to buyer power in upstream markets

(388) Similar as described in the assessment of non-coordinated effects, coordination between purchasers in an upstream market may in particular impede effective competition if such coordination would lead to a reduction of the overall output or an increase in price in the final product market, thereby harming consumer welfare. Increased buyer power can be beneficial to consumers if the reduction in input prices is passed on to consumers.

(389) Because lamb/sheep of Irish origin competes with lamb/sheep of other origin, as stated in Section 4.5, potential reductions in the purchase of inputs are unlikely to

---

263 Diverging patterns of sales for the key competitors in any market give a strong indication of the volatility of demand. In this regard, data provided by the Parties show that the Slaney JV's lamb sales to supermarkets in Belgium [Details of the Slaney JV's sales performance] in 2014 and [Details of the Slaney JV's sales performance] in 2015. Conversely, ABP's lamb sales [Details of ABP sales performance].

264 See Horizontal Merger Guidelines, paragraph 56.

265 Horizontal Merger Guidelines, paragraph 56.

result in an overall reduction of output or higher prices in the final product markets. Any reduction of output of Irish lamb/sheep would be limited since the slaughterhouses have an interest themselves to rather increase their market shares in the downstream markets to than decrease their share. Such result would not lead to a reduction in consumer welfare.

5.2.4.3. Conclusion

(390) Based on the reasons above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market with respect to coordinated effects on the market for the purchase of live lamb/ sheep for slaughter in the RoI. Furthermore and in any event, the Commission considers that the Transaction is unlikely to have a detrimental effect in the final product market that would harm consumer welfare.

5.3. Markets for sale of fresh beef meat

(391) With regards to sale of fresh beef ABP and Slaney's activities overlap in a number of EEA countries: Austria, Belgium, Cyprus, Denmark, France, Germany, Ireland, Italy, Lithuania, Malta, the Netherlands, Poland, Spain, Sweden and the UK.

(392) On the basis of a segmentation of the market for sale of fresh beef by distribution channel no affected market would arise under any possible geographic delineation (national, regional or EEA-wide) of the respective markets for sale of fresh beef to (i) supermarkets, (ii) caterers, and (iii) industrial processors with the exception of the market for sale of fresh beef to industrial processors in the RoI.

Table 8: markets for the sale of fresh beef meat

Sale of fresh beef meat	**At national level within the EEA**	**At regional level**	**At EEA-level**
To supermarkets[266]	Not affected in any EEA country	Not affected	Not affected
To butchers	Not affected in any EEA country	Not affected	Not affected
To caterers	Not affected in any EEA country	Not affected	Not affected
To industrial processors	***Affected in RoI***	Not affected	Not affected

Source: Parties' estimates

5.3.1. Sale of fresh beef to industrial processors in the RoI

(393) On such possible market for sale of fresh beef to industrial processors in the RoI the Parties' combined market share in 2015 amounts to [20-30]% by volume (Slaney: [5-10]%, Fane Valley/Linden: [5-10]%, ABP: [5-10]%).

266 The Slaney JV is not active in the sale of fresh beef to supermarkets in any EEA country, including the RoI.

Table 9: market shares on the possible market for sale of fresh beef meat to industrial processors in the RoI

	2015 by volume	2015 by value
ABP	[5-10]%	[5-10]%
Slaney	[5-10]%	[5-10]%
Fane Valley	[5-10]%	[5-10]%
Parties combined	***[20-30]%***	***[20-30]%***
Dawn	[40-50]%	[40-50]%
Kepak	[20-30]%	[20-30]%
Jennings	[10-20]%	[10-20]%
Others	[5-10]%	[5-10]%
Total	**100%**	**100%**

Source: Parties' estimates

(394) First, the combined market share of the Parties is moderate and the presumption set forth by paragraph 18 of the Horizontal Merger Guidelines[267] applies, as the merged entity's market share does not exceed 25%.

