



EUROPEAN COMMISSION

DG Competition

*Case M.8611 –
Smithfield / Pini Polonia*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 9(3)

Date: 23.1.2018

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 Where possible the information omitted has been replaced by ranges of figures or a general description.



Brussels, 23.1.2018
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Public Version

COMMISSION DECISION

of 23.1.2018

**relating to Article 9 of Regulation (EC) No 139/2004
referring to case M.8611 - Smithfield/Pini Polonia**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (the "TFEU")¹,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 thereof,

Having regard to Council Regulation (EC) No. 139/2004 of 20.1.2004 on the control of concentrations between undertakings² (the "Merger Regulation"), and in particular Article 9(3) thereof,

Having regard to the notification made by Smithfield Foods, Inc on 27 November 2017, pursuant to article 4 of the said Regulation,

Having regard to the request of the *Urząd Ochrony Konkurencji i Konsumentów* of Poland of 15 December 2017,

Whereas:

- (1) On 27 November 2017, the Commission received notification of a proposed concentration, pursuant to Article 4 of the Merger Regulation, by which Smithfield Foods, Inc. ("Smithfield", USA) would acquire Pini Polonia Sp. z o.o. ("Pini Polonia", Poland), within the meaning of Article 3(1)(b) of the Merger Regulation, by way of a purchase of shares (hereafter the "Proposed Transaction"). Smithfield is referred to as the "Notifying Party" and Smithfield and Pini Polonia are collectively referred to as the "Parties", whilst the undertaking that would result from the Proposed Transaction is referred to as "the merged entity".
- (2) The Polish Competition Authority received a copy of the notification on 27 November 2017.
- (3) By letter dated 15 December 2017, Poland – via the Polish *Urząd Ochrony Konkurencji i Konsumentów* ("UOKiK") – requested the referral to its competition authority of the Proposed Transaction in its entirety with a view to assessing it under national competition law, pursuant to article 9(2)(a) of the Merger Regulation ("the request").
- (4) The Notifying Party was informed of the referral request made by the UOKiK on 15 December 2017 and received a non-confidential version of the referral request on 18 December 2017. On 19 December 2017, the Parties orally presented their observations as regards the request for referral during a conference call; these

¹ OJ C115, 9.8.2008, P.47.

² OJ L 24, 29.1.2004, p.1. 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.

observations were subsequently incorporated by the Parties in a written submission received by the case team on 4 January 2018.

1. THE PARTIES

- (5) **Smithfield** is an indirect wholly-owned subsidiary of Hong Kong-based WH Group Limited and is primarily engaged in pig production, pig slaughtering, and the processing and distribution of packaged meats and fresh pork through its subsidiaries and affiliates in the United States, Mexico, Poland, Romania and the United Kingdom.
- (6) **Pini Polonia** is a Polish undertaking that operates a single pork slaughterhouse located in Kutno, Poland. In addition to the slaughtering of pigs, Pini Polonia also supplies pork meat to retailers and to plants for further processing. Pini Polonia does not have any production assets outside of Poland.

2. THE OPERATION AND THE CONCENTRATION

- (7) At the time of the notification, Smithfield owned 33.5% of the shares in Pini Polonia, through the special purpose vehicle Rozaliss Investments Sp. z o.o. Pursuant to a share purchase agreement signed on 28 July 2017, Smithfield will acquire the remaining 66.5% of the shares of Pini Polonia, and thus sole control over Pini Polonia.
- (8) It follows that the Proposed Transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.
- (9) On 1 June 2017, Smithfield acquired Pini Polska Sp. z o.o., Hamburger Pini Sp. z o.o. and Royal Chicken Sp. z o.o. from the target, Pini Polonia. This transaction was reviewed by the Polish Office of Competition and Consumer Protection and cleared on the 26 April 2017

3. UNION DIMENSION

- (10) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (Smithfield: EUR 19 465 million, Pini Polonia: EUR 620 million).³ Each of them has a Union-wide turnover in excess of EUR 250 million (Smithfield: EUR [...] million, Pini Polonia: EUR [...])⁴, but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension within the meaning of to Article 1(2) of the Merger Regulation.

³ Turnover calculated in accordance with Article 5 of the Merger Regulation.

⁴ Pursuant to Article 5(2) of the Merger Regulation, the turnover of Pini Polonia includes the turnovers of Pini Polska Sp. z o.o., Hamburger Pini Sp. z o.o. and Royal Chicken Sp. z o.o.

4. THE ARTICLE 9 REFERRAL REQUEST

- (11) By a letter dated 15 December 2017, the Polish Office of Competition and Consumer Protection ("UOKiK"), on behalf of the Republic of Poland, requested the Proposed Transaction to be referred in its entirety to UOKiK with a view to assessing the effects of the Proposed Transaction in Poland under Polish national competition law, pursuant to Article 9(2)(a) of the Merger Regulation.
- (12) UOKiK has identified horizontal overlaps in four markets, namely the markets for (i) the purchase of live pigs for slaughtering, (ii) the sale of fresh pork for direct human consumption, (iii) the sale of fresh pork for further processing, and (iv) the supply of animal by-products. UOKiK is concerned that competition may be significantly threatened in particular on the market for the purchase of live pigs for slaughtering in Poland.⁵ As per the Form CO, the estimated combined market share of the Parties in Poland is around [30-40]% whereas all competitors have a market share [0-10]%, giving Smithfield a significant competitive advantage. UOKiK further refers to information it obtained as regards plans by Smithfield to build a new slaughterhouse in Rawicz. As such, the UOKiK considers that on the market for the purchase of live pigs for slaughtering in Poland, which has all the characteristics of a distinct market, the Proposed Transaction threatens to significantly distort competition.
- (13) UOKiK further submits that it would be the best placed authority to review the competition effects of the Transaction in Poland for all markets, given the fact that all relevant assets of the Parties are located in Poland as well as both the major suppliers, competitors and customers, that the effects of the Transaction will be likely limited to Poland and that UOKiK possesses the necessary knowledge and experience for the assessment of the case.

5. RELEVANT MARKETS

5.1. PRODUCT MARKETS

- (14) The Parties' activities overlap horizontally in the purchase of live pigs for slaughtering and the production and sale of fresh pork meat and related by-products. Furthermore, as Smithfield is vertically integrated and active in the sale of processed meat products, the Proposed Transaction also gives rise to a vertical link, between the upstream market for the supply of fresh pork for further processing and the downstream market for the sale of processed meat products. In addition, Smithfield has activities regarding other types of meat than pork meat. Those activities will not be discussed in this decision, as no overlaps are created in relation to those activities pursuant to the Proposed Transaction.

⁵ UOKiK submits in this regard that it stems from the information available that the Parties purchase live pigs for slaughter within a radius of 300 km from their slaughterhouses. In UOKiK's assessment, such purchases could be made even within a smaller radius.

- (15) In previous decisions⁶, the Commission has analysed the pork meat industry, and has identified several relevant product markets along the pork meat value chain, of which the following are relevant for the present case:
- (1) The purchase of live pigs for slaughtering;
 - (2) The sale of fresh pork meat for direct human consumption, that could potentially be further segmented by the distribution channel, into retail and catering/out-of-home ("OOH");
 - (3) The sale of fresh pork meat for further processing;
 - (4) The sale of processed meat products;
 - (5) The sale of animal by-products ("ABPs").

5.1.1. *Purchase of live pigs for slaughtering*

- (16) Both Parties are active as regards the purchase of live pigs for slaughtering. Smithfield operates on this market through Animex Foods Sp. z o.o. sp.k ("Animex") and Agri Plus Sp. z o.o. ("Agri Plus")⁷. Animex operates three slaughterhouses, in Szczecin, Starachowice and Ełk. Pini Polonia operates a single slaughterhouse in Kutno. Animex purchases [...] of its pigs directly from farmers⁸, Pini Polonia sources [...] % of its total demand of live pigs from traders.⁹
- (17) In previous decisions, the Commission has taken the view that there is a separate product market for the slaughter of live pigs compared to the slaughter of other animals.¹⁰ This market has, in some previous decisions, also been further segmented into the slaughtering of live pigs and the slaughtering of sows. This delineation is based on the fact that pigs and sows for slaughtering differ greatly in weight and therefore require different processing lines in the slaughterhouse.¹¹
- (18) The Notifying Party agrees with this delineation.
- (19) The market investigation confirmed the distinction between the slaughtering of live pigs and the slaughtering of other animals owing to different technical requirements and different production lines.¹²

⁶ M.2662 – *Danish Crown / Steff Houlberg*; M.1313 – *Danish Crown / Vestjyske Slagterier*; M.7565 – *Danish Crown / Tican*; M.6285 – *Saria / Danish Crown / Daka JV*; M.3968 – *Sovion / Südfleisch*; M.3337 – *Best Agrifund / Nordfleisch*.

⁷ For a further explanation on Agri Plus, see paragraph 20 *et seq.*

⁸ In 2015, Animex sourced [...] % of its pigs from traders.

⁹ These traders act as intermediaries between farmers and slaughterhouses. They buy small quantities of pigs from a large number of farmers, and aggregate these supplies to sell large quantities of pigs to slaughterhouses. Approximately [...] % of the Polish slaughter pig volume is traded by traders, and the seven largest traders represent [...] % of the total traded volume.

¹⁰ M.6285 – *Saria / Danish Crown / Daka JV*, paragraphs 39, 40; M.3605 – *Sovion / HMG*, paragraphs 13, 15; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 8; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraphs 20, 21.

