

Anticipated acquisition by Graphic Packaging International Limited of Benson Box Holdings Limited

ME/6430/14

The CMA's decision on reference under section 33(1) given on 20 May 2014. Full text of the decision published on 3 July 2014.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. Graphic Packaging International Limited (Graphic) intends to acquire the entire issued share capital of Benson Box Holdings Limited (Benson). The Competition and Markets Authority (CMA)¹ considers that the transaction results in enterprises ceasing to be distinct and that the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is met. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
2. The parties overlap in the supply of folding carton-board packaging to manufacturers in the food, beverage and non-food (eg personal-care products) sectors. The parties' most significant overlap is in the provision of folding carton-board packaging for food products. In addition, Graphic supplies packaging machinery and raw carton-board in the UK.
3. The CMA considered whether it is or may be the case that the merger may be expected to result in a substantial lessening of competition (SLC) through unilateral effects arising in the provision of folding carton-board packaging for food products. The CMA considers that, although the merged firm will be the largest supplier, a range of competitors will continue to pose a significant constraint on the merged entity, including two relatively large competitors. In addition, there are a significant number of smaller competitors, many of which

¹ The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the Office of Fair Trading's merger control functions were transferred to the CMA on 1 April 2014.

supply or have previously supplied customers of the parties. Many customers use a range of suppliers to fulfil their requirements.

4. The CMA was also provided with tender data showing that both Graphic and Benson (in particular) have lost work to a range of competitors, including smaller suppliers. Further, there are some differences in the parties' offering and customer base and the parties do not appear to be closer competitors than their shares of supply would suggest. Evidence from customers shows that, despite some costs and time involved, there is a significant amount of switching between suppliers. There is no evidence to suggest that competing suppliers are capacity constrained and several have expanded capacity in recent years. Many customers highlighted their negotiating strength and noted this would be unaffected by the merger.
5. The CMA therefore does not consider that it is or may be the case that the merger may be expected to result in an SLC in the supply of folding carton-board packaging for food products.
6. The CMA further considered whether the merger may result in anti-competitive buyer power from increased purchases of carton-board by the merged entity, but does not consider that competition concerns are likely to arise in this regard.
7. The CMA also considered whether Graphic's supply of packaging machinery or raw carton-board could give rise to conglomerate or vertical effects respectively, but the evidence did not suggest this would be the case.

Decision

8. This merger will therefore **not be referred** under section 33(1) of the Act.

Parties

9. Graphic is a wholly owned subsidiary of Graphic Packaging Holding Company which is listed on the New York Stock Exchange. Graphic is active in the worldwide supply of folding carton-board packaging to product manufacturers in the food, beverage and personal care sectors.
10. Benson is a wholly owned subsidiary of Shoo 553 Limited, a company incorporated in the UK. Benson is active in the supply of folding carton-board packaging to product manufacturers and its UK turnover in the year to 31 May 2013 was £114.9 million.

Transaction

11. Graphic signed a sale and purchase agreement to purchase the entire issued share capital of Benson on 18 February 2014 (the merger). The merger is conditional on clearance by the UK competition authority.
12. The parties notified the merger to the Office of Fair Trading (OFT), now the CMA, on 11 March 2014. The administrative deadline is 20 May 2014.

Jurisdiction

13. As a result of the merger, Graphic and Benson will cease to be distinct. Benson achieved UK turnover of £114.9 million in the financial year ending 31 May 2013. The turnover test in section 23(1)(b) of the Act is therefore met. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Frame of reference

Product Scope

14. The parties overlap in the supply of folding carton-board packaging to manufacturers in the food, beverage and non-food sectors (eg personal care products). Suppliers of such packaging are often known as 'converters'.
15. Graphic is also vertically integrated and supplies packaging machinery to beverage manufacturers and raw carton-board (sourced from its USA group companies) to UK suppliers of folding carton-board packaging.

Folding carton-board packaging

16. The supply of folding carton-board packaging products involves converting raw carton-board into carton-board packaging through printing, folding, gluing and often laminating pre-ordered sheets of carton-board. The carton-board is formed with creases, enabling it to be folded into packaging for a range of end use products.
17. The CMA considers below whether it is appropriate to widen the frame of reference to include other forms of packaging or to narrow the frame of reference by end-use of the packaging (eg different types of food).

Other forms of packaging

18. The parties told the CMA that other forms of packaging (such as shrink wrap, corrugated cardboard and plastics) exercise a competitive constraint as customers can and do switch between alternative forms of packaging.
19. The OFT and European Commission have both previously defined frames of reference that are no wider than the supply of folding carton-board packaging.² In particular, the OFT found in *Graphic/Contego* that customers owned their own packaging machinery capable of processing folding carton-board packaging and as a result these customers would not switch to other types of packaging. In this case, although some customers indicated that they would consider alternative packaging types, many customers told the CMA that they would be unlikely to switch to a different packaging type if prices for folding carton-board rose by 5%.³
20. For these reasons, and taking a cautious approach, the CMA does not consider that it is appropriate to widen the frame of reference to include other forms of packaging.

Food, beverage, non-food/beverage

21. Industry reports tend to split packaging between (at least) food, beverage and non-food/beverage products. The parties submit there is a high degree of supply-side substitution between end-product types, although acknowledge that there may be a small number of exceptions where the parties do not overlap ie tobacco, luxury goods, pharmaceutical goods and liquid packaging.
22. The parties submit that they overlap to the greatest extent in the food sector, with some minor overlaps in the beverage and non-food/beverage sectors. The CMA therefore considers whether to limit the frame of reference to food packaging or alternatively widen it to include beverage packaging and non-food/beverage packaging.
23. One customer told the CMA that it would not purchase food packaging from carton-board manufacturers who were not already active in producing food packaging as it required its supplier to have a history working in the food industry.