(395) Second, post-transaction, several strong suppliers will continue to be active in the market, namely Dawn, Kepak, Jennings, and will continue to represent credible alternatives for industrial processors.

(396) Third, the results of the market investigation suggest that ABP and Slaney are not close competitors to each other for the sale of fresh beef to industrial processors in Ireland: Dawn and Kepak have been indicated as closest to ABP.[268] Furthermore, most respondents (industrial processors) consider that they have sufficient buyer power vis-à-vis suppliers of fresh beef meat.[269]

(397) No substantiated concerns have been raised by market participants. In particular, the majority of slaughterhouses confirmed that there will be sufficient competition post-transaction to prevent the merged entity from raising prices[270] and the

267 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), Official Journal C 31, 05.02.2004, p. 5-18.

268 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 27.

269 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 30.

270 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 32.

proposed transaction will not have any significant impact on the market for sale of fresh beef meat for further processing.[271]

(398) In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the sale of fresh beef meat for further processing in the RoI.

5.4. Markets for sale of fresh lamb meat[272]

(399) With regards to sale of fresh lamb meat ABP and Slaney's activities overlap on a national basis in a number of EEA countries: Austria, Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Poland, Spain, Sweden and the UK. If an overall market for sale of fresh lamb meat were to be defined, the proposed transaction would give rise to affected markets at national level in Belgium and the RoI.

(400) On the basis of a segmentation of the possible market for sale of fresh lamb by distribution channel (by analogy to beef) affected markets would arise with respect to: (i) sale of fresh lamb meat to industrial processors in the RoI; and (ii) sale of fresh lamb meat to supermarkets in Belgium.

Table 10: possible markets for the sale of fresh lamb meat

Sale of fresh lamb meat	At national level within EEA	At regional level	At EEA-level
Overall market	***Affected in RoI and Belgium***	Not affected	Not affected
To supermarkets	***Affected in Belgium***	Not affected	Not affected
To butchers	Not affected in any EEA country	Not affected	Not affected
To caterers	Not affected in any EEA country	Not affected	Not affected
To industrial processors	***Affected in RoI***	Not affected	Not affected

Source: Parties' estimates

5.4.1. Sale of fresh lamb meat in the RoI

(401) On the possible overall market for sale of fresh lamb meat (via all distribution channels) in Ireland, the Parties' combined market share in 2015 amounts to [20-30]% by value (Slaney: [10-20]%, Fane Valley/Linden: [0-5]%, and ABP: [0-5]%) and [20-30]% by volume (Slaney [20-30]%, Fane Valley/Linden: [0-5]%, and ABP: [0-5]%). The increment brought by the proposed transaction is very small at below [0-5]%.

271 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 35.

272 In view of the very modest fraction (approximately 10%) that mutton represents from all ovine animals slaughtered (see paragraph (178)), an assessment of a possible overall market comprising both fresh lamb and fresh mutton meat will not differ materially from the assessment carried in this Decision in relation to the possible market for sale of fresh lamb meat.

Table 11: market shares on the possible market for sale of fresh lamb meat in the RoI

	2015 by volume	2015 by value
ABP	[0-5]%	[0-5]%
Slaney	[20-30]%	[10-20]%
Fane Valley	[0-5]%	[0-5]%
Parties combined	***[20-30]%***	***[20-30]%***
Kepak	[10-20]%	[10-20]%
Kildare Chilling	[10-20]%	[10-20]%
Dawn	[10-20]%	[10-20]%
Tenderlean	[5-10]%	[5-10]%
Musgrave	[5-10]%	[5-10]%
Brake Brothers	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%
Total	**100%**	**100%**

Source: Parties' estimates

(402) The combined market share of the Parties on this possible market is very modest and the presumption set forth by paragraph 18 of the Horizontal Merger Guidelines[273] applies, as the merged entity's market share does not exceed 25%.