¹¹ M.3605 – *Sovion / HMG*, paragraphs 13-16, M. 3968 – *Sovion / Südfleisch*, paragraph 14.

¹² Replies to questions 10 and 10.1 of Q2 – Questionnaire to Traders; Replies to questions 19 and 19.1 of Q3 – Questionnaire to Slaughterhouses.

- (20) As both Parties are only active as regards the purchase of live pigs for slaughtering, and not as regards sows, it is not necessary for the purposes of the present decision to conclude whether pigs and sows belong to the same relevant product market, as the market for the purchase of live pigs for slaughtering can in any case be considered as the narrowest possible market. Given the fact that neither of the Parties is active as regards the slaughtering of sows, this will also not be discussed further.

Agri Plus

- (21) The Notifying Party submits that a significant share of the pigs for slaughter purchased by Smithfield, is being supplied via a specific business model, called the "Agri Plus system".
- (22) Indeed, in Poland Smithfield operates on the market for the purchase of live pigs for slaughtering through its subsidiaries Animex and Agri Plus. Animex sources [...] ¹³ of its slaughter pigs through its subsidiary Agri Plus. ¹⁴
- (23) Agri Plus operates on the basis of "Framework Agreements for the Supply of Agricultural Products" with farmers. As per this contractual relationship, Agri Plus provides [Details of Agri Plus contract finishing model]. ¹⁵
- (24) Under this contract, the Agri Plus farmer receives [Details of Agri Plus contract]. ¹⁶ This remuneration accounts for [Details of Agri Plus contract]. ¹⁷
- (25) The Notifying Party claims that, because of the specific structure of the remuneration and the typical duration of the Framework Agreements ¹⁸, purchases in the context of Agri Plus contracts ought to be excluded from the relevant product market as they are qualitatively different from the spot purchases made in the market.
- (26) The Commission notes that the Notifying Party also indicates that certain quantities of pigs are sold by Agri Plus to other slaughterhouses on the market. ¹⁹ Furthermore, the market investigation has indicated that the vast majority of Agri Plus farmers believe that they can easily enter into and exit from Agri Plus contracts. Also, the results of the market investigation support the Notifying Party's statement that Agri Plus contracts are usually concluded for a period of one year and can be annulled any

¹³ See the Notifying Party's reply to the Commission's RFI 1, Question 26. In 2016, Animex bought [...] % of its slaughter pigs from Agri Plus, [...] % from farmers that are not part of Agri Plus and [...] % from traders.

¹⁴ Additionally, Agri Plus also owns three farms. As these only account for the raising of approximately [...] pigs per year, or [...] % of the total number of pigs slaughtered in Poland in 2016, this is not material to the assessment of the case.

¹⁵ The Framework contract is generally signed for a period of [Details of Agri Plus contract] and is tacitly renewed for [Details of Agri Plus contract], unless either of the parties annuls the contract [Details of Agri Plus contract] before the end of the contract period or [Details of Agri Plus contract].

¹⁶ A farmer will on average raise 2.8 lots of pigs per year (Form CO, paragraph 115).
¹⁷ [Details of Agri Plus contract].

¹⁸ Paragraphs 159-161 of the Form CO specify that [...] % of active contracts (in May 2017) lasted [...] years or less; [...] % of these contracts lasted more than [...] years. The average duration of terminated contracts is [...] months, and of ongoing contracts, [...] months.

¹⁹ Parties' submission via email on 14/12/2017 at 11:56. The Notifying Party provided in this context data for 3 of the slaughterhouses to which Agri Plus sold pigs. The sales to these 3 slaughterhouses alone account for [Quantities sold] heads in 2017, which represented [Quantities sold] % of Agri Plus purchases in 2015.

time after the delivery of one lot of piglets and before the next lot is supplied (i.e. approximately 2.8 times per year).²⁰

- (27) The Commission concludes that, on the basis of the available information and the results of the market investigation, there are strong indications that Agri Plus purchases are part of the market for the purchase of live pigs for slaughtering. However, for the purpose of the present decision, whether or not the purchases of live pigs in the context of Agri Plus contracts belong to the same product market as the purchases of live pigs for slaughtering, need not be concluded at this stage, as the Proposed Transaction warrants closer scrutiny irrespective of that distinction.

5.1.2. *Sale of fresh pork meat for direct human consumption*

- (28) In previous decisions²¹, the Commission has considered that fresh pork meat is meat that has not undergone further processing i.e. meat that has not been cooked, smoked or dried, and to which no other ingredients or spices have been added. The term fresh pork meat includes both fresh and frozen pork meat, as well as minced meat.
- (29) Further, the Commission has considered that the sale of fresh pork for direct human consumption could constitute a separate product market, distinct from the sale of fresh pork meat for further processing. The Commission has also considered a further segmentation of the market for the sale of fresh pork meat for direct human consumption, into (i) fresh pork meat sold to the retail channel and (ii) fresh pork meat sold to the foodservice/catering channel (out of home – "OOH").²²
- (30) Both Parties sell fresh pork meat for direct human consumption. The Notifying Party agrees that there is a separate market for the sale of fresh pork for direct human consumption, and does not contest the existence of separate segments depending on the sales channel.
- (31) The market investigation showed that the vast majority of respondents confirmed that fresh pork meat includes meat that has not undergone further processing.²³ A large majority of respondents also confirmed the existence of separate product markets for the sale of fresh pork meat for direct human consumption and the sale of fresh pork meat for further processing.²⁴ However, the majority of respondents did not consider a more detailed segmentation between fresh pork meat sold to the retail channel and fresh pork meat sold to the OOH channel to be accurate, as they consider the product distributed in both channels to be the same, and as, depending on the customer

²⁰ Replies to questions 31, 31.1 and 32 of Q1 – Questionnaire to Farmers, and Form CO, paragraph 115.

²¹ M.7565 – *Danish Crown / Tican*, paragraph 27; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraph 34.

²² M.7868 – *Tonnies / Tican*, paragraphs 14, 15, 19; M.7565 – *Danish Crown / Tican*, paragraphs 17, 18, 19, 25, 30; M.3522 – *Danish Crown / HK / Sokolow*, paragraph 10; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraphs 34, 36, 38.

²³ Replies to questions 20 and 20.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 8 and 8.1 of Q4 – Questionnaire to Processors; Replies to questions 11 and 11.1 of Q5 – Questionnaire to Supermarkets; Replies to questions 18 and 18.1 of Q6 – Questionnaire to Wholesalers; Replies to questions 5 and 5.1 of Q7 – Questionnaire to Trade Associations.

²⁴ Replies to questions 21 and 21.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 10 and 10.1 of Q4 – Questionnaire to Processors; Replies to questions 13 and 13.1 of Q5 – Questionnaire to Supermarkets; Replies to questions 20 and 20.1 of Q6 – Questionnaire to Wholesalers; Replies to questions 6 and 6.1 of Q7 – Questionnaire to Trade Associations.

concerned, it is not always clear whether the meat sold will go to the retail channel or to the catering channel.²⁵

- (32) The Commission further notes that the activities of both Parties as regards sales to the OOH channel are limited. Pini Polonia sold [Quantities sold] kg of fresh pork meat to the OOH channel in 2016, and [Quantities sold] kg in 2015, which corresponds to a market share of [0-5]% in Poland. Smithfield has a market share of [0-5]% in Poland.
- (33) In light of the above, the Commission concludes that the sale of fresh pork meat for direct human consumption constitutes a distinct product market for the purpose of the present decision.
- (34) Whether this market should be further segmented depending on the sales channel, into fresh meat sales to the retail and OOH channel, can be left open for the purposes of this decision, as the Parties' activities as regards the OOH channel are negligible. Given that the market for the sale of fresh pork meat to the retail channel constitutes the narrowest possible market, the Commission's assessment of the market for the sale of fresh pork meat for direct human consumption will, for the purpose of the present decision, only concern the retail channel.

5.1.3. Supply of fresh pork meat for further processing

- (35) In previous decisions, the Commission has considered the sale of fresh pork meat for direct human consumption and the sale of fresh pork meat for further processing as belonging to two separate product markets.²⁶
- (36) Both Parties sell fresh pork meat for further processing. The Notifying Party does not disagree with the above delineation.
- (37) The results of the market investigation support the finding of a separate distinct product market for the sale of fresh pork meat for further processing.²⁷
- (38) In light of the above, the Commission concludes that the sale of fresh pork meat for further processing constitutes a relevant product market for the purpose of the present decision.

²⁵ Replies to questions 22 and 22.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 11 and 11.1 of Q4 – Questionnaire to Processors; Replies to questions 14 and 14.1 of Q5 – Questionnaire to Supermarkets; Replies to questions 21 and 21.1 of Q6 – Questionnaire to Wholesalers; Replies to questions 7 and 7.1 of Q7 – Questionnaire to Trade Associations.

²⁶ M.7868 – *Tonnies / Tican*, paragraphs 14, 15; M.7565 – *Danish Crown / Tican*, paragraphs 18, 19; M.3522 – *Danish Crown / HK / Sokolow*, paragraphs, 10, 11; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraphs 34, 35.

²⁷ Replies to questions 21 and 21.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 10 and 10.1 of Q4 – Questionnaire to Processors; Replies to questions 13 and 13.1 of Q5 – Questionnaire to Supermarkets; Replies to questions 20 and 20.1 of Q6 – Questionnaire to Wholesalers; Replies to questions 6 and 6.1 of Q7 – Questionnaire to Trade Associations.