² ME/5821/12 Anticipated acquisition by Graphic Packaging International Holding Company of Contego Packaging Holdings Limited (**Graphic/Contego**) paragraph 13; COMP/M.1792 Ahlstrom/Capman/Folding Carton Partners, 2000

³ The CMA's approach to the hypothetical monopolist test is set out in the *Merger Assessment Guidelines* (adopted), from paragraph 5.2.9.

In addition, converters may require certain accreditation to supply packaging to the food sector.⁴ Therefore, on a cautious basis and given that the parties' greatest overlap is in this sector, the CMA considers the appropriate frame of reference to be limited to the supply of carton-board packaging for food products, excluding beverage and non-food/beverage products.

24. Given the fact that the merger results in only a [0 to 10%] increment in the supply of folding carton-board packaging for beverages, the parties' position in the supply of this packaging for non-food/beverage products is [0 to 10%] and the CMA received no third party concerns in this respect, the CMA does not consider beverage and non-food further for the purposes of this decision.

Distinction by end-use (ie food type) and customer requirements

25. The European Commission has previously noted that there may be some possible distinction of folding carton-board packaging by end-use.⁵ There was no need for the OFT to consider this in *Graphic/Contego* given that no competition concerns arose in that case.
26. The parties overlap in the supply of packaging for different food types, namely fresh food, frozen food, chilled food, dry food, baked products, dairy products, confectionary products, dry beverages (eg tea and coffee) and 'other' food⁶ (based on supply in 2013).
27. Different food types may require different packaging solutions. For example, frozen food packaging will need to withstand moisture. However, while there is some differentiation between general categories of food type, different producers will have different requirements. For example, one producer may want both its chilled and frozen food to be packaged with a carton-board sleeve, while another may want both to be fully protected by a carton-board box with sides. It is therefore not possible to make a clear distinction solely based on the type of food being packaged as there may still be significant similarities based on the bespoke customer requirements.
28. The CMA's market testing has identified that customers have a range of requirements beyond the type of food the packaging is used for, such as length of

⁴ For instance, accreditation from the British Retail Consortium Packaging and Packaging Materials Standard which includes requirements for product quality and hygiene practices.

⁵ See, for example, Case No. COMP/M.5599 Amcor/Alcan, 14 December 2009, which noted that a distinction can be made for certain segments, for instance tobacco, where specifications are stricter. See also Case No. COMP/M.1792 Ahlstrom/Capman/Folding Carton Partners, 2000, which discussed some segments where supply side switching was more restricted and shares of supply were considered separately for food, detergents, confectionary, frozen food and tobacco.

⁶ Oils and fats, meal replacement supplements and fast foods.

print runs, speed of delivery of the packaging, types of raw material (eg recycled or virgin board), re-launch rate, overall volume and number of SKUs⁷ required (ie the number of different product lines, such as differently sized packs of the same product).

29. Since converters therefore supply relatively bespoke products to customers, one packaging product will not necessarily be a demand side substitute for another even if both packaging products can be used for the same type of food. The CMA has therefore considered the extent to which the supply side substitutability of folding carton-board packaging for different customer requirements or food types may indicate that it is appropriate to consider them together.⁸
30. This may be appropriate if all (or a group of) customers face a similar set of potential suppliers that could all bid on the basis of the service they can offer to supply those customers with bespoke products. However, the CMA's market testing has found that converters tend to differ with respect to both the strength of their position in packaging for different end use segments and the customer requirements that they cater for. For instance the CMA has found variations in the number of converters serving different food segments and those likely to supply print runs of different lengths.
31. Further, the parties submit that equipment, raw materials or finishing techniques do not represent material barriers to supply side switching between different end-uses; once a converter is active within the supply of food packaging the barriers to switching across specific types of food are low. They do, however, indicate that converters may be differentiated with regard to whether they are suited to long print runs typical of branded goods or short print runs typical of own-label products.
32. An internal document produced by Benson dated 31 March 2011 (the 'Benson Report') indicates that converters may be specialised with respect to food type. It stated that Benson had focused on packaging for: [X], had a strong proposition in its [X] and that its [X].
33. Some converters told the CMA that there were no significant barriers to supplying packaging for different food types but instead pointed to a range of requirements of individual customers that were not just based on food types, such as length of print runs, volumes, speed of delivery, 'value added' of the packaging (eg the finish of packaging), flexibility and security of supply. Convertors identified particular reasons why they focused on supplying packaging for certain types of

⁷ Stock keeping unit.

⁸ See [Merger Assessment Guidelines](#) (adopted) from paragraph 5.2.17.

product and customer requirements, including their equipment (such as size of printing presses), historical strategy, customer relationships, and possession of a recognisable brand. Some converters noted that these factors amounted to barriers to supplying other segments.