(403) Moreover, a number of strong suppliers, will remain active in the market namely Kepak, Kildare Chilling and Dawn, which will continue to represent credible alternative suppliers to customers.

(404) Also, no concerns were expressed during the market investigation in relation to the sale of fresh lamb meat in the RoI.

(405) In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the possible overall market for the sale of fresh lamb meat in the RoI.

5.4.2. Sale of fresh lamb meat in Belgium

(406) On the possible overall market for sale of fresh lamb meat (via all distribution channels) in Belgium the Parties' combined market share in 2015 amounts to [20-30]% by value (Slaney: [10-20]%, Fane Valley/Linden: not active, and ABP: [0-5]%) and [20-30]% by volume (Slaney [10-20]%, Fane Valley/Linden: not active, and ABP: [0-5]%). The increment brought by the proposed transaction is very small at between [0-5]% and [0-5]%.

273 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), Official Journal C 31, 05.02.2004, p. 5-18.

Table 12: market shares on the possible market for sale of fresh lamb meat in Belgium

	2015 by volume	2015 by value
ABP	[0-5]%	[0-5]%
Slaney	[10-20]%	[10-20]%
Fane Valley	Not active	Not active
Parties combined	***[20-30]%***	***[20-30]%***
Bimpex/Van Aerde	[10-20]%	[10-20]%
Frigo	[10-20]%	[10-20]%
Select Products	[5-10]%	[5-10]%
Van Engelandt	[5-10]%	[5-10]%
Vlees Centrale Viande (VCV)	[5-10]%	[5-10]%
Macquet (France)	[5-10]%	[5-10]%
Manu Polis	[5-10]%	[5-10]%
Good Meat	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%
Total	**100%**	**100%**

Source: Parties' estimates

(407) The combined market share of the Parties on this possible market is very modest and the presumption set forth by paragraph 18 of the Horizontal Merger Guidelines[274] applies, as the merged entity's market share does not exceed 25%.

(408) Moreover, a number of sizeable competitors, will remain active in the market namely Bimpex/Van Aerde, Frigo, Select Products, VCV and Macquet, which will continue to represent credible supply alternatives to customers.

(409) Also, no concerns were expressed during the market investigation in relation to the sale of fresh lamb meat in Belgium.

(410) In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the possible overall market for the sale of fresh lamb meat in Belgium.

274 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings ("Horizontal Merger Guidelines"), Official Journal C 31, 05.02.2004, p. 5-18.

5.4.3. *Sale of fresh lamb meat to industrial processors in the RoI*

(411) On the possible market for the sale of fresh lamb meat to industrial processors in the RoI, the Parties' combined market share in 2015 amounts to [20-30]% by volume (Slaney: [10-20]%, Fane Valley/Linden: [0-5]%, ABP: [0-5]%).

Table 13: market shares on the possible market for sale of fresh lamb meat to industrial processors in the RoI

	2015 by volume	2015 by value
ABP	[0-5]%	[0-5]%
Slaney	[20-30]%	[10-20]%
Fane Valley	[0-5]%	[0-5]%
Parties combined	***[20-30]%***	***[20-30]%***
Kepak	[10-20]%	[10-20]%
Kildare	[10-20]%	[10-20]%
Dawn	[10-20]%	[10-20]%
Tenderlean	[5-10]%	[5-10]%
Musgrave	[5-10]%	[5-10]%
Brake Brothers	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%
Total	**100%**	**100%**

Source: Parties' estimates

(412) First, the combined market share of the Parties is very moderate with a negligible increment of [0-5]% brought by the proposed transaction, and the presumption set forth by paragraph 18 of the Horizontal Merger Guidelines applies, as the merged entity's market share does not exceed 25%.

(413) Second, post-transaction, there will continue to a sufficient number of sizeable suppliers active in the market, namely Kepak, Kildare and Dawn, which will continue to represent credible alternatives for industrial processors.

