

Anticipated acquisition by Multi Packaging Solutions UK Limited of Presentation Products Group Limited

ME/6497-14

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 26 February 2015. Full text of the decision published on 23 March 2015.

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

SUMMARY

1. Multi Packaging Solutions UK Limited (**MPS**) has agreed to acquire Presentation Products Group Limited (**PP**) (the **Merger**). MPS and PP are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of rigid box packaging for drinks products in the UK, specifically to Scotch whisky producers. The CMA has not considered it necessary to distinguish between packaging supplied to Scotch whisky producers and packaging supplied to producers of other drinks products, as the packaging supplied for different drinks products is sufficiently similar and at least one of the Parties and several competitors supply packaging across a range of drinks products.
4. The CMA considered whether the product scope should be widened to include types of premium packaging material other than rigid boxes, and supply to customers outside the drinks industry, but concluded that this would not be appropriate. The CMA found that whilst there is a degree of substitutability between different types of packaging materials, third party

views varied and rigid box packaging is often considered to be more premium than other materials, with the exception of wooden boxes, which are generally seen as too expensive to be a viable substitute. The evidence also suggests that it may not be easy for current suppliers of rigid boxes outside the drinks sector to begin supplying rigid box packaging to the drinks industry if they have not done so in the past.

5. The CMA also considered whether the Merger should be assessed on a narrower geographic scope than national, but again reached the conclusion that this would not be appropriate as the CMA found the Parties to be competing with suppliers located across the UK.
6. The CMA has therefore assessed the impact of the Merger in the supply of rigid box packaging for drinks products in the UK, where the Parties' combined share of supply is estimated to be around [30-40]%, with an increment of [10-20]%.
7. Although the Parties are close competitors, the CMA found that there will be sufficient competitors remaining in the market to exert a significant constraint on the Parties post-Merger. There are also a number of constraints outside the market for the supply of rigid box packaging for drinks products in the UK that will continue to exert additional competitive pressure on the Parties post-Merger, including constraints from suppliers of other types of premium packaging and suppliers located outside the UK.
8. The CMA considers that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. MPS is a UK subsidiary of Multi Packaging Solutions Global Holdings Limited, a global provider of print-based specialty packaging. Headquartered in the USA, it supplies a broad range of packaging, including printed folded cartons, labels, inserts/leaflets, rigid boxes and specialist packaging for a range of end-markets. The turnover of MPS in the year ending 29 December 2013 was around £222.8 million worldwide and around £201.6 million in the UK.

11. On 8 July 2014, MPS completed the acquisition of Armstrong Packaging Limited (**Armstrong**) in Arbroath, Scotland, a supplier of rigid box packaging with a particular focus on the drinks industry. Prior to this acquisition, the MPS group had no rigid box supply presence in the UK. Armstrong is now called Multi Packaging Solutions Arbroath Limited. Armstrong's total turnover in the financial year ending March 2013 was around £10.9 million.
12. PP is a premium packaging supplier based in Arbroath, Scotland. PP offers concept development, creative design, gift and novelty item sourcing, product manufacturing and assembly, packing and distribution, with the majority of its activities in the design and supply of rigid box packaging to the drinks industry. PP has two Asian subsidiaries, Presentation Products (Asia Pacific) Limited (a Hong Kong Company) and Dongguan Kuai Teng Trade Co., Limited (a Chinese company), which enable PP to source production from Asia. PP's turnover in the year ending 28 February 2014 was around £27.7 million worldwide and around [✂] in the UK.

Transaction

13. The Parties entered into a sale and purchase agreement on 26 November 2014, pursuant to which MPS agreed to acquire the entire issued share capital of PP.

Jurisdiction

14. As a result of the Merger, the enterprises of MPS and PP will cease to be distinct.
15. The Parties overlap in the supply of rigid box packaging for drinks products in the UK, with a combined share of supply in excess of 25% (with an increment), based on share of supply estimates provided by the Parties, and adjusted by the CMA as a result of its market testing process. These share of supply figures are set out in Table 1 at paragraph 67. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
16. Accordingly, the CMA 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.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 9 January 2015 and the statutory 40 working day deadline for a decision is therefore 5 March 2015.

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive as between the merging parties than these conditions.¹
19. In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual in this case.

Frame of reference

20. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.²

Product scope

21. The CMA's approach to market definition is to begin with the overlapping products of the parties, taking this as the narrowest plausible candidate product market and then to see if this can be widened on the basis of demand-side substitution. The CMA will also have regard to whether the market can be widened due to supply-side factors.³

¹ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

² [Merger Assessment Guidelines](#), paragraph 5.2.2.

³ For further details of the CMA's approach to market definition, please see [Merger Assessment Guidelines](#), paragraph 5.2.1 et seq.