34. Customer views varied on the degree of specialism that converters have with regard to different types of food, but customers generally supported that customers have a range of individual requirements that are not (or not only) related to the type of food. The factors listed by customers were in line with the factors listed by converters and set out above. Volume requirements are an important factor that was mentioned by the parties and several third parties, with some converters focussing on larger volumes than others. The parties also referred to a possible distinction in packaging between branded and own-label food products and noted that Graphic focuses mostly on the former and Benson on the latter, although third party comments were mixed on the extent to which this distinction was relevant or were mostly a reflection of more general differences in customer requirements. The focus on differences in customer requirements is supported by the 'Benson Report' showing that branded and own-label customers have specific requirements relating to product diversity, re-launch rate, volumes and speed of delivery.
35. Overall, it appears that converters bid on the basis of the service they can offer to supply customers (or similar groups of customers) with relatively bespoke products. The pool of potential suppliers open to customers therefore differs on the basis of the customer's specific requirements in terms of not only type of food but also volumes, speed of delivery, type of material etc. The competitive constraint on converters may therefore come from a customer's willingness to award the contract to a rival (ie rather than to switch to a different bespoke product). As a result, aggregating a range of contracts where the same set of converters would have been credible bidders may provide more useful information about the competitive constraints on the merged entity than focusing on just the type of food or one otherwise bespoke product.⁹
36. In summary, while many converters are able to serve a wide range of requirements, evidence from internal documents and third party comments suggests that some converters may specialise (eg by food type, ability to produce high volume orders or a broad range of smaller volume orders, and customer type). As a result, the suppliers that a customer can source from will vary dependent on a range of factors. While it may be possible to establish separate

⁹ *Ibid.*, paragraph 5.2.18.

frames of reference based on one or more of these factors as they apply to a group of customers - eg by specific food type or high/low volume orders – the extent to which this is the case, given the interaction between them and the mixed and diverse requirements of customers, is unclear. As a result, the CMA has considered the supply of all folding carton-board packaging for food products for the purposes of the competitive assessment. The CMA has, however, taken account of available suppliers – and differentiating factors between suppliers – for customers with different requirements as part of that assessment.

Form, fill and seal packaging machinery

37. The packaging machinery supplied by Graphic performs ‘form, fill and seal’ functions at the end of a beverage manufacturer’s bottling production line. Since Benson does not supply any packaging machines, the parties do not overlap in the supply of these machines but the CMA has assessed whether Graphic’s supply of these machines may give rise to any conglomerate issues as a consequence of the merger.
38. The CMA has assessed such issues on the basis of a frame of reference for form, fill and seal packaging machinery for the beverage sector, as these are the machines supplied by Graphic and this is the most cautious basis in which concerns may arise in this case. However, because, as set out below, no competition concerns arise, it has not been necessary for the CMA to conclude on the precise product scope.

Supply of carton-board

39. In *Graphic/Contego* the OFT found that, in the UK, carton-board is made from one of four distinct types of raw material depending on the end use of the packaging, namely: recycled materials, Kraft (virgin carton-board), virgin fibre and bleached carton-board.¹⁰ Graphic supplies a type of virgin carton-board called ‘Kraftboard’ to UK suppliers of folding carton-board packaging. The CMA assessed whether the merger raises the prospect of vertical effects (see paragraphs 116 and 119) on the basis of the supply of virgin carton-board as this is the most cautious basis in which concerns may arise. However, as no concerns arise on this basis, the CMA has not concluded on whether the most appropriate frame of reference is the overall supply of carton-board or by specific variety of carton-board.

¹⁰Graphic/Contego paragraph 8.

Conclusion

40. For the reasons set out above, the CMA has assessed the transaction on the basis of the supply of:
- folding carton-board packaging for food products
 - form, fill and seal packaging machinery to the beverage sector;
 - raw carton-board.
41. However, with respect to the supply of folding carton-board for food packaging, the CMA found that customer requirements and converter specialisms may be differentiated in relation to a number of factors and these are taken into account as part of the competitive assessment.

Geographic Scope

Folding carton-board packaging

42. The parties submit that competition generally occurs on a national (although increasingly international) basis. They state that larger UK customers source from European-wide suppliers based outside the UK and some procure on an EU-wide basis. The parties submit that smaller customers are free to shop around converters in the UK.
43. The parties activities are focused on the UK (although Graphic is also active in Ireland): Graphic does not export packaging outside of the UK and Benson's exports account for approximately [0 to10%] of its total turnover.
44. In *Graphic /Contego* the OFT found that UK customers purchased, on average, 95% of their carton-board packaging from UK converters.¹¹ On a cautious basis the OFT analysed the merger on the basis of a UK market (although it did not need to conclude on geographic scope as no competition concerns arose). The EU Commission has previously found the market for folding carton-board packaging to be EEA wide in scope¹² However, it also recognised the parties' argument in *Ahlstrom/Capman/Folding Carton Partners* that local service is essential and has taken note of market shares in individual Member States in its assessment.¹³

¹¹ *Graphic/Contego* paragraph 16.

¹² COMP/M.5599 Amcor/Alcan, 14 December 2009

¹³ COMP/M.1792 Ahlstrom/Capman/Folding Carton Partners, 2000

45. Some customers told the CMA in this case that they procure on a European-wide basis. Others indicated that they either currently, or would consider, sourcing carton-board from overseas suppliers. However, evidence on the overall scale of imports and their constraint on domestic suppliers is unclear. Some customers indicated that they favour a domestic supplier (eg due to transport costs or security of supply); and one customer explicitly stated that a UK-based supplier is required to meet their cost, complexity and short lead time requirements.
46. A rival converter said that while customers can source some packaging from overseas suppliers, certain requirements, especially own-label packaging, may need to be sourced from UK suppliers. The Benson Box Report also stated that 'for retail branded products turnaround speed and security of supply reduce the attractiveness of using offshore converters'.
47. The CMA therefore on a cautious basis defines the geographic scope of the market to be the UK. Any constraint from imports is taken account of in the competitive assessment, where the evidence supports this.