(414) Third, the results of the market investigation suggest that ABP and Slaney are not close competitors to each other for the sale of fresh beef to industrial processors in Ireland: Dunbia, Kepak and Randall Parker Foods have been identified by respondents as closest to ABP.[275]

(415) No substantiated concerns have been raised by market participants. In particular, the majority of slaughterhouses that replied to the relevant question confirmed that there will be sufficient competition post-transaction to prevent the merged entity

275 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 28.

from raising prices[276] and the proposed transaction will not have any significant impact on the market for sale of fresh lamb meat for further processing.[277]

(416) In view of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market with respect to the sale of fresh lamb meat for further processing in the RoI.

5.4.4. *Sale of fresh lamb meat to supermarkets in Belgium*

(417) The table below illustrates the market shares of the Parties and their competitors on the possible market for the sale of fresh lamb meat to supermarkets in Belgium. The combined market share of the Parties stands at [30-40]% by volume and [40-50]% by value for 2015 with a relatively low increment of around [5-10]% brought by the proposed transaction.

Table 14: market shares on the possible market for sale of fresh lamb meat to supermarkets in Belgium

	2015 by volume	2015 by value
ABP	[0-5]%	[5-10]%
Slaney	[20-30]%	[30-40]%
Fane Valley	Not active	Not active
Parties combined	***[30-40]%***	***[40-50]%***
Select Product	[10-20]%	[10-20]%
Macquet (France)	[10-20]%	[10-20]%
Importers from New Zealand	[30-40]%	[30-40]%
Others	[10-20]%	[10-20]%
Total	**100%**	**100%**

Source: Parties' estimates

(418) The possible market for sale of fresh lamb meat to supermarkets in Belgium seems to be characterised by a sufficient number of competitors, including importers from outside the EEA, which will remain active post-transaction ensuring a significant competitive constraint on the Parties.

(419) No substantiated concerns have been raised by market participants. Most respondents consider that there will be sufficient competition post-transaction to prevent the merged entity from raising prices for fresh lamb meat for direct human consumption in Belgium.[278] The market investigation results confirmed that the

276 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 33.

277 See replies to Q04 Questionnaire to industrial processors (fresh lamb and fresh beef meat) of 5 September 2016, question 36.

278 See replies to Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 – question 38.

proposed transaction will not have any significant impact on the market for sale of fresh lamb meat to supermarkets in Belgium.[279]

(420) In light of the above, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market with respect to the possible market for sale of fresh lamb meat to supermarkets in Belgium.

6. COMPETITIVE ASSESSMENT – VERTICAL RELATIONSHIPS

6.1. Analytical framework

(421) Foreclosure concerns a situation where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of a merger and those companies' ability and/or incentive to compete is reduced. Such foreclosure can take two forms: input and customer foreclosure.[280]

(422) Input foreclosure is a situation where, post-merger, the new entity would be likely to restrict access to products or services that it would have otherwise supplied absent the merger, thereby raising its downstream rivals' costs by making it harder for them to obtain supplies of the input under similar process and conditions as absent the merger.[281]

(423) Customer foreclosure is a situation where the merged entity may foreclose access to a sufficient customer base to its actual or potential rivals in the upstream market and reduce their ability or incentive to compete. In turn, that may raise downstream rivals' costs by making it harder for them to obtain supplies of the input under similar prices and conditions as absent the merger.[282]

(424) For an input or customer foreclosure scenario to raise competition issues, three factors need to be taken into account: 1) the ability of the merged entity to engage in foreclosure, 2) the incentives of the merged entity to do so and 3) whether a foreclosure strategy would have a significant detrimental effect on competition on the downstream market.[283]

6.2. Animal by-products

(425) ABP operates a Category 1 plant at Christendom, Ferrybank, Co. Waterford (Waterford Proteins) which renders Category 1 and 2 materials and a Category 3 plant in Cahir, Co. Tipperary. The information submitted by the Parties indicates that in relation to the RoI markets for collection of Category 1 and 2[284] and Category 3 animal by-products, ABP has a market share of c.[40-50]% and c.[30-40]% respectively. If the geographic scope of the markets for collection of animal by-products is the IoI, ABP's market share would be [20-30]% for Category 1 and 2 and [20-30]% for Category 3.