5.1.4. *Sale of processed meat products*

- (39) Processed meat products can be defined as pork, beef or poultry meat containing external ingredients such as salt or spices, being raw, dried, smoked or cooked.²⁸
- (40) In some previous decisions, the Commission concluded that processed pork meat products constitute a relevant product market, separate from those of processed beef and processed poultry products.²⁹ In other decisions, this question was nonetheless left open.³⁰
- (41) The Notifying Party submits that processed meat products include different types of meats, such as pig, beef or poultry meat, because a vast majority of the processed meat products are made from a combination of pork and other types of meat. For that reason, the Notifying Party is of the opinion that no distinction should be made between processed pork products and products based on other kinds of processed meat.
- (42) The responses to the market investigation were inconclusive as to whether the sale of processed pork meat products constitutes a product market distinct from the sale of processed meat products of other types of animals. Some respondents indicated that it is inaccurate to make a distinction, because many processed meat products containing pork also contain other types of processed meat and because most processed meat products are perceived by customers as being the same, irrespective of the raw material used. Other market participants indicated that the cooperation with processors as well as the orders and internal structure is based on a division depending on the type of raw material used, and that customer behaviour analyses show that processed meat products from different types of animals are not treated as substitutes.³¹
- (43) However, it is not necessary, for the purposes of this decision, to conclude on the exact market definition concerning processed pig meat products, as the competitive assessment will not substantially differ irrespective of the market definition. The Commission assessment of this market will, for the purpose of the present decision, only concern the sale of processed pork meat products, as this is the narrowest possible market.

5.1.5. *Supply of animal by-products ("ABPs")*

- (44) ABPs 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 skin. These products are produced during the slaughtering process, and either

²⁸ M.7565 – *Danish Crown / Tican*, paragraph 21; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraph 43; M.2662 – *Danish Crown / Steff Houlberg*, paragraph 66; M.3522 – *Danish Crown / HK / Sokolow*, paragraph 16.

²⁹ M.2662 – *Danish Crown / Steff-Houlberg*, Article 9 referral decision, paragraph 70, and Article 6(1)(b) decision, paragraph 27; M.3401 – *Danish Crown / Flagship Foods*, paragraphs 15–18; M.3605 – *Sovion / HMG*, paragraph 88

³⁰ M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 41 and 42; M.3522 – *Danish Crown / HK / Sokolow*, paragraph 19.

³¹ Replies to questions 9 and 9.1 of Q4 – Questionnaire to Processors; Replies to questions 12 and 12.1 of Q5 – Questionnaire to Supermarkets; Replies to questions 19 and 19.1 of Q6 – Questionnaire to Wholesalers; Replies to questions 8 and 8.1 of Q7 – Questionnaire to Trade Associations.

have to be disposed of, or be further processed into mainly fats, proteins and meals, which are then used for different applications.³²

- (45) In previous decisions, the Commission has considered that ABPs should broadly be distinguished based on the applications for which they can be used, into food-grade and non-food-grade by-products. The non-food-grade materials include category 1 and 2 by-products as high risk materials and category 3 by-products as low risk materials.³³
- (46) The Notifying Party does not distinguish between the three categories of ABPs identified in previous Commission decisions.
- (47) The vast majority of respondents to the market investigation confirmed the distinction between food-grade and non-food-grade by-products³⁴ and the existence of three risk categories.³⁵
- (48) However, it is not necessary for the purposes of this decision to conclude on the exact market definition concerning ABPs as the Commission's competitive assessment will not substantially differ irrespective of the market definition.

5.2. GEOGRAPHIC MARKETS

5.2.1. *Purchase of live pigs for slaughtering*

- (49) In previous decisions, the Commission has considered the geographic market to be national or wider than national in scope, or consisting of a 150km or 200-300km radius around a slaughterhouse. Ultimately, the geographic market has been left open.³⁶
- (50) The Notifying Party argues that the relevant geographic market is wider than national, including at least Poland and Germany owing to strong structural links, especially as regards prices in Poland and Germany.³⁷ According to the Notifying Party, [...]% of Smithfield's non-Agri Plus contracts explicitly refer to German prices. For Pini Polonia, [...]% of its purchases are made on the basis of contracts which apply the German prices in their pricing formula.
- (51) Further, there are no limits to importing or exporting pigs, with the exception of the restrictions related to the African Swine Fever ("ASF") regions.³⁸ According to the Notifying Party, in total 212 000 tonnes of pigs were imported into Poland in 2016 and 9 000 tonnes of pigs were exported from Poland.³⁹

³² M.8481 – *ABP Food Group / Fane Valley / Linden Foods*, paragraphs 55, 57; M.7930 – *ABP Group / Fane Valley / Slaney Foods*, paragraphs 187, 188; M.7868 – *Tonnies / Tican*, paragraph 36; M.5935 – *Vion / Weyl*, paragraph 67; M.3605 – *Sovion / HMG*, paragraphs 105, 106, 107; M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 70, 75.

³³ M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 26; M.7565 – *Danish Crown / Tican*, paragraph 64.

³⁴ Replies to questions 23 and 23.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 9 and 9.1 of Q7 – Questionnaire to Trade Associations.

³⁵ Replies to questions 24 and 24.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 10 and 10.1 of Q7 – Questionnaire to Trade Associations; Replies to question 1 of Q8 – ABP customers.

³⁶ M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 53; M.3605 – *Sovion / HMG*, paragraph 17, 44; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 10; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraph 53.

³⁷ Notifying Party submission of Compass Lexicon study on co-integration of prices.

³⁸ Form CO, paragraphs 186-187, 189.

³⁹ Form CO, paragraphs 283-284. Overall, imports represents 10.8% and exports 0.5% of the total amount of pig slaughtered in Poland in 2016.

- (52) The Commission disagrees with the Notifying Party's view that the market is wider than national for the following reasons.
- (53) First, the Commission notes that when purchasing live pigs for slaughtering, a slaughterhouse generally looks for pigs available 'in the area', from farmers with whom it has a working contract.⁴⁰
- (54) Second, the Commission notes that as per the Notifying Party's submission, according to the EU Regulatory framework as regards the transport of livestock, pigs have to be given a rest after 8 hours of transport. Moreover, trucks that are transporting pigs for longer than 8 hours must dispose of a special ventilation and watering system. The absolute maximum traveling time for pigs is 24 hours. The Notifying Party further states that traders generally do not transport live pigs for slaughter for longer distances than in the event of direct purchases by slaughterhouses from farmers. Even more, as traders bear the costs of the transport between the farmers from which they purchase their pigs and the slaughterhouse to which they sell these pigs, they tend to supply slaughterhouses with pigs they purchased in the proximity of that slaughterhouse, in order to minimise these costs.⁴¹
- (55) Third, the Notifying Party's own estimated transport data of live pigs indicate that [...] % of the purchased pigs for slaughter travel less than [...] km, [...] % less than [...] km and [...] % less than [...] km. The average travel distance of live pigs in Poland is approximately 200 km.
- (56) Fourth, the Commission notes that in 2016, Smithfield itself imported only [Supply quantities] pigs, or [...] % of its total slaughter volume.⁴² All imported pigs were slaughtered in Smithfield's facility in Szczecin*, close to the German border, and accounted for [...] % of Szczecin's slaughter volume. Pini Polonia does not import any pigs, but it is possible that the traders from whom it buys pigs do so.⁴³
- (57) Fifth, the Commission considers that the Notifying Party's correlation and co-integration submission⁴⁴ is not informative for the purpose of defining the relevant geographic market. In the first place, price correlation analysis can only provide indirect evidence of market definition, and is more suitable as a 'separation' test rather than an 'inclusion' test. That is to say, it can provide insights on whether two products/regions do not belong to the same relevant market, rather than whether they belong to the same relevant market. This is because the evidentiary value of price correlation analysis is highly dependent on controlling for common costs and demand factors.⁴⁵ In the second place, even when controlling for common costs and demand factors, the fact that the weekly German price is used in contracts and as a reference price in Poland implies that the pigs prices in the two countries will display a structural degree of correlation. Such correlation, however, is not dependent on any competitive interaction between the two countries in the sales of live pigs for

⁴⁰ A fact which is acknowledged by the Notifying Party – see Notifying Party's submission via email on 14/12/2017 at 11:56.

⁴¹ Form CO, paragraph 107.

⁴² Smithfield imported [Supply quantities] pigs in 2015 and [Supply quantities] pigs in 2014.

* Should read Szczecin.

⁴³ Form CO, paragraph 191. As no data are electronically gathered identifying the exact volume of pigs purchased from each farmer, the Notifying Party could however not be concrete as regards this point.

⁴⁴ Form CO, paragraph 185 *et seq.*; Annex 1.1 to Form CO, "Economic Assessment of the Proposed Acquisition of Pini Polonia".

⁴⁵ M.7061 – *Huntsman Corporation/Equity interests held by Rockwood Holdings*, recital 146 and Annex 1.

slaughtering, and hence cannot be regarded as informative for the purpose of defining the relevant geographic market.