Form, fill and seal packaging machines

48. Graphic supplies form, fill and seal packaging machinery to the UK from a Group company in the USA. On a cautious basis, the CMA adopts a UK frame of reference for the supply of these machines for the purposes of this assessment, although it has not been necessary to conclude on the precise geographic scope as no concerns arise on any basis.

Raw carton-board

49. Graphic supplies carton-board to Europe and the UK from its US mill. The global nature of the parties' supply chain suggests that the appropriate frame of reference for the supply of carton-board may be wider than national. However, on a cautious basis, the CMA adopts a UK frame of reference for the purposes of the assessment. Nevertheless, as no concerns arise on any basis the CMA has not needed to conclude on this point.

Horizontal issues

50. In determining the extent of any loss of competition in the supply of folding carton-board packaging caused by the merger, the CMA has examined: shares of supply; the closeness of competition between the parties with reference to third party views, bidding information, and a range of differentiating factors between the parties and other suppliers, including customer type (branded or own label),

food type end use, and customer requirements (value added, length of print run, volumes); and the constraint from remaining alternative suppliers.

Share of supply

51. The parties provided estimated market shares based on their revenues and estimates of their rivals'. The CMA verified these with a number of third parties. The resulting market share estimates are shown in Table 1. These show that the parties have around [30 to 40]% of the overall supply of folding carton-board packaging for food products in the UK. The next two largest suppliers are Mayr-Melnhof ('MMP') and Chesapeake which the parties name as key competitors.

Table 1: Shares of supply of parties and competitors in the supply of folding cartonboard packaging for food products

Competitor	Estimated value of sales 2013	Estimated share 2013 (by value)
Benson	[X]	[10 to 20]
Graphic Packaging	[X]	[10 to 20]
Combined entity	[X]	[30 to 40]
Mayr-Melnhof ("MMP")	[X]	[10 to 20]
Chesapeake	[X]	[0 to10]
St Neots	[X]	[0 to10]
MSO	[X]	[0 to10]
Paragon	[X]	[0 to10]
Clondalkin	[X]	[0 to10]
Marchmont	[X]	[0 to10]
Ken Wilkins	[X]	[0 to10]
Others¹⁴	[X]	[20 to 30]
Total	[X]	100

Source: Graphic estimates, third parties, CMA estimates, excludes in-house supply

52. The parties also provided estimated market shares based on two industry reports, one compiled by Pira¹⁵ and one compiled by PRISM.¹⁶ The Pira report

¹⁴ Others contains 14 converters (including Alexir, Harrisons and Van Genechten) each with less than [0 to10]% share.

¹⁵ Smithers Pira "The Future of Folding Cartons – Market Forecasts to 2018" 2013 (the 'Pira Report').

¹⁶ The parties commissioned updated figures to those contained in The Packaging Research Intelligence Strategies & Marketing 2010 'European Carton Prospects A Report for ECMA' 2009/2010 Edition (the 'PRISM Report').

indicates that the parties have a combined market share of 16% (with an increment of 7%) whereas the PRISM figures indicate that the parties have a combined share of [30 to 40]% (with an increment of [10 to 20]%).

53. The CMA notes that the parties' combined shares may be underestimated since the total market figures include microflute packaging (which neither party supplies). Where the CMA was able to verify revenue figures with third parties (in seven instances) they were, in several cases, significantly (eg several were 15 to 30%) lower than the estimates provided by the parties.
54. The estimated market shares shown in Table 1, and uncertainty around these estimates, do not enable the CMA to rule out *prima facie* concerns. Given the degree of differentiation between suppliers highlighted by third parties, the CMA has gone on to consider the extent of competition between the parties and that lost as a result of the merger.
55. The parties also submitted estimated shares of supply based on branded packaging and own-label packaging (based on their own estimates), and by end use (based on PIRA and PRISM figures). However, with regard to the shares of supply segregated by food type, the parties believe that volumes have been misallocated between the specific end use segments. They state that this overstates their share of supply of packaging for some end uses.¹⁷ The CMA has, in any event, not relied on the market shares for branded and own-label products or food type separately but rather taken them into account alongside a wide range of other evidence in its overall assessment of closeness of competition below.

Closeness of competition

56. The CMA considers whether, and to what extent, the parties represent a close alternative to each other for customers of folding cartonboard packaging for food products.

Bidding and switching data

57. The parties provided data and internal documents relating to tenders they had bid for and switching that had taken place.
58. A Graphic internal document that was introduced in the fourth quarter of 2013 to track tenders contained details of eleven tenders relating to UK food packaging.

¹⁷ This is demonstrated, according to the parties, by the parties having a combined share of over 100% in some segments based on the Pira Report.

Benson was mentioned as a current supplier for only one of these tenders while competing suppliers MMP and Chesapeake were mentioned three times. Ken Wilkins and Simply Packaging and Norgraft were also mentioned once. In addition, Graphic submitted a document to the CMA which provides information on its sales pipeline. Out of [REDACTED] prospective work leads recorded at the time of acquisition relating to food packaging, Benson was referred to as a competitor in only five instances. In four of these one or two other firms were also listed as competitors: Paragon, Leyprint, MMP, Harrison and MSO. In [REDACTED] other prospective work leads Benson was not listed but a wide range of other large and smaller competitors were named (including MMP, Chesapeake, Clondalkin, Kentmere Packaging etc) across numerous food categories (including baked, dry beverage, frozen, chilled, confectionary).¹⁸

59. More comprehensive switching data was not available for Graphic's business. According to the parties, it wins a [REDACTED]. However, the limited data available shows that in 2013 Graphic lost:

- a [REDACTED] tender lost to [REDACTED]; and
- a [REDACTED] contract lost to [REDACTED].