---

279 See replies to Q03 Questionnaire to supermarkets in Belgium of 5 September 2016 - question 40.

280 See, for instance Guidelines on the assessment of non-horizontal mergers under the Council regulation on the control of concentrations between undertakings, OJ C 265, 18.10.2008, p. 7. ('Non-Horizontal Guidelines'), paragraphs 29 and 30.

281 See, for instance Non-Horizontal Guidelines, paragraph 31.

282 See, for instance Non-Horizontal Guidelines, paragraph 58.

283 See, for instance Non-Horizontal Guidelines, paragraphs 32 and 59.

284 As already explained in paragraph (189) above there are no Category 2 plants on the IoI or in the UK. Therefore, the Category 2 material is downgraded and is rendered in Category 1 facilities.

(426) The Slaney JV operates a Category 3 rendering facility in Co. Wexford (Slaney Proteins). This facility renders some of the Category 3 material generated from slaughtering activities of the Slaney JV as well as very limited volumes of two third parties[285] (volumes totalling to approximately […]% of all materials rendered in the Slaney JV plant).[286] Given that […]% of Category 3 animal by-products rendered by Slaney JV are materials generated by Slaney JV's own slaughtering activities, the Slaney JV is therefore to a large extent not active on the merchant market in relation to the collection of Category 3 animal by-products.[287]

(427) The proposed transaction gives rise to two vertically affected markets:

(a) the markets for the purchase of live cattle and lamb/sheep for slaughter (upstream) and the RoI market for the collection of Category 1 & 2 animal by-products (downstream) and

(b) the markets for the purchase of live cattle and lamb/sheep for slaughter (upstream) and the RoI market for the collection of Category 3 animal by-products (downstream).

(428) If the geographic scope of collection of Category 1 & 2 and Category 3 animal by-products is the IoI, the Transaction would still give rise to two vertically affected markets as the Parties' IoI market shares for the purchase of live lamb/sheep for slaughter are above 30%.

(429) The Parties argue that the proposed transaction has no effect on competition in any market for the collection of animal by-products.

6.2.1. No input foreclosure effects

(430) Since, at present, rendering companies competing with ABP in the collection of Category 1 & 2 and Category 3 animal by-products source part of their materials from the Slaney JV and/or from Fane Valley, the Commission assessed whether or not the transaction would likely lead to restricted access to the collection of animal by-products in the RoI for competing renderers.

(431) The market investigation did not provide indications of possible foreclosure risks of competing renderers. Respondents to the market investigation noted that they currently source relatively small portions of the materials which they render from Fane Valley and/or the Slaney JV and that, in any event, the transaction brought "*no change to our market*".[288] In particular, the Slaney JV and/or Fane Valley only supply animal by-products to […] of the 4 renderers that are active in the RoI in the context of the market investigation; the volumes supplied by the Slaney JV and/or Fane Valley amount to about [minimal figure]% of the materials treated by one renderer and less than 15% of those treated by another. One respondent noted "*I do*

285 Other Category 3 animal by-products generated by the Slaney JV and/or Fane Valley are rendered by […]. These […] renderers also collect for treatment the Category 1&2 animal by-products generated by the Slaney JV and/or Fane Valley.

286 According to information provided by the Parties, […]% of the animal by-products rendered by Slaney Proteins are generated intra-group. The remaining […]% is generated by two local butchers,[…].

287 In light of this negligible market presence, the technical overlap between ABP and Slaney JV in relation to the collection of Category 3 animal by-products is unlikely to raise serious doubts and is therefore not assessed further in this Decision.