22. Armstrong and PP overlap in the supply of premium packaging, predominantly in the supply of rigid box packaging to Scotch whisky producers. Rigid box packaging is a rigid form of packaging made largely of paperboard.
23. The Parties submitted that their focus on supplying Scotch whisky producers with rigid box premium packaging is a by-product of their location (Scotland) and history. In particular, the Parties explained that the primary premium drink produced in the UK is Scotch whisky, which has been a successful growth industry for many years and has exhibited a trend towards 'premiumisation', thereby increasing the demand from whisky producers for rigid boxes, which are seen as a premium packaging product.
24. An internal document from MPS⁴ discussing the rationale for the Armstrong and PP transactions states that [✂].
25. However, the Parties submitted that they have both quoted to supply customers in the drinks industry other than Scotch whisky producers. This is supported by information provided by the Parties regarding customer orders they have won and lost over the last few years (described in more detail at paragraph 33 below), which shows that at least one of the Parties has supplied rigid box packaging for drinks products other than Scotch whisky, including rum and gin.
26. Competitors told the CMA that packaging for different drinks products is relatively similar and described themselves as active within the drinks packaging sector, rather than specifically the Scotch whisky packaging sector. The CMA also notes that PP and several other competitors supply rigid box packaging to a number of different drinks producers, not just whisky producers. In addition, customers generally did not draw any distinction between suppliers of rigid box packaging to whisky producers and suppliers of rigid box packaging to producers of other types of drinks, and one whisky producer told the CMA that it looked for suppliers with a history of producing packaging for drinks products, rather than focusing exclusively on whisky.
27. Therefore, the CMA has not considered it necessary to distinguish between packaging for Scotch whisky and packaging for other drinks products, and has taken as the narrowest plausible candidate product market the supply of rigid box packaging for drinks products.

⁴ [Internal document from MPS].

28. The CMA has considered whether this candidate market should be widened to include:
- (a) types of premium packaging material other than rigid box; and/or
 - (b) the supply of rigid box packaging to customers outside the drinks industry.

Type of premium packaging material

29. The Parties primarily overlap in the supply of rigid box packaging. The Parties explained that rigid box packaging is a premium form of packaging in which the box containing the product is rigid, which confers a sense of luxury to the product inside and also protects the product.
30. The CMA considered the extent to which the frame of reference in this case could be widened beyond rigid box packaging, to include other types of premium packaging.
31. The Parties submitted that there is a single frame of reference for the supply of premium packaging, and that it would be inappropriate to further segment the market by packaging material.
32. On the demand side, the Parties submitted that the market for premium packaging covers all packaging used to convey a sense of luxury to the end user, who in most cases is a retail consumer. The Parties argued that rigid boxes are just one form of premium packaging and that customers have the option of using many different alternative materials, such as plastic, tin, glass, wood and carbon fibre in their premium packaging. According to the Parties, customers often consider the viability of a range of packaging materials at the design stage, and regularly alternate between different packaging materials for their premium packaging. The Parties provided a series of examples of customers switching between different premium packaging materials for their drinks products.
33. The Parties also provided the CMA with information regarding customer orders that each Party had won and lost over the last few years.⁵ The CMA understands that most orders are won and lost through informal processes, as opposed to formal tendering processes. The data provided by the Parties identifies around [X] instances of orders that the Parties have won and lost, with the majority (around [X]) being orders won. The Parties do not keep comprehensive records of work won and lost, and for the majority of orders

⁵ Lost customers included failed bids for new work as well as the loss of existing business. The data provided by MPS is for the last [X] years. PP provided information for the past [X] years, but submitted that the information for the last [X] months was more comprehensive than the data for the [X] months before that.

the Parties have been unable to identify who they were competing against, particularly for orders that they have won. The CMA has therefore considered carefully any inferences that can be drawn from the win/loss data, and has viewed the data as indicative only, alongside other evidence. Nonetheless, the CMA considers that the data does provide some insight into the competitive dynamics of the market.

34. In the win/loss data, PP identified [redacted] rigid box orders that it has lost over the last three years. Within this, PP identified that it has lost [redacted] rigid box orders to other rigid box suppliers and [redacted] rigid box orders because customers moved to materials other than rigid box. These materials were carton ([redacted]) and wooden boxes ([redacted]). There were also a number of lost orders for which PP was unable to identify who they had lost the order to, so it may be the case that additional orders were lost to other types of packaging. The data provided by MPS did not generally attribute the loss of orders to a particular source, other than for orders that were split with other suppliers.
35. The CMA considers that the examples in the win/loss data of customers switching away from rigid box to other packaging materials provide evidence of some constraint being exerted on rigid box packaging by those other packaging materials.
36. However, third parties provided mixed views on the substitutability between rigid box packaging and other types of packaging on the demand side.
37. The CMA asked third parties whether customers would be likely to switch from using rigid box to using a different packaging material if the price of rigid box packaging were to increase by 5%.⁶ Although a number of customers and competitors indicated that there was a degree of substitutability between rigid box and other packaging materials, in particular tubes, wooden boxes, folding cartons and rigid plastic, third party responses varied significantly as to the extent of substitutability, often depending on whether third parties perceived other packaging materials to be sufficiently premium or of a sufficiently high quality, and on the price differential.
38. For example, although wooden box packaging was often regarded as sufficiently premium by customers, many third parties considered it to be more expensive and therefore not an appropriate substitute. Although some third parties viewed materials such as tubes, folding cartons and rigid plastic as substitutable for rigid box, others considered that these were not sufficiently premium.