60. The parties also submit (although without providing substantiating evidence) that, while Graphic has been [REDACTED], it had on a number of occasions been [REDACTED] as a result of competition.

61. Benson provided data on work that it lost during a recent 10-month period (in 2013-2014). Of the £[REDACTED] lost to competitors, £[REDACTED] was lost to Graphic. However, a further £[REDACTED] was lost to other competitors across the market for food packaging. These losses included, for example, £[REDACTED] of business lost to [REDACTED]. The single biggest loss to another third party besides Graphic was a £[REDACTED] contract to [REDACTED]. The parties also highlighted examples of Benson's largest customers ([REDACTED]) switching product lines from Benson to multiple mid-sized or small converters.

62. Benson also provided information on tenders it had submitted bids for during 2013-14. Out of [REDACTED] tenders, Graphic was listed as a competitor or incumbent in [REDACTED] instances. According to this data Benson [REDACTED]. Conversely, in [REDACTED] instances where Benson had been the incumbent supplier, in at least [REDACTED] instances [REDACTED]. These were lost to a range of competitors including: [REDACTED].¹⁹

¹⁸ Other entries had no competitors listed (e.g. they were blank or 'n/a', 'unknown' or 'none')

¹⁹ Suppliers winning business from Benson can be greater than the number of contracts due to multi- and split-sourcing.

63. In summary, while the bidding data suggest that the parties do compete to some extent for certain tenders and some of this evidence points to the parties competing closely, on balance, the evidence overall points to a wide range of constraints on the parties from other suppliers. The evidence shows that other suppliers can and commonly do win business from the parties, often to a greater degree than the parties do from each other.

Different customer focus

64. The parties submit that they are not each other's closest competitors as they serve different customer requirements. In particular:

- Graphic is focused on supplying branded packaging while Benson is focused on own-label packaging.
- Graphic uses larger Size 6 printing presses which are suitable for high volume work associated with branded products. Benson only uses smaller Size 3B presses which are better suited to the own-label work with multiple product lines of smaller volumes.

Branded and own-label customers

65. The parties submit that their revenues, when divided between branded and own-label products attest to the fact that, although they are of a similar size in the overall supply to the food sector (with revenues of £[redacted] (Graphic) and £[redacted] (Benson) respectively), the parties do not focus on the same work or target the same customers. The parties submit that Benson has focussed its business on supplying packaging for own-label (also known as white label) products which are ultimately sold by supermarkets. Approximately [70 to 80]% of Benson's revenue (£[redacted]) is derived from this sector. On the other hand, much of Graphic's packaging is for branded products, often large global brands such as [redacted]. In the food segment, approximately [70 to 80]% of Graphic's revenue (£[redacted] million) is derived from packaging for branded products. Third party views varied, but some third parties referred to this distinction and told the CMA that the parties have a different focus.

Customer volume requirements

66. The parties submit that Graphic is focused on low margin, high volume production, ie large format packaging typically for global brands with limited product lines that rarely change design but that are produced in high volumes. To

fulfil such requirements, Graphic uses mainly 'Size 6' print presses which the parties submit are used predominately for large scale work.²⁰

67. Benson conversely supplies mainly small format products that, according to the parties, have multiple lines which change rapidly depending on, for example, seasons and sales numbers. The packaging designs are also more likely to change. This work suits Benson's smaller scale print presses, referred to 'size 3B' print presses, of which it has [REDACTED].
68. The Benson Report is broadly supportive of this differentiation between the parties as it describes Benson's core focus as '[REDACTED]' which require [REDACTED]. It states that these require [REDACTED]. In contrast, the report refers to [REDACTED]. However, the document also describes there being [REDACTED].²¹
69. Some customers agreed with the parties' view that the parties were differentiated according to the press sizes they used and therefore their suitability for different types of work. For example, one customer told the CMA that it had previously divided work between them according to their varying strengths.
70. A major retailer also stated that Benson is better suited for producing a product (such as a tea bag box) with 20 to 30 product lines while Graphic would more likely be used to produce a higher volume (and larger) product such as a cereal box with fewer product lines.
71. Competitors also pointed to suppliers tending to focus on different volume scales as one factor determining who they compete with most closely. One competitor recognised that Graphic and Benson use different size presses and they may focus on serving different parts of the market. However, competitors told us that the parties do compete against each other and, in particular, that Benson was able to compete for high volume lines.
72. Overall, third party comments suggested that converters who typically supply high volume lines (such as Graphic) and those that typically serve smaller volume lines (such as Benson) may compete less closely. However, the boundaries between small and high volume lines are not clearly defined and there is evidence that the parties were bidding for at least some common customers.

²⁰ Graphic's Leeds facility produces packaging for food product and has [REDACTED].

²¹ The report does list 'Nampak' (which was a company purchased by Graphic) as a competitor in a number of areas. The parties submit, however, that since the report was produced Nampak [REDACTED].