- (58) Sixth, the vast majority of respondents to the market investigation confirmed that slaughter pigs are sold to/purchased by slaughterhouses in Poland.⁴⁶ This is clearly supported by the information submitted by the Notifying Party, that exports of live pigs for slaughtering from Poland amounted to 9 000 tons which represents 0.5% of the total amount of pigs slaughtered in Poland. This effectively confirms that Polish pigs are sold to Polish slaughterhouses. Therefore, customer-supplier relationships are forged at most on a national basis, if not more locally. Most respondents also indicated that that live pigs are rarely, if ever, transported across borders, because of limits relating to animal welfare and also due to the ASF outbreak.⁴⁷ The replies regarding the typical distance in kilometres over which live pigs are transported varied. However, 85% of the respondents indicated a maximum transport distance of less than 300 kilometres, and all respondents to the market investigation confirmed that the typical time for transporting live pigs was less than 8 hours, due to transport costs and weight loss during transportation.⁴⁸
- (59) In light of the above and based on the results of the market investigation, the Commission considers that the geographic market for the purchase of live pigs for slaughtering in Poland is likely national or narrower than national including radii of 300 km around the slaughterhouses of Kutno, Starachowice, Szczecin* and Elk. That geographic market presents, pursuant to Article 9(2)(a) of the Merger Regulation, all the characteristics of a distinct market.
- (60) It should be pointed out that, if this market were considered to be wider than national, the Proposed Transaction would not give rise to a horizontally affected market or threaten to significantly affect competition. In contrast, if the market was defined as Poland or as radii around the respective slaughterhouses, the market(s) would be affected, and the Proposed Transaction would give rise to such a threat.

5.2.2. *Sale of fresh pork meat for direct human consumption*

- (61) In previous decisions, the Commission has considered the geographic market to be national, wider than national or EU-wide in scope, but has ultimately left the market definition open.⁴⁹
- (62) The Notifying Party argues that the geographic market can be wider than national and may cover the territory of the EU, given that from a supply-side perspective, large retail chains organise EU-wide tenders and choose their suppliers irrespective of their country of origin. As regards the demand side, the Notifying Party submits

⁴⁶ Replies to questions 1, 1.1 and 2 of Q1 – Questionnaire to Farmers; Replies to questions 4.1, 4.3, 5.1, 11 and 14 of Q2 – Questionnaire to Traders; Replies to questions 4.4, 4.6, 9.1, 10.1 and 25 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 11, 12, 13 and 14 of Q7 – Questionnaire to Trade Associations.

⁴⁷ Replies to questions 15, 15.1, 16 and 16.1 of Q1 – Questionnaire to Farmers; Replies to questions 18, 18.1, 19, 19.1, 20 and 20.1 of Q2 – Questionnaire to Traders; Replies to questions 29, 29.1, 30, 30.1, 31 and 31.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 19, 19.1, 20, 20.1, 21 and 21.1 of Q7 – Questionnaire to Trade Associations.

⁴⁸ Replies to question 14 of Q1 – Questionnaire to Farmers; Replies to questions 15 and 15.1 of Q2 – Questionnaire to Traders; Replies to questions 27.1 and 27.2 of Q3 – Questionnaire to Slaughterhouses; Replies to question 15 of Q7 – Questionnaire to Trade Associations.

⁴⁹ M.3522 – *Danish Crown / HK / Sokolow*, paragraph 13; M.1313 – *Danish Crown / Vestjyske Slagterier*, paragraphs 86, 88.

that, for consumers, the price of the meat is a decisive factor, whereas the origin of the meat is not.⁵⁰

- (63) The results of the market investigation indicate that while fresh meat does travel to some extent and that there are cross-border sales of fresh meat, in Poland the majority of fresh meat appears to be of Polish origin. Based on the replies from Polish producers of fresh pork meat, more than 75% of their sales are to customers in Poland; based on the replies from purchasers of fresh pork meat located in Poland, the vast majority source more than 50% of their fresh pork meat from suppliers in Poland.⁵¹ There were mixed results as to the importance of the origin of fresh meat to Polish consumers, therefore no conclusion can be drawn on this point.⁵²
- (64) In light of the above and based on a preliminary analysis, the Commission's investigation has shown a sufficient number of indications suggesting the existence of a possible Polish market for the sale of fresh pork meat for direct human consumption (including its sub-segments retail and OOH). If this market were considered to be wider than national, the Proposed Transaction would not give rise to a horizontally affected market or threaten to significantly affect competition. Given that this market is directly downstream from that of the purchase of live pigs for slaughtering where the Proposed Transaction threatens to significantly affect competition, the Commission has reached the conclusion that the geographic market definition can be left open for the purposes of this decision, leaving it to UOKiK to investigate the matter further.

5.2.3. *Supply of fresh pork meat for further processing*

- (65) In previous decisions, the Commission has considered the geographic market to be national, wider than national or EU-wide in scope, but has ultimately left the market definition open.⁵³
- (66) The Notifying Party argues that the market should be considered as EU-wide in scope, as processors procure fresh pork meat from slaughterhouses located in different countries. Furthermore, the Notifying Party claims that the origin of the meat has little importance for the ultimate consumer.
- (67) Whilst the market investigation supports the Notifying Party's argument that meat processors tend to purchase fresh pork meat for further processing from cross-border (in particular from Germany and Denmark), it is unclear whether the slaughterhouses in Poland sell mainly to processors located in Poland or elsewhere. There were

⁵⁰ Form CO, paragraph 57 and footnote 18. The Notifying Party notes in that regard that in fact, only packaged meat for direct human consumption has easily accessible information regarding the origin of the meat. However, most of the fresh meat sold in Poland is sold in an unpackaged form, so that there is no information related to the origin of the meat available on the product.

⁵¹ Replies to questions 15 and 32 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 5 and 16 of Q5 – Questionnaire to Supermarkets; Replies to questions 4.1, 11 and 23 of Q6 – Questionnaire to Wholesalers; Replies to question 22 of Q7 – Questionnaire to Trade Associations.

⁵² Replies to questions 35, 35.1, 36 and 36.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 22, 22.1, 23, 23.1, 24 and 25 of Q5 – Questionnaire to Supermarkets; Replies to questions 29, 29.1, 30, 30.1, 31 and 32 of Q6 – Questionnaire to Wholesalers; Replies to questions 29, 29.1, 30, 30.1, 31 and 32 of Q7 – Questionnaire to Trade Associations.

* Should read Szczecin.

⁵³ M.7868 – *Tonnies/Tican*, paragraph 22; M.7565 – *Danish Crown/Tican*, paragraph 32; M.3522 – *Danish Crown/HK/Sokolow*, paragraph 15; M.3605 – *Sovion/HMG*, paragraphs 73, 74; M.3401 – *Danish Crown/Flagship Foods*, paragraph 10; M.2662 – *Danish Crown/Steff-Houlberg*, paragraph 16.

mixed results as to the importance of the origin of fresh meat to Polish consumers, therefore no conclusion can be drawn on this point.⁵⁴

- (68) The Commission notes that in the most recent case where this market was assessed by the Commission, M.7565 – Danish Crown / Tican, the market investigation showed a sufficient number of indications suggesting the existence of a possible national market in Denmark for the sale of fresh pork meat for further processing. In that context, the Commission noted the Parties' market shares differed significantly between for instance Denmark and Germany when it comes to the sale of fresh pork meat for further processing. The same applies in the present case, as the Parties' estimated combined market share in Poland is [10-20]%, but in a market comprising Germany and Poland only [0-5]%.
- (69) In light of the above and based on a preliminary analysis, the Commission's investigation has shown some indications suggesting the existence of a possible Polish market for the supply of fresh pork meat for further processing. If this market were considered to be wider than national, the Proposed Transaction would not give rise to a horizontally affected market or threaten to significantly affect competition.
- (70) Although on the basis of information submitted by the Notifying Party, the combined market share of the Parties in Poland would also remain relatively limited, this market may warrant closer scrutiny, given that this market is directly downstream from that of the purchase of live pigs for slaughtering where the Proposed Transaction threatens to significantly affect competition. As any negative effects would clearly be limited to Poland, UOKiK is, as explained under Section 7, the most appropriate authority to investigate the Proposed Transaction. For that reason, the Commission has reached the conclusion that the geographic market definition can be left open for the purposes of this decision, leaving it to UOKiK to investigate the matter further.

5.2.4. *Sale of processed meat products*

- (71) In some previous decisions, the Commission has considered the geographic market for the sale of processed meat products to be wider than national⁵⁵, however in other cases the Commission considered that due to suppliers' ability to price discriminate between different Member States, a national market delineation was justified.⁵⁶ Also, the Commission did not rule out that there were markets for individual product groups of processed meat which may be wider in scope than others. In all previous decisions, the Commission however ultimately left the market definition open.⁵⁷
- (72) In the opinion of the Notifying Party, the geographic scope of the market for the sale of processed meat products is wider than national and may cover the EU, because

⁵⁴ Replies to questions 35, 35.1, 36 and 36.1 of Q3 – Questionnaire to Slaughterhouses; Replies to questions 22, 22.1, 23, 23.1, 24 and 25 of Q5 – Questionnaire to Supermarkets; Replies to questions 29, 30, 31 and 32 of Q6 – Questionnaire to Wholesalers; Replies to questions 29, 29.1, 30, 30.1, 31 and 32 of Q7 – Questionnaire to Trade Associations.

⁵⁵ M.1313 – *Danish Crown/Vestjyske Slagterier*, paragraph 96; M.3605 – *Sovion/HMG*, paragraph 90; M.3522 – *Danish Crown/HK/Sokolow*; paragraph 20; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 44.

⁵⁶ M.2662 – *Danish Crown/Steff-Houlberg*, Article 9 referral decision, paragraph 84, Article 6(1)(b) decision, paragraph 37; M.3605 – *Sovion/HMG*, paragraph 90; M.3522 – *Danish Crown/HK/Sokolow*; paragraph 20; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 44.