288 See replies to Q05 Questionnaire to renderers of animal by-products of 5 September 2016 - questions 16-18.

not foresee a circumstance in which this transaction will impact on our business. Slaney Proteins currently only processes Cat 3 material from within the Slaney Group. it is not active in the market place. therefore there will be no change in the market place post transaction."[289]

(432) In addition, there are a number of alternatives from whom competing renderers actually collect by-products, including Kepak Group, Moy Park, Vion Foods, Dunbia Foods, Wooleys and 2 Sisters or from whom they could source, including Liffey Meats, Jennings, Dawn Meats Group, Western Brand, Rosderra Group and Euro Farm Foods. These would remain as possible sources of material in the RoI by competing renderers in the collection of Category 1 & 2 and Category 3 by-products post-merger.

(433) If the geographic scope of the markets of the collection of Category 1 & 2 and Category 3 animal by-products is the IoI, the risk of foreclosure for competing renderers is even more limited due to the presence of additional slaughtering plants in NI from whom they can collect animal by-products including, for example, WD Meats, Ballymena Meats and Foyle Food Group.

(434) In light of the above, the Transaction does not raise serious doubts in relation to this vertical link.

6.2.2. No customer foreclosure effects

(435) The Commission also assessed whether the merged entity would have the ability or incentive to foreclose competing slaughterhouses from access to a significant customer base or otherwise foreclose competing slaughterhouses in relation to the disposal of by-products.

(436) This is not likely to be the case for several reasons. Starting with Category 1 & 2 animal by-products, the Commission notes that only about […]% of Category 1 & 2 animal by-products treated by ABP's rendering plant in Waterford are currently generated intra-group.[290] Any foreclosure strategy would necessarily imply a decrease in the amount of animal by-products treated in this plant, which would in turn lead to underutilization of the rendering plant and possibly to financial losses. Second, there are currently a number of alternatives to which competing slaughterhouses can turn to dispose their Category 1 and 2 animal by-products, including College Proteins, Linergy and Dublin Products.

(437) Regarding Category 3 animal by-products, the Commission notes that Slaney Proteins does not collect animal by-products in the RoI as it mostly renders Category 3 materials generated intra-group.[291] Therefore, the Transaction does not reduce demand for Category 3 animal by-products from the market. As for ABP's incentives to foreclose competing slaughterhouses, the Commission observes that ABP generates intra-group only less than […]% of the Category 3 animal by-products treated by ABP's rendering plant in Cahir. This implies that any foreclosure strategy would necessarily decrease the (total) volumes of animal by-

---

289 See replies to Q05 Questionnaire to renderers of animal by-products of 5 September 2016 - question 20.1.

290 All Category 1, 2 and 3 by-products generated by the slaughtering activities of ABP in the RoI and NI are [specific details on rendering of by-products generated by the slaughtering activities of ABP in the RoI and NI].

291 See footnote 286.

products treated in this plant. This would in turn lead to a significant underutilization of the rendering plant and possibly to financial losses.

(438) One slaughterhouse raised the concern that the transaction would reduce the number of independent renderers and that this would lead to an increase of the prices slaughterhouses currently pay to dispose their waste.[292] However, no such concern appears to arise from the present transaction since, as explained before, Slaney Proteins does not source animal by-products on the market. In any event, as indicated above, a number of other renderers remain active in the RoI.

(439) If the geographic scope of the markets of the collection of Category 1 & 2 and Category 3 animal by-products is the IoI, the risk of foreclosure for competing slaughterhouses is even more limited due to the presence of other rendering plants in NI to whom they can turn to dispose/sell their animal by-products including, for example, Foyle Proteins, and others.

(440) In light of the above, the Transaction does not raise serious doubts in relation to this vertical link.