Remaining alternative suppliers

73. The parties submit that the merged party will continue to face strong competition from a host of European, national and local competitors.
74. The Benson Report gives an overview of the competitive landscape. The report states that the market is '[X]' but names [X] which broadly accords with the market shares set out in figure 2. In addition, however, the report also states that [X] converters competed directly with Benson for business. In particular, Benson was considered to compete against [X].
75. This supports the parties' bidding and switching data, outlined above, which points to a range of suppliers competing with the parties, in particular Benson, to an equal or greater extent than the parties are with each other.

Third party views on closeness of competition

76. Of customers that responded to the CMA's inquiries, views were mixed on whether the parties competed closely for customers. Around half of the parties' largest customers²² told the CMA that they considered them to be close competitors – although most of these raised no concerns due to the presence of other suppliers – and two ranked them as their first and second preferred suppliers. One of these believed that it had no other viable choice except for the parties. In addition, at least two large customers had recently switched work between them.
77. Three customers raised concerns that the merger reduced their choice of supplier. However, one of these, a customer of Benson, named four closer alternatives to Graphic who bid in their last tender.
78. One other customer that raised concerns regarding the merger told the CMA that both parties have the ability to supply them with the packaging currently supplied by the other. These customers' concerns are further discussed below (paragraph 85).
79. However, approximately half of the parties' largest customers did not consider that the parties were close competitors and a number gave reasons based on the parties serving different customer needs with differentiation based on their different press sizes.

²² We contacted a range of each parties' customers. These included the five largest (by overall revenue spend) customers of food packaging and we received responses from nine of these.

80. Five of the eight medium and small customers who responded²³ thought that the parties were close competitors. Two of these reported switching business between the parties recently but only one of these raised concern about the merger, stating that Graphic and Benson are two of the bigger more capable suppliers. The remaining three who thought the parties were close competitors said that each party had bid in their last tender and one raised concerns about the merger. The CMA notes, however, that each of these three tenders had at least six participants and the parties were never ranked closest competitors by the customer.
81. Two further customers told the CMA that the parties could both supply them but that there are a large number of alternative suppliers remaining. A further Graphic customer had not heard of Benson.
82. More specifically, the CMA notes that, of the five food manufacturers identified by the parties as suppliers principally of only branded products, four raised no serious concerns about the merger. One producer of branded products was concerned that they would lose Benson as an independent supplier as well as negotiation strength. However, the third party invited six suppliers to bid in their last tender and Graphic were ranked as their least favoured bidder. Another producer of branded products stated that the merger would marginally reduce the competitor base but also listed Graphic and Benson as their second and fifth preferred suppliers out of a potential set of nine overall. They also indicated that barriers to entry were low and raised the viability of importing from the EU.

Ability to multi-source and ease of switching

83. Views on the number of potential suppliers also ranged widely. Around half of those customers that responded to the CMA's questions multi-sourced their packaging requirement from multiple suppliers (between two and seven). This covers both larger and smaller customers of the parties.
84. Almost all customers who responded referred to their ability to use mid-sized or smaller converters. In particular, several of the parties' largest customers told the CMA that they either did or could use a number of mid-sized converters. In addition, the main competitors to the parties, [X], told the CMA that they faced competition from [X]. [X] considered there to be 90 'serious' converters in the UK and considered that [X] would all be big enough to be alternative options for customers who wish to switch volumes away from the parties.

²³ We contacted five 'medium' customers of each party (with an annual spend with one party ranging from £[X]k to £[X]m) and five 'small' customers (with an annual spend with one party of between £[X]k - £[X]k).

85. Two customers, however, were concerned that no other supplier would be large enough to handle the same volume of work that Graphic or Benson do which limited their ability to switch. One of these customers was concerned that multi-sourcing from a larger number of suppliers would be less efficient. To assess these concerns the CMA spoke to two customers who were named by this complainant as having broadly comparable packaging requirements. This was verified by one of the customers and all four companies appear to have relatively broad, albeit differentiated, product ranges.
86. One of these customers multi-sourced from converters in addition to Graphic and Benson, also using Ken Wilkins, Cartonage and Averis and switched work between them. This customer did not think that the relative size of the converter impacted the converter's competitiveness. The other multi-sourcing customer told the CMA that its range of requirements sits best with different suppliers and it works with three converters in each area of its product range and eight converters overall. All converters told the CMA that they had current spare capacity to take on additional work.
87. The parties submit that switching costs are low and converters are able to take on additional work at short notice. They submit that they have previously taken on work within two days' notice as a result of a competitor going into administration or its facilities being temporarily unavailable. A competitor of the parties also pointed to examples of switching taking place very quickly, within a couple of days if necessary.
88. Customers told the CMA that switching converter can take between three to nine months and involves some costs including: the transfer of artwork, running trials, obtaining customer approval, etc. Nevertheless, a relatively large number of customers indicated that they would consider switching in the event of a 5% price rise or that such a price rise would prompt the company to go out to tender. Reference is made to the tender and switching data set out above as evidence that customers can and do switch supplier.
89. The CMA also received further evidence that customers did regularly switch despite any cost and time considerations. Of the 16 customers who responded to the CMA's questions, 12 had switched suppliers or work between suppliers in recent years. The switching data provided by Graphic also indicated that switching volumes between suppliers was not unusual.
90. One customer was concerned that retailer approval may reduce the number of available suppliers (noting that Graphic and Benson were approved by all retailers) and be a barrier to switching. However, no other customer raised this as a concern and the parties submit that almost all UK converters have the

accreditation that retailers require.²⁴ One converter told the CMA that although obtaining retailer approval could be onerous it was not a significant barrier for them.