⁵⁷ M.3968 – *Sovion/Südfleisch*, paragraph 81; M.3605 – *Sovion/HMG*, paragraph 91; M.3522 – *Danish Crown/HK/Sokolow*, paragraph 21; M.3401 – *Danish Crown/Flagship Foods*, paragraph 21; M.3337 – *Best Agrifund / Nordfleisch*, paragraph 46.

there is substantial cross-border trade. According to the Notifying Party, 23% of the Polish processed meat products were exported in 2016.

- (73) The results from the market investigation indicate that, while processed meat products do travel and that there are cross-border sales of processed meat products, the majority of processed meat products produced in Poland are still destined for the Polish market. For example, one of the largest market players indicated that the vast majority of its products, up to almost 90%, are supplied within Poland and that Polish consumers have a preference for processed pork meat of Polish origin, primarily because of reasons related to the taste.⁵⁸ Some respondents also referred to ASF as a barrier for exporting processed pork meat.⁵⁹ Based on the replies from purchasers of processed meat located in Poland, the vast majority source more than 70% of their processed meat from suppliers in Poland.⁶⁰
- (74) In light of the above and based on a preliminary analysis, the Commission's investigation has shown some indications suggesting the existence of a possible Polish market for the sale of processed meat products. If this market were considered to be wider than national, the Transaction would in any case not give rise to a horizontally or vertically affected market or threaten to significantly affect competition.
- (75) Although on the basis of information submitted by the Notifying Party there is no horizontal overlap, this market may warrant closer scrutiny given that it is part of the chain downstream from the market for the purchase of live pigs for slaughtering where the Proposed Transaction threatens to significantly affect competition, within which the Parties would be vertically integrated. As any negative effects would clearly be limited to Poland, UOKiK is, as explained under Section 7, the most appropriate authority to investigate the Proposed Transaction. Therefore, the Commission has reached the conclusion that the geographic market definition can be left open for the purposes of this decision, leaving it to UOKiK to investigate the matter further.

5.2.5. *Supply of animal by-products ("ABPs")*

- (76) In previous decisions, the Commission has found indications of the geographic market being national in scope but ultimately left the market definition open.⁶¹
- (77) The Notifying Party submits that the geographic market definition is at most national in scope as materials need to be processed in the area of origin.
- (78) The majority of respondents to the market investigation indicated that the geographic market for ABPs is national.⁶²
- (79) The Commission also notes that in the most recent case where this market was assessed by the Commission, M.7565 – Danish Crown / Tican, the contacts with

⁵⁸ Replies to questions 15, 15.1, 18 and 18.1 of Q4 – Questionnaire to Processors.

⁵⁹ Replies to questions 17 and 17.1 of Q4 – Questionnaire to Processors.

⁶⁰ Replies to questions 15 and 15.1 of Q4 – Questionnaire to Processors; Replies to questions 6 and 17 of Q5 – Questionnaire to Supermarkets; Replies to questions 4.1, 12 and 24 of Q6 – Questionnaire to Wholesalers.

⁶¹ M.8481 – *ABP Food Group / Fane Valley / Linden Foods*, paragraphs 59, 64; M.7930 – *ABP Group / Fane Valley / Slaney Foods*, paragraph 195; M.7868 – *Tonnies / Tican*, paragraph 43; M.6285 – *Saria / Danish Crown / Daka JV*, paragraph 48; M.5935 – *Vion / Weyl*, paragraph 69; M.3605 – *Sovion / HMG*, paragraphs 124, 139; M.3337 – *Best Agrifund / Nordfleisch*, paragraphs 76, 77.

⁶² Replies to question 39 of Q3 – Questionnaire to Slaughterhouses; Replies to question 37 of Q7 – Questionnaire to Trade Associations.

market participants indicated that, as ABPs need to be very fresh and chilled in order to be processed, the sourcing of ABPs might be limited in distance. The Commission considered that the market investigation had shown a sufficient number of indications suggesting the existence of a national market in Denmark.

- (80) In light of the above and based on a preliminary analysis, the Commission's investigation has shown a number of indications suggesting the existence of a possible Polish market for the sale of ABPs. If this market were considered to be wider than national, the Transaction would in any case not give rise to a horizontally affected market or threaten to significantly affect competition.
- (81) Although on the basis of information submitted by the Notifying Party, the combined market share of the Parties in Poland would remain relatively limited (see recital (117) below), this market may warrant closer scrutiny given that it is directly downstream from that of the purchase of live pigs for slaughtering where the Proposed Transaction threatens to significantly affect competition. As any negative effects would clearly be limited to Poland, UOKiK is, as explained under Section 7, the most appropriate authority to investigate the Proposed Transaction. Hence, the Commission has reached the conclusion that the geographic market definition can be left open for the purposes of this decision, leaving it to UOKiK to investigate the matter further.

6. COMPETITIVE ASSESSMENT

- (82) The Commission finds that the Parties' activities horizontally overlap on the potential markets for (i) the purchase of live pigs for slaughtering in Poland, and/or within smaller areas within Poland, (ii) the sale of fresh pork meat for direct human consumption in Poland, (iii) the sale of fresh pork meat for further processing in Poland and (iv) the sale of ABPs in Poland. Were the geographic scope of any of these markets to be wider than Poland, no affected markets would arise. The Proposed Transaction could thus only threaten to significantly affect competition in Poland or smaller areas of Poland.
- (83) The Proposed Transaction would also result in a vertical link, as Smithfield is also active in the sale of processed meat products.

6.1.1. *Horizontal non-coordinated effects*

6.1.1.1. Purchase of live pigs for slaughtering

- (84) The Parties estimate that their combined market share on a Polish market would be [30-40]%.⁶³ The Proposed Transaction would result in the elimination of competition between the two largest competitors in Poland and create a new, possibly dominant, market leader unrivalled in size and being 4.5 times larger than its nearest competitor. The largest remaining competitors would be Sokolow, with a market share of [5-10]%, followed by Skiba ([0-5]%) and Gobarto ([0-5]%).⁶⁴

⁶³ Excluding Agri Plus sales, the Parties' combined market share would be [20-30]%.

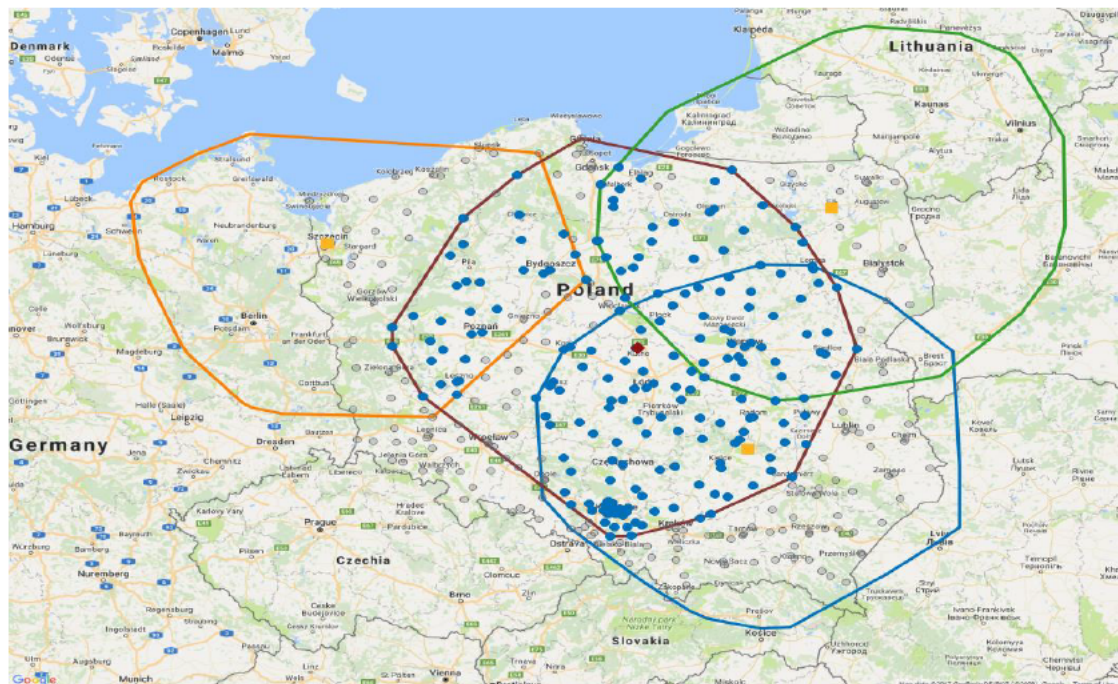
⁶⁴ Should the market for the purchase of live pigs for slaughtering be considered wider, as including Poland and Germany, the Parties would have a combined market share of [5-10]% if Agri Plus sales are included (there is no data available excluding Agri Plus sales) with many larger competitors such as Tonnies ([20-30]%) and Vion ([10-20]%) and Westfleisch ([5-10]%).

number of heads ⁶⁵	including Agri Plus sales		
	2016	2015	2014
Smithfield	[10-20]%	[10-20]%	[10-20]%
Pini Polonia	[10-20]%	[10-20]%	[10-20]%
Combined	[30-40]%	[30-40]%	[30-40]%
Sokolow	[5-10]%	[5-10]%	[5-10]%
Skiba	[0-5]%	[0-5]%	[0-5]%
Gobarto	[0-5]%	[0-5]%	[0-5]%
Others	[50-60]%	[50-60]%	[50-60]%

Source: Form CO and Reply to RFI 8

- (85) In accordance with the results of the Commission's market investigation, the relevant market is likely to be smaller than national, potentially covering a radius of 300 km around a slaughterhouse. The relevant areas are depicted in Figure 1.