7. ARTICLE 2(4) ASSESSMENT (POSSIBLE SPILL-OVER EFFECTS)

(441) Under Article 2(4) of the Merger Regulation, to the extent that the creation of a JV that constitutes a concentration pursuant to Article 3 has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, the Commission must assess such coordination in accordance with the criteria of Article 101(1) and (3) TFEU, with a view of establishing whether or not the operation is compatible with the common market.

(442) In making this assessment, the Commission must take into account, in particular, whether two or more parent companies retain, to a significant extent, activities in the same market as the joint venture or in a market that is downstream or upstream from that of the joint venture or in a neighbouring market closely related to this market. In addition, the Commission has to take into account whether the coordination which is the direct consequence of the creation of the joint venture affords the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products or services in question. A restriction of competition under Article 101(1) TFEU is established when the coordination of the parent companies' competitive behaviour is likely and appreciable and results from the creation of the joint venture.[293]

7.1. Activities of ABP, Fane Valley and Slaney JV in the purchase of live sheep and/ or lamb for slaughter in the IoI

(443) As regards market where both parent companies retain activities in the same market as the joint venture, the Commission assessed the activities of both ABP and Fane Valley in the market for the purchase of live sheep and/ or lamb for slaughter in the IoI.

(444) As indicated in Section 5.2.3, the Commission considers that any potential coordination between ABP and Fane Valley would not afford the Notifying Parties with the possibility of eliminating competition in respect of a substantial part of the

---

292 See Q02 Questionnaire to slaughterhouses of 5 September 2016 - question 111.2.

293 Merger Regulation, Article 2(5).

products or services in question, in particular taking into account the spare capacity available to competitors, the ability of farmers to switch to other slaughterhouses and that there is no risk of restricting downstream competition and the limited market shares of ABP and Fane Valley compared to the ones of Slaney JV.

(445) As outlined in Section 5.2.3.1, ABP has a market share of [5-10]% in terms of volume in 2015 for lamb, of [0-5]% for sheep and of [5-10]% for lamb and sheep. As Fane Valley specialised in slaughtering lamb, its respective market shares amount to [0-5]% for lamb, [0-5]% for sheep and [0-5]% for sheep and lamb.

(446) There is no evidence that the joint venture's object is to coordinate the Parties' competitive behaviour in the market for the purchase of live sheep and/ or lamb for slaughter in the IoI. Moreover, the Commission considers that in light of the low market shares of ABP and Fane Valley, spill-over effects in terms of Article 2(4) are unlikely and in any event, unlikely to be appreciable.

7.2. Activities of ABP and Fane Valley in the purchase of live cattle in Northern Ireland

(447) As regards activities of both parents in markets neighbouring to the activities of the joint venture, the Commission considered the slaughtering of cattle in NI.

(448) Based on estimates of the Notifying Parties, the Commission calculated shares of cattle processed in NI as follows:

Table 15: market shares on the possible markets for purchase of live cattle for slaughter in NI

	Volume	**Volume share**
ABP	[…]	[20-30]
Fane Valley	[…]	[10-20]
Foyle	[…]	[20-30]
WD Meats	[…]	[10-20]
Dunbia	[…]	[10-20]
Others	[…]	[5-10]

Source: Commission's calculations based on estimates provided by the Parties

(449) There is no evidence that the joint venture's object is to coordinate the Parties' competitive behaviour in a hypothetical market for the purchase of live cattle for slaughter in Northern Island.

(450) In any event, as regards the appreciability of potential coordination between the parents, despite the combined market share of c. [40-50]% of ABP and Fane Valley, several other competitors are present in NI, including as the market shares suggest, strong competitor, Foyle which has a [20-30]% market share besides WD Meats with a c.[10-20]% market share and Dunbia with a c.[10-20]% market share.

(451) Moreover, assuming for the purposes of this assessment that NI would constitute a separate market and would not be part of a UK-wide market for the purchase of live cattle for slaughter, the Commission considers that several of the aspects discussed in Section 5.2.1 and Section 5.2.2 would speak against a likelihood of coordination between ABP and Fane Valley on such market.