91. In view of the evidence set out above, the CMA considers that customers of the merging parties are able to switch all or some of their carton-board packaging requirements to alternative suppliers. Although two of the parties' customers expressed concerns about losing a large converter that is able to supply large volumes of packaging, two other large customers that also have a range of packaging requirements, already source their packaging from several suppliers, including smaller converters. Further, the CMA did not receive any evidence to suggest that medium-sized and smaller converters – or any competing suppliers - are capacity constrained so as to prevent them from responding to an increase in demand.

Barriers to entry and expansion

92. Entry or expansion of existing firms can mitigate any initial effect of a merger on competition and may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.²⁵

Expansion

93. The parties state that excess capacity will continue to constrain them post-merger and that they are not aware of any occasion where an order was refused on the basis of insufficient capacity. They argue that all competitors have spare capacity as most operate on a five-day cycle and believe that most have some downtime each day suggests that they could expand operations to meet additional demand.
94. One competing converter told us that there has been some reduction in capacity since 2000 as some brand owners have moved production overseas. However, evidence from a number of other competing converters suggests that many currently have spare capacity. In addition, many converters have expanded their capacity in recent years, although individually each example of expansion was relatively small.

²⁴ Namely, BRC/IOP and ISO 9001 accreditation.

²⁵ *Merger Assessment Guidelines*, (adopted) paragraphs 5.8.1 *et seq.*

Entry

95. The parties state that they will be constrained by potential entry from commercial printers who can enter quickly and at low cost. They point to Paragon as an example of a commercial printer that, in the last five years, has begun to supply folding carton-board and is estimated to have annual packaging turnover of £25-30m. They state that Paragon [REDACTED].
96. [REDACTED] and it is unclear to what extent the constraint of new entry can be taken into account given that only two customers mentioned Paragon as a potential supplier and none as a current supplier. It is therefore not clear, based on the evidence available, that entry is sufficiently likely, timely and sufficient to constrain the parties post-merger. However, it was not necessary for the CMA to conclude on this point given that no concerns arise in any event.

Countervailing buyer power

97. Over two thirds of customers that responded considered that they had a degree of negotiating strength. Some included within their answer reference to their value of purchases being a factor and others referred to the presence of alternative suppliers that they could switch to.
98. Half of customers of food packaging that responded to the CMA (8 out of 16) indicated that their negotiating strength would not be impacted at all by the acquisition.
99. Of the remaining responses, three customers indicated that there may be some impact on their negotiating position but did not express strong concerns. Another customer did not know the impact of the merger on their negotiating strength and one thought that competition may be compromised if Graphic continued to purchase additional converters.
100. Only a small number (3 out of 16) of customers thought that the merger would significantly reduce their negotiating strength. Their concerns are discussed above.

Conclusion on unilateral effects

101. Although the parties are the two largest converters by share of supply and are significantly larger than their next largest competitor, the CMA considers that a range of competitors will continue to pose a significant constraint on the merged entity. These include two large competitors (MMP and Chesapeake) that are smaller but have a substantial presence in the market and will continue to pose a constraint including for higher volume lines. In addition, there is a significant

number of smaller competitors remaining, many of which currently or have previously supplied customers of the parties. Many customers are using a combination of converters to fulfil their requirements.

102. Tender and switching data show that Benson has lost work to a range of competitors across the food sector and some of its largest customers have appeared able and willing to switch lines away from it to multiple mid-sized or smaller converters. The information on Graphic shows [X] in general, but losses include a [X]. In addition, customers have indicated that they have switched volumes away from Graphic to other converters. The CMA also notes that Graphic and Benson are differentiated in the sense that, broadly, Graphic focusses on branded customers with relatively few but high-volume product lines and Benson focusses on own-label customers with relatively many but low-volume product lines. This is also reflected in the different sized presses used by the parties and has been confirmed by some third parties.
103. The CMA received complaints from three of the parties' customers, one of which told the CMA that it would not have any other available suppliers post-merger. However, the CMA received evidence that most customers, including large customers, do or are willing and able to multi-source, including from a combination of small or mid-sized converters.
104. Potential obstacles and the time associated with switching suppliers do not appear to have prevented switching and the CMA has been provided with many examples of customers switching between suppliers. Transferring volumes between suppliers is also relatively common (perhaps more common than switching suppliers completely). The majority of customers also highlighted that they had some degree of negotiating strength.
105. For these reasons, the CMA does not believe that the merger gives rise to a realistic prospect of an SLC in the supply of folding carton-board packaging for food products.

Anti-competitive buyer power

106. Where the merging parties purchase the same products, the merged firm may enjoy greater buyer power than the parties could previously exert individually. In many cases, an increase in buyer power is not likely to give rise to unilateral effects; and some of the benefits to the firm from its greater buyer power may be passed on to customers.²⁶