Figure 1: Map indicating 300 km radius around slaughterhouses in Kutno (centre circle), Starachowice (lower circle), Szczecin* (left circle) and Elk (right circle)



Source: Form CO

Note: the yellow dots represent Animex' 3 slaughterhouses; the red dot in the centre represents Pini Polonia's slaughterhouse and the blue dots represent Polish counties (i.e. powiats).

⁶⁵ Combined market shares based on tonnes are similar: [30-40]% (2016); [30-40]% (2015); [30-40]% (2014).

* Should read Szczecin.

- (86) In this respect, the Notifying Party submits that, as Pini Polonia purchases the vast majority of live pigs for slaughter via traders and no data are electronically gathered identifying the exact volume of pigs purchased from each farmer, it is not able to compute exact market shares for each radius. Therefore, as a proxy, it is assumed that Pini Polonia's purchases are equally spread over the 300 km zone.
- (87) Taking this into account, the market shares of the Parties in the overlapping radii around Kutno, Starachowice, Szczecin and Elk, which would be the affected markets, are shown in Table 2.

<i>number of heads</i>	Overlap Kutno-Szczecin	Overlap Kutno-Elk	Overlap Kutno-Starachowice	Overlap Kutno-Elk-Starachowice
Smithfield⁶⁷	[0-20]%	[10-30]%	[0-20]%	[20-40]%
Pini Polonia⁶⁸	[0-20]%	[0-20]%	[0-20]%	[0-20]%
Combined	[20-40]%	[30-50]%	[20-40]%	[40-60]%
Others	[60-80]%	[50-70]%	[60-80]%	[40-60]%

Source: Form CO & Reply to RFI 7 & 8

- (88) Given the merged entity's market position not only at the level of Poland but also in respect of these smaller areas, the merged entity could decrease its purchases and the price paid to farmers, raise prices downstream (whether to retail customers or to competing downstream meat processors), and limit the availability of pigs to competitors. Those possible sources of harm are not mutually exclusive, in the sense that the merged entity may have the incentives to pursue, possibly to different extents, all of them at the same time.⁶⁹
- (89) The Notifying Party submits first that despite the increased concentration, many slaughterhouses remain so that the farmer's choice Post-Transaction would not be limited to a large extent.⁷⁰
- (90) Second, according to the Notifying Party the size of the slaughterhouse does not matter to farmers when choosing a slaughterhouse. The Notifying Party argues in this regard that the small slaughterhouses are not at any disadvantage in sourcing their slaughter pigs compared to larger slaughterhouses and could thus exert a competitive constraint on the Parties, as many of the small slaughterhouses are family-owned and

⁶⁶ The Notifying Party could not provide market shares of competitors.

⁶⁷ The market shares are based on the data for 2015. The Commission notes that the market shares of Smithfield's data cover 86% of the total amount of live pigs purchased in that year, and are thus underestimated. The Notifying Party explained that the remaining 14% of the pigs is not accounted for in the company records.

⁶⁸ Pini Polonia's market shares in the relevant radii are computed on the basis of the assumption that Pini Polonia buys all of its pigs within a 300 km radius around its slaughterhouse in Kutno. As it is also assumed that Pini's purchases are equally spread relative to the total production in each 'Powiat' (i.e. county in Poland), As a result, Pini's market share in any zone is identical to its overall market share.

⁶⁹ As regards this last element, it has to be noted that the Notifying Party has argued that there is a shortage of pigs in Poland compared to the demand.

⁷⁰ Form CO, paragraph 233 and onwards.

have smaller overhead costs than large slaughterhouses. Additionally, according to the Notifying Party, the most prevalent factor is not the capacity of a slaughterhouse but the price that will be paid for the pigs by the slaughterhouse.⁷¹

- (91) Third, according to the Notifying Party, competitors could easily increase capacity since in Poland, many slaughterhouses operate based on a 1-shift, 5-day basis and capacity could be increased by operating a 2-shift, 6-day and higher line speed basis.⁷²
- (92) Fourth, according to the Notifying Party, its competitor Gobarto is planning to build a slaughterhouse in Poland with a capacity of 3 million pigs per annum.⁷³
- (93) Fifth, the Notifying Party argues that as there is a shortage of pigs in Poland compared to demand, there is no risk of price decreases towards farmers.⁷⁴
- (94) The Commission considers that the Notifying Party's arguments as regards why there is no threat of the Proposed Transaction significantly affecting competition in this market require further investigation and do not prima facie remove the concerns for the following reasons.
- (95) First, although a large number of competitors remain, slaughtering operations in Poland are very fragmented, as there are very few very large slaughterhouses (slaughtering more than 500 000 pigs per annum) and a very large number of small slaughterhouses.
- (96) Second, the results of the market investigation indicate that, contrary to the Notifying Party's submission, the capacity of a slaughterhouse plays a role for the farmer in determining where to slaughter his pigs. Respondents explained that, as live pigs have to be slaughtered within a short time-frame in order to make space for the next group of slaughter pigs to be raised, the slaughterhouses with the largest capacity will be approached, as those will be able to process all of these pigs at the right time whereas smaller slaughterhouses may be capacity constrained.⁷⁵
- (97) Third, the replies to the market investigation suggest that competing slaughterhouses use 70 to 90% of their maximum slaughtering capacity, but that there are limits as to increasing the capacity utilisation. These are related mainly to limitations in storage capacity.⁷⁶ As such, only a small proportion of farmers might be able to switch to competing slaughterhouses.
- (98) Fourth, as regards the possibility of competitors to increase their capacity by switching from a 1-shift per five days to a 2-shifts per six days is questionable. Any increase in shifts and days also entails additional costs. The market investigation suggests in this regard that there might be limits to increasing capacity, because of a lack of delivery of live pigs during weekends and higher costs related to slaughtering

⁷¹ Form CO, paragraph 236.

⁷² Form CO, paragraph 248.

⁷³ Parties' submission via email on 04/01/2018 at 10:36.

⁷⁴ Notifying Party's submission of 3 January 2018 on Referral Request, email of 10:36.

⁷⁵ Replies to questions 6, 8, 11, 11.1 and 11.2 of Q1 – Questionnaire to Farmers. As regards capacity, it has to be noted that the market investigation indicated that this also plays a role downstream, for the wholesalers and retailers, as slaughterhouses with large capacities can offer a larger range of products, can provide large quantities and can more easily negotiate on price. See Replies to questions 35, 35.1, 36 and 36.1 of Q5 – Questionnaire to Supermarkets; Replies to questions 42, 42.1, 43 and 43.1 of Q6 – Questionnaire to Wholesalers.

⁷⁶ Replies to questions 5 and 6 of Q3 – Questionnaire to Slaughterhouses.

during weekends.⁷⁷ A more detailed profit/cost analysis would need to be carried out to determine whether this would be feasible. Furthermore, the Commission notes that currently, Pini Polonia utilises approximately [...]% of its maximum capacity operating on a 2-shift, 5-day basis and Smithfield utilises approximately [...]% of its maximum capacity operating on a 2-shift, 5-day basis. Therefore, the merged entity could also increase their capacity by operating on a 6-day basis.

- (99) Fifth, as regards the plans by Gobarto to build a new large slaughterhouse, this fact was brought to the attention of the Commission on 4 January 2018. The Commission's market investigation however revealed no plans by competitors to increase capacity. Therefore, any potential plans by Gobarto to expand its slaughtering capacity require further investigation.
- (100) Sixth, the market investigation showed that several respondents, both from the demand and supply side, are concerned about the creation of a quasi-monopolist and the lack of competitiveness in the market for the purchase of live pigs for slaughter post-Transaction, which could allow the merged entity to dictate prices in this market. These responses need further investigation.⁷⁸
- (101) Finally, it became apparent during the market investigation that the Notifying Party initially had plans to build a new slaughterhouse in Rawicz. This new slaughterhouse's radius would overlap with the 300km radius of Kutno, as the driving distance between Kutno and Rawicz is approximately 225 km.⁷⁹ Based on the information available to the Commission, the Notifying Party only publicly announced the cancellation of its plans in December 2017. It would appear, subject to further investigation, that the decision not to build the new slaughterhouse is linked to the decision to buy Pini Polonia.⁸⁰ As such, the Proposed Transaction could be viewed also as elimination of potential competition. Further investigation is needed in this regard.⁸¹
- (102) Based on the preliminary analysis above, the Commission considers that in the market for the purchase of live pigs for slaughtering in Poland or in the relevant radii around the respective slaughterhouses, the Proposed Transaction threatens to significantly affect competition.
- (103) As explained in Section 7, UOKiK is the most appropriate authority to deal with this Proposed Transaction because it takes place in Poland and its competitive effects are limited to Poland.

6.1.1.2. Sale of fresh pork meat for direct human consumption

- (104) Regarding the sale of fresh pork for direct human consumption in Poland, the Parties' combined market share post-Transaction would be [10-20]%.

⁷⁷ Replies to questions 5 and 6 of Q3 – Questionnaire to Slaughterhouses.

⁷⁸ Replies to questions 23, 23.1, 24, 24.1, 25 and 26 of Q1 – Questionnaire to Farmers; Replies to questions 64, 64.1, 65 and 66 of Q3 – Questionnaire to Slaughterhouses.