(452) Slaughterhouses face strong fluctuations in the demand from retailers, industrial processors and caterers would make coordination on price difficult. An output reduction or a price increase in the final product market seems very unlikely as the result of potential coordination due to downstream competition.[294]

(453) Moreover, no substantiated concerns regarding the possibility of coordination in terms of Article 2(4) have been raised as regards a hypothetical market for the purchase of live cattle for slaughter in Northern Island.

7.3. Activities of ABP, Fane Valley and Slaney JV in downstream markets relating to the sale of fresh meat

(454) In the downstream markets, as illustrated in Table 16 and Table 17 below for RoI and Belgium, both parent companies are active in the same market as the joint venture in relation to the (i) sale of fresh beef meat to caterers in RoI; the (ii) sale of fresh beef meat to industrial processors in RoI; and (iii) sale of fresh lamb meat in RoI. On these three markets the respective market shares of both ABP and Fane Valley appear to be low at below 8% each thus suggesting that the Parents will not retain to a significant extent activities in these markets.

(455) There is no evidence that the joint venture's object is to coordinate the parties' competitive behaviour in these markets.

(456) Moreover, the Commission considers that in light of the low market shares of ABP and Fane Valley, spill-over effects in terms of Article 2(4) are unlikely and in any event, unlikely to be appreciable in relation to these markets.

7.4. Activities of ABP and Fane Valley in downstream markets relating to the sale of fresh meat

(457) As regards activities of both parents in markets neighbouring to the activities of the joint venture, the Commission also considered the market for sale of fresh beef to supermarkets in RoI.

(458) There is no evidence that the joint venture's object is to coordinate the Parties' competitive behaviour in this market. On this market, whereas ABP activities appear to be not insignificant as indicated by its market share, Fane Valley has only very limited activities in this market. This significant disproportion between the two parents would appear to limit any potential impact on competition on the market for sale of fresh beef meat to supermarkets in the RoI following the Transaction. The Commission considers therefore spill-over effects in terms of Article 2(4) are unlikely.

---

294 Moreover, lower input costs are unlikely to restrict downstream competition or total output in light of competition on downstream markets for the sale of fresh beef meat.

Table 16: Markets shares of the Parties on the downstream markets for sale of fresh beef meat in RoI

		ABP	Fane Valley	Slaney JV
RoI	to supermarkets	[20-30]%	[0-5]%	Not active
	to butchers	[5-10]%	Not active	Not active
	to caterers	[0-5]%	[0-5]%	[0-5]1%
	to industrial processors	[5-10]%	[5-10]%	[5-10]%

Source: Parties' estimates

Table 17: Markets shares of the Parties on the downstream markets for sale of fresh lamb meat in RoI and in Belgium

		ABP	Fane Valley	Slaney JV
RoI	**overall**	**[0-5]%**	**[0-5]%**	**[10-20]%**
	to supermarkets	Not active	Not active	[10-20]%
	to butchers	Not active	Not active	[10-20]%
	to caterers	Not active	[0-5]%	[10-20]%
	to industrial processors	[0-5]%	[0-5]%	[10-20]%
Belgium	**overall**	**[0-5]%**	**Not active**	**[10-20]%**
	to supermarkets	[0-5]%	Not active	[20-30]%
	to butchers	Not active	Not active	[0-5]%
	to caterers	Not active	Not active	[0-5]%
	to industrial processors	[5-10]%	Not active	[5-10]%

Source: Parties' estimates

7.5. Conclusion of Article 2(4) assessment

(459) In light of the above, the Commission considers it unlikely that the Transaction will increase the risk of coordination between the Parties' in terms of Article 2(4) of the Merger Regulation.

8. CONCLUSION

(460) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Cecilia MALMSTROM
Member of the Commission