²⁶ See *Merger Assessment Guidelines* (adopted), paragraph 5.4.19 *et seq.*

107. Two third parties raised concerns that the merger may lead to pricing pressure that could lead to smaller converters exiting the market. One specifically referred to the possibility that the parties may be able to negotiate better pricing with the board mills as the contributing factor. Another referred to the possibility that they may be given sole supply from an upstream supplier resulting in availability issues for other converters.
108. The merged entity will be a more significant individual purchaser of carton-board²⁷ and potentially allow it to attain more favourable pricing from carton-board mills than each of the parties does independently, although the parties' share of carton-board purchases is estimated to be only around [15 to 25]%.²⁸ Graphic itself supplies raw carton-board which may reduce the amount of external purchases made by the parties and any merger effect (this is discussed in more detail below at paragraph 116).
109. Although generally unlikely, one circumstance in which increased buyer power may potentially be anti-competitive is through anti-competitive buyer power, known as a 'waterbed effect'.²⁹ However, the CMA does not consider the conditions that may give rise to an anti-competitive waterbed effect are present in this case.³⁰ Without even taking account of the possible pro-competitive effects of buyer power, the CMA notes that, according to data supplied by the parties, neither Benson nor Graphic [X]: discounts [X]. Evidence available to the CMA suggests that Graphic's contracts [X],³¹ and in a number of cases, the parties submit that carton-board supply price is negotiated directly between the raw material supplier and the customer. In such cases Graphic has no control over

²⁷ Although the parties may in future serve more of their own carton-board needs internally, in which case their buyer power with third party carton-board mills may not increase.

²⁸ The parties estimate that they account for between [10 to 25]% of supply of folding carton-board packaging in the UK.

²⁹ A waterbed effect may arise where any additional discount generated by the enhanced buying power of the merged firm allows it to reduce prices and attract additional business. Some of that increased business comes at the expense of the merged firm's competitors (some may come from growing the market). This may reduce the discount competitors obtain and/or reduce scale economies, potentially giving rise to competition concerns if, as a result, the merged firm's competitors exit the market or otherwise cut back their operations, potentially reducing the competitive pressure on the merged firm sufficiently to offset any pro-competitive effects of its buyer power. See *Anticipated acquisition by Travis Perkins Plc of BSS Group*, OFT, 2011 (**Travis Perkins/BSS**) for an outline of the CMA's approach to assessing waterbed effects. In the same case, the OFT also considered a 'demand withholding' theory of harm. However, in this case the CMA considers this unlikely to arise due to the likely EEA or global geographic market for the upstream supply of carton-board.

³⁰ These factors are outlined in detail in *Travis Perkins/BSS* and include the extent of scale economies, the extent to which discounts depend on scale, whether such scale discounts apply at the margin (so that discounts affect rivals' costs), and the extent to which the competing suppliers are smaller and/or operating under lower margins than the parties (such that they are or could be squeezed).

³¹ If a carton-board supplier applies a discount to an incremental purchase rather than across all purchases then a small reduction in volume purchases by rival converters may increase input costs on incremental units of output compared to if a reduced volume discount were spread across all purchases.

the negotiation of the raw material supply price. These arrangements are typical for larger, branded customers that comprise Graphic's core customer base.

110. On this basis the CMA considers that there is no realistic prospect that anti-competitive 'waterbed effects' will emerge as a result of the merger.

Conglomerate issues

111. Graphic is one of two major suppliers of packaging machines that supply 'form, fill and seal' functions. These machines are used by beverage manufacturers at the end of the bottling production line. The parties estimate that Graphic has a [50 to 60]% share of supply of these machines in the UK.
112. The parties submit that Graphic [redacted].
113. The parties state that Graphic's supply of this specialist machinery will not be affected by the merger as Benson has virtually no sales in the beverage sector and no presence in the supply of these machines
114. Nevertheless, the CMA considered whether the merger may increase Graphic's ability and incentive to tie or bundle sales of carton-board and packaging machinery. The CMA contacted the current customers of Graphic's leased packaging machinery and obtained responses from two out of the [redacted], neither of which raised material concerns that the merger would increase Graphic's ability to tie or bundle raw carton-board sales to machinery leasing.
115. On the basis of the evidence available to it, including third party comments and the very small increment attributable to Benson with respect to carton-board packaging supplied to the beverage sector, the CMA considers it very unlikely that the merger will increase the merger parties' ability to tie/bundle sales of raw carton-board and packaging machinery. As such, it did not have to consider the effects any such tying or bundling could give rise to.

Vertical issues

116. Graphic is vertically integrated and supplies a type of carton-board called 'Kraftboard' to the UK and Europe, which the parties state is mainly used in the beverage sector and to a lesser extent in the healthcare and chilled food segments.
117. We received a small number of third party concerns that the merger may lead to either a reduction in choice and/or higher prices for raw carton-board.
118. Graphic supplies a relatively small proportion of all raw carton-board used in the UK and EU. It is a more significant supplier to the beverage sector (which is [redacted])

but the CMA notes that Benson's activities in this sector are negligible. One third party told the CMA that Graphic has recently obtained food contact approval for use of its 'Omnikote' raw carton-board in the EU and that it may supply a greater volume of carton-board to the EU going forward.

119. Given the above evidence and the CMA's conclusion on horizontal effects, the CMA does not consider that the third party concerns outlined above regarding Graphic's supply of raw carton-board are sufficiently substantiated. The CMA also notes that no other third party raised concerns over the impact of Graphic obtaining food contact approval in the EU for its 'Omnikote' raw carton-board.

Third party views

120. The CMA has sought views on the merger from customers and competitors of the merging parties. Third party comments have been referenced in this decision where relevant.
121. Although most customers of food packaging were not concerned, three customers of the parties did raise some unilateral concerns, which have been discussed above.
122. Most competitors that responded to the CMA raised no concerns about the acquisition. Two competitors raised unilateral concerns (one relating to the food sector and another to the parties' position more generally in the food and beverage sector), which have been discussed above.

Decision

123. This merger will therefore **not be referred** to a Phase 2 investigation under section 33(1) of the Act.

Nelson Jung
Director of Mergers
Competition and Markets Authority
20 May 2014