⁷⁹ In flying distance, Kutno and Rawicz are located approximately 185 km from one another.

⁸⁰ This is clear from the documents provided by the Parties on 13/12/2017 in reply to RFI 10 – these documents were not submitted as documents under Section 5.4 of the Form CO. None of the documents that were submitted under this Section, nor any other documents submitted as part of the Form CO, suggested any concrete plans to build a new slaughterhouse in Poland.

⁸¹ In this context, it should be noted that a Letter of Intent dated 12 December 2016 was signed by both Animex and the mayor of Rawicz, and later published.

Table 3: Market share estimates in Poland – the sale of fresh pork meat for direct human consumption, 2014-2016			
<i>tonnes</i>	2016	2015	2014
Smithfield	[10-20]%	[10-20]%	[10-20]%
Pini Polonia	[5-10]%	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%	[10-20]%
Others	[80-90]%	[80-90]%	[80-90]%

Source: Form CO

- (105) On the Polish market, the estimated combined market share of the Parties was [20-30]% regarding the sale of fresh pork to the retail channel and [0-5]% on the sale of fresh pork to the OOH channel.

Table 4: Market share estimates in Poland – the sale of fresh pork meat for direct human consumption to the retail channel, 2014-2016			
<i>tonnes</i>	2016	2015	2014
Smithfield	[10-20]%	[10-20]%	[10-20]%
Pini Polonia	[5-10]%	[5-10]%	[5-10]%
Combined	[20-30]%	[20-30]%	[20-30]%
Others	[70-80]%	[70-80]%	[70-80]%

Source: Form CO

Table 5: Market share estimates in Poland – the sale of fresh pork meat for direct human consumption to the OOH channel, 2014-2016			
<i>tonnes</i>	2016	2015	2014
Smithfield	[0-5]%	[0-5]%	[0-5]%
Pini Polonia	[0-5]%	[0-5]%	[0-5]%
Combined	[0-5]%	[0-5]%	[0-5]%
Others	[90-100]%	[90-100]%	[90-100]%

Source: Form CO

- (106) Therefore, the only potentially affected market would be the sale of fresh pork for direct human consumption to the retail channel in Poland.⁸²

⁸² On an EU-wide basis, the estimated combined market share for the Parties in respect of sale of fresh pork meat for human consumption would be less than [0-5]%. On a combined Poland and Germany basis, the Notifying Party estimates the combined share to be [0-5]%. Should the market be further sub-segmented between the sale of fresh pork to the retail channel and the OOH channel, this would result in negligible

- (107) The Notifying Party submits that small and intermediate slaughterhouses compete with the large ones on the market for fresh pork meat for direct human consumption. Small and intermediate slaughterhouses are in particular strong in the traditional trade, which in Poland is, according to the Notifying Party's best estimate, responsible for approximately 60% of the fresh meat trade, because of proximity and customer service. These smaller slaughterhouses supply smaller quantities to local customers. Small and intermediate slaughterhouses are less competitive in terms of access to the retail chains and export.
- (108) Both Parties either sell their fresh pork meat for direct consumption to large retailers or to wholesalers. Neither of the Parties sells its fresh pork meat directly to traditional retailers; all the supplies of fresh pork meat to these retailers are done via wholesalers. Smithfield supplies the majority of its fresh pork meat for direct human consumption to wholesalers; Pini Polonia sells most of its fresh pork to large retailers.⁸³
- (109) According to the Notifying Party, wholesalers act as intermediaries between slaughterhouses and traditional retailers, because it is very difficult and costly for slaughterhouses to deliver directly to small stores. These are often very large undertakings, which sometimes also have slaughtering, cutting or processing capabilities. The Notifying Party argues that, given their size and the fact that many slaughterhouses are offering fresh meat, the wholesalers have a strong bargaining position, and can simply wait for the slaughterhouses to approach them with an offer.
- (110) Furthermore, the Polish retail market is, according to the Notifying Party, to a large extent concentrated, with the largest retail chain representing 24% of the market and the five largest retail chains together accounting for 60% of the total market.⁸⁴ These retail chains are also the biggest customers of the Parties and organise tenders on a weekly basis.
- (111) The Commission considers that despite the fact that the Parties' combined market share in Poland is relatively modest, were the Parties post-Transaction able to threaten to significantly affect competition in the upstream market for the purchase of live pigs for slaughtering, this could potentially have some negative effects also in the markets downstream to this market. Concerns to this extent were raised by some market participants during the Commission's market investigation.⁸⁵ These concerns need to be further investigated. Subsequently, it needs to be further investigated whether the existence of competitors such as Sokolow, Skiba and Gobarto, the concentration as regards retail and the significant role that wholesalers play in these Polish markets is sufficient to remove any such concerns.
- (112) In any case, as it is clear that if the markets for the sale of fresh pork for direct human consumption (whether via the retail or OOH channel) is assessed on a wider

combined market shares on an EU-wide basis. On a combined Poland and Germany basis the Parties could not provide an estimate for the sale of fresh pork to the retail channel but were close to [0-5]% for the sale of fresh pork to the OOH channel.

⁸³ Smithfield sells [...] of its fresh pork meat to wholesalers, and [...] to large retailers. Pini Polonia sells [...] of its fresh pork meat to wholesalers, and [...] to large retailers.

⁸⁴ The Commission notes that it is unclear how the five largest chains can represent 60% of the retail market when the Notifying Party at the same time has submitted that 60% of the retail market is represented by traditional trade rather than retail chains.

⁸⁵ Replies to questions 33, 33.1, 34, 34.1, 35, 35.1, 36, 36.1, 37 and 37.1 of Q4 – Questionnaire to Processors; Replies to questions 48, 48.1, 49 and 50 of Q5 – Questionnaire to Supermarkets; Replies to questions 55 and 56 of Q6 – Questionnaire to Wholesalers.

than national basis no affected markets arise as a result of the Proposed Transaction, any effects that the Proposed Transaction may have in respect of the sale of fresh pork meat for direct human consumption would clearly be limited to Poland. As explained under Section 7, UOKiK is the most appropriate authority to investigate this further.

6.1.1.3. Supply of fresh pork meat for further processing

- (113) Regarding the supply of fresh pork meat for further processing in Poland, the Parties' combined market share post-Transaction would be [10-20]%.^{86 87}

Table 6: Market share estimates in Poland – the supply of fresh pork meat for further processing, 2014-2016			
<i>tonnes</i>	2016	2015	2014
Smithfield	[0-5]%	[0-5]%	[0-5]%
Pini Polonia	[5-10]%	[5-10]%	[5-10]%
Combined	[10-20]%	[5-10]%	[10-20]%
Others	[80-90]%	[90-100]%	[80-90]%

Source: Form CO

- (114) According to the Notifying Party, Smithfield [Processing capacity]. In 2016, it sold [Quantities sold] of fresh pork meat for further processing on the market in Poland. However, it also purchased [Supply quantities] of fresh pork meat for further processing in 2016, and [Supply quantities] in 2017.⁸⁸
- (115) Responses to the market investigation indicated that the Proposed Transaction would have a negative impact on the market for the supply of fresh pork meat for further processing, as the unprecedented concentration of the upstream market for the purchase of live pigs for slaughter could allow the merged entity to control the prices of both livestock and fresh meat. It was mentioned that there is a risk that the potential financial benefits of the merged entity would not be passed on to end-consumers, but this claim was not substantiated. These responses need further investigation.⁸⁹
- (116) Although on the basis of information submitted by the Notifying Party, the combined market share of the Parties in Poland would remain below [10-20]%, this market may warrant closer scrutiny given that this market is directly downstream from that of purchasing of live pigs for slaughtering where the Proposed Transaction threatens to significantly affect competition. Were the market to be defined as wider than Poland the Parties' market share would be significantly lower than in Poland, no affected market(s) would arise and no threat to significantly affect competition would arise. As any negative effects would thus clearly be limited to Poland, UOKiK is, as explained under Section 7, the most appropriate authority to investigate this further.

⁸⁶ Excluding Smithfield's internal captive sales.

⁸⁷ On an EU-wide basis, the Notifying Party estimates a combined market share of [0-5]%. On a potential market consisting of Poland and Germany, the combined market share would be [0-5]%.
⁸⁸ Form CO paragraph 101, Reply to Question 5 of RFI 7; 2017 data until 5 December 2017.

⁸⁹ Reply to Q3 – Questionnaire to Slaughterhouses; Replies to questions 33, 33.1, 34, 34.1, 35, 35.1, 36, 36.1, 37 and 37.1 of Q4 – Questionnaire to Processors.

6.1.1.4. Supply of animal by-products ("ABPs")

- (117) Should the market for the supply of ABPs be considered as Poland, the Parties would have an estimated combined market share of [10-20]%. As the supply of the various categories of ABPs is likely to be proportional to the overall supply of ABPs, the market shares of the Parties would, according to the Notifying Party, not differ significantly from their overall market share, and would in any case not result in a combined market share of more than 20%.

Table 7: Market share estimates in Poland – Animal by-products, 2014-2016			
<i>tonnes</i>	2016	2015	2014
Smithfield	[5-10]%	[5-10]%	[5-10]%
Pini Polonia	[5-10]%	[5-10]%	[5-10]%
Combined	[10-20]%	[10-20]%	[10-20]%
Others	[80-90]%	[80-90]%	[80-90]%

Source: Form CO

- (118) The Notifying Party argues that as all slaughterhouses have to dispose themselves of ABPs, the market position of the Parties does not give them any market power vis-à-vis the purchasers of ABP products.
- (119) The majority of respondents to the market investigation stated that the Proposed Transaction would have no impact or no significant impact, neither on their company nor on the market in general. In this regard, one respondent explained that the Parties are only one of the many slaughterhouses from whom it obtains/purchases ABPs; a large number of alternative suppliers exist.
- (120) One respondent indicated that the Proposed Transaction would have a negative impact on the market, but did not substantiate its claim.⁹⁰
- (121) Although on the basis of information submitted by the Notifying Party, the combined market share of the Parties in Poland would remain below [10-20]%, this market may warrant closer scrutiny given that this market is directly downstream from that of purchasing of live pigs for slaughtering where the Proposed Transaction threatens to significantly affect competition. Were the market to be defined as wider than Poland the Parties' market share would be significantly lower than in Poland, no affected market(s) would arise and no threat to significantly affect competition would arise. As any negative effects would thus clearly be limited to Poland UOKiK is, as explained under Section 7, the most appropriate authority to investigate this further.

⁹⁰ Reply to question 3 of Q8 – Questionnaire to ABP customers.

6.1.2. *Non-horizontal effects*

Supply of fresh pork meat for further processing – Sale of processed meat products

- (122) Whereas Smithfield and Pini Polonia are both active on the upstream market for the sale of fresh pork meat for further processing, Smithfield is also active on the downstream market for the sale of processed meat products.
- (123) In 2016, Smithfield's market share was [10-20]% with Pini Polonia not active in the market.
- (124) Therefore, since the Parties' combined market share under the narrowest possible geographic market definition (national) is estimated at [10-20]% on the upstream market and [10-20]% on the downstream market, these do in any case not exceed the 30% threshold for vertically affected markets.
- (125) In light of the above, the Commission considers that it is unlikely that the Proposed Transaction would threaten to significantly affect competition in Poland in respect of the sale of processed meat products. However, as the whole case is being referred to Poland, this will ultimately be determined by UOKiK.

7. ASSESSEMENT UNDER ARTICLE 9(3) OF THE MERGER REGULATION

- (126) According to Article 9(3) of the Merger Regulation, the Commission may refer the whole or part of the case to the competent authorities of the Member State concerned with a view to applying the State's national competition law if, following a request for referral by that Member State pursuant to Article 9(2) of the Merger Regulation, the Commission considers that the Transaction threatens to significantly affect competition in a market within that Member State, which presents all the characteristics of a distinct market.
- (127) In this regard, the requesting Member State is required to demonstrate that, based on a preliminary analysis, there is a real risk that the Transaction may have a significant adverse impact on competition. Such preliminary indications may be in the nature of prima facie evidence of such a possible significant adverse impact. Furthermore, the Member State is required to show that the geographic markets in which competition is affected by the Transaction, in the manner described, are national or narrower than national.⁹¹
- (128) In the present case and based on the results of the market investigation, the Commission considers, that there is a distinct market for the purchase of live pigs for slaughtering in Poland, or potentially in narrower areas within Poland, and that the Proposed Transaction threatens to significantly affect competition in that market, both in Poland and/or in those narrower radius areas within Poland.
- (129) As regards the downstream markets for (i) the sale of fresh pork meat for direct human consumption, (ii) the sale of fresh pork meat for further processing and (iii) the sale of ABPs, including any of their sub-segments, the Commission considers that although the combined market shares of the Parties in Poland would remain relatively limited, these markets may warrant closer scrutiny given that they are part of the chain downstream from the market for the purchase of live pigs for

⁹¹ Commission Notice on Case Referral ("Referral Notice") in respect of concentrations, 2005/C 56/02, paragraph 35.

slaughtering where the Proposed Transaction threatens to significantly affect competition. As any negative effects would clearly be confined to Poland, UOKiK is ultimately best placed to determine the effects.

- (130) Finally, as regards (iv) the sale of processed meat products, the Commission considers that although there is no horizontal overlap, this market may warrant closer scrutiny given the Notifying Party's vertical integration. Therefore, this market cannot be separated from the rest of the analysed markets and UOKiK is ultimately best placed to determine the effects.
- (131) Following the above, based on the preliminary evidence available, the Commission considers that the criteria for a referral provided for in Article 9(2)(a) of the Merger Regulation are fulfilled with regard to the Proposed Transaction as the Proposed Transaction threatens to significantly affect competition in particular on the market for the purchasing of live pigs for slaughtering in Poland or smaller areas of Poland.
- (132) Moreover, in deciding whether to refer a case fulfilling the legal criteria for referral, the Commission considers which authority is more appropriate for dealing with the transaction, having regard to the specific characteristics of the case as well as the tools and expertise available to the authority.⁹²
- (133) In this respect, particular regard is given to the likely locus of any impact on competition resulting from the concentration. Other factors taken into account include legal certainty and the benefits of the 'one-stop-shop' principle. Fragmentation of cases is to be avoided where possible, and it is normally appropriate that, in case of Article 9 referrals, the whole case or at least all connected parts thereof are dealt with by a single authority.⁹³
- (134) For the following reasons the Commission considers that UOKiK is the most appropriate authority to assess the Proposed Transaction since it has all necessary tools to investigate the competitive effects of the Proposed Transaction and is the best placed authority to deal with the case.
- (135) The Notifying Party disagrees with UOKiK's claim that it has expertise. In this regard, the Notifying Party submits that UOKiK has only published two decisions regarding the market for the purchase of pigs for slaughtering, whereas the Commission has reviewed 25 concentrations on the meat production markets in the last 13 years.
- (136) The Commission however notes in this context that, on the one hand, based on the information provided by the Notifying Party, UOKiK has published 26 decisions regarding the meat supply chain.⁹⁴ On the other hand, of all the concentrations related to meat production reviewed by the Commission, only 5 concerned the market for the purchase of live pigs for slaughtering, and in none of those decisions an assessment was made as regards Poland. The Commission has also previously referred cases in this sector to the competent national competition authorities, in Denmark, the UK and France.⁹⁵
- (137) Furthermore, the Notifying Party submits, in its observations of 4 January 2018 on the request for referral, that it will lose the benefit inherent to a 'one-stop-shop'

⁹² Referral Notice, paragraphs 9 and 37.

⁹³ Referral Notice, paragraphs 11-14

⁹⁴ Annex 2 to Notifying Party's submission of 3 January 2018 on Referral Request, email of 10:36.

⁹⁵ M.7865 – *Danish Crown / Tican*; M.6845 – *Sofiproteol / Groupe Euralis / JV*; M.3737 – *YARA / AGRO / DLG / JV*; M.3534 – *Cargill / ABF / Allied Grain JV*.

system, because a full referral is not possible as the relevant geographic markets of all downstream markets to the market for the purchase of live pigs for slaughtering are wider than national.

- (138) The Commission however notes in this regard that the fact that some markets could be wider than national, does not in principle preclude a full referral on the basis of Article 9 of the Merger Regulation, as is sustained by the Notifying Party especially when none of the markets would be affected if a market definition wider than national would be considered. Moreover, the Commission finds that any negative effects resulting from the Proposed Transaction would clearly be confined to Poland. The likely locus of the competitive effects of the Proposed Transaction thus resides in Poland.
- (139) Also, as Smithfield is vertically integrated, and as these downstream markets are linked to the market for the purchase of live pigs for slaughtering, for which the Commission has identified a potential threat to competition, a separation of these markets would entail an inappropriate fragmentation of the assessment of the case in terms of these vertical links.
- (140) For efficiency reasons and in order not to unnecessarily split the Proposed Transaction, the Commission considers therefore that this case should, in line with UOKiK's referral request, be referred as a whole. Moreover, this is consistent with the Commission's general policy that fragmentation of cases through referral should be avoided where possible and that it would be appropriate for the whole of a case, or at least all connected parts thereof, to be dealt with by a single authority.⁹⁶
- (141) Moreover, given that the geographic scope of the market for the purchase of live pigs for slaughtering is likely to be Poland or narrower, the case may require further investigative efforts at local level, for which UOKiK is the best placed. Given these specific characteristics, a market investigation conducted by UOKiK is best suited to properly reach the market, to understand its main characteristics and to deal with possible concerns.
- (142) Therefore, the Commission notes that UOKiK is capable of safeguarding and restoring effective competition on the relevant markets.
- (143) In light of the above and all of the preliminary evidence, the Commission considers that the competent authorities of Poland are the most appropriate and best placed to carry out a thorough investigation of the Proposed Transaction. It is therefore appropriate for the Commission to exercise its discretion under Article 9(3) Merger Regulation and refer the case, in its entirety, to Poland.

8. CONCLUSION

- (144) From the above it follows that the conditions to request a referral under Article 9(2)(a) Merger Regulation are met. The Commission also considers that, given the local scope of the markets affected by the Proposed Transaction, the competent authorities of Poland are the most appropriate and best placed to carry out a thorough investigation of the whole case, and that it is therefore appropriate for the Commission to exercise its discretion under Article 9(3)(b) Merger Regulation so as to grant the referral.

⁹⁶ Referral Notice, paragraph 11-12.

HAS ADOPTED THIS DECISION:

Article 1

The notified concentration is referred in its entirety to the competition authority of Poland, pursuant to Article 9(3)(b) of Council Regulation (EC) No 139/2004.

Article 2

This Decision is addressed to Poland.

Done at Brussels, 23.1.2018

For the Commission

(Signed)

Margrethe VESTAGER

Member of the Commission