⁶ See [Merger Assessment Guidelines](#), paragraph 5.2.12.

39. On the supply side,⁷ the Parties noted that PP, and many of its competitors such as MW Creative (MW Luxury Packaging) and Supremia, supply a range of different premium packaging materials (whether they manufacture them themselves or source them externally).
40. However, third party submissions indicated that, whilst there were examples of some suppliers supplying a range of different types of packaging, different types of packaging required different manufacturing equipment and techniques, and it was not easy to switch production between them.
41. Based on the evidence set out above, the CMA considers that, whilst there is a degree of substitutability between different types of packaging materials, rigid box packaging is often considered to be more premium than other materials, with the exception of wooden boxes, which are generally seen as too expensive to be a viable substitute. Therefore, on a cautious basis, the CMA has not widened the frame of reference to include materials other than rigid box packaging. However, the CMA has considered the constraints imposed on the Parties by suppliers of other packaging materials in the competitive assessment.

Supply to customers outside the drinks industry

42. The Parties submitted that it would not be appropriate to segment the premium packaging market by reference to the categories of products being packaged, due to the clear supply-side substitutability between rigid box packaging supplied to different industries. The Parties argued that there is no real difference between rigid box packaging supplied to different industries. They all involve the same production assets and it is not difficult to switch between supplying to different industries.
43. The CMA notes that there are several suppliers of rigid box packaging that supply packaging for different products. For example, PP supplies rigid box packaging to the drinks industry as well as for gift boxes.
44. Although third parties generally acknowledged that it was not hard to switch between supplying rigid box packaging to different industries, some third parties identified certain technical difficulties with regard to such switching, and also identified suppliers as focusing on supplying to particular industries or supplying packaging for particular types of products.

⁷ [Merger Assessment Guidelines](#), paragraph 5.2.17 et seq, explains that although the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone, several narrower relevant markets may be aggregated into one broader one on the basis of supply-side factors.

45. One competitor submitted that many boxes supplied to the drinks industry still require a high level of manual labour, and that the production processes for these rigid boxes is very different to the processes for producing rigid box packaging for other product types. A further competitor explained that box making has evolved from being made by hand into more automated box production, but there are many processes involved and it can take time and experience to be able to run automated lines efficiently and proficiently. This competitor recognised that it is possible to learn how to do this, but explained that it is tricky.
46. A number of customers in the drinks industry also expressed a preference for using suppliers with proven capabilities to supply high quality products to the drinks industry, and one customer noted that, when selecting a new supplier, they would request samples of drinks packaging. Similarly, competitors generally recognised that reputation and experience in the drinks industry can be an important factor for customers.
47. Based on the evidence above, the CMA considers that it may not be easy for suppliers to begin supplying rigid box packaging to the drinks industry if they have not done so in the past. Therefore, on a cautious basis, the CMA has not widened the frame of reference to include the supply of rigid box packaging to industries other than the drinks industry. The potential constraint exerted on the Parties from other suppliers of rigid box packaging, currently supplying to industries outside the drinks industry, has been considered in the competitive assessment.

Geographic scope

48. The Parties submitted that the premium packaging market is global in scope. They explained that many customers, such as Diageo, Chivas, Grant's, LVMH, Chanel and L'Oréal, are global and source their packaging from all over the world. They stated that UK customers also commonly source packaging from overseas.
49. The Parties submitted that over the last 15 years customers have increasingly been requesting more complex products that are more 'premium'. The increased labour and material costs as a result of this has made sourcing premium packaging from China economical, as labour and material costs are lower and these savings outweigh the shipping costs. Today, the Parties explained, many European companies source premium packaging from Asian manufacturers (particularly from China, which offers comparable production quality).

50. In any event, the Parties do not believe that defining a geographic market narrower than the UK would be appropriate.
51. Both Parties' rigid box manufacturing capabilities are located in Arbroath, Scotland, and the Parties primarily overlap in the supply of rigid box packaging to the Scotch whisky industry. The CMA therefore considered whether a narrower geographic market than national would be appropriate based on the location of competing suppliers and customers, and whether it could be appropriate to consider the market as wider than national.

Segmentation by location of suppliers and customers

52. All of MPS' rigid box customers are located in Scotland. PP deals with large customers in Scotland, England and internationally, but PP's largest rigid box customer is located in Scotland, and PP delivers the majority of its rigid box packaging supplied to the drinks industry to sites located in Scotland.
53. Some of the Parties' internal documents indicate that Scotland may be considered a relevant market for the supply of rigid box to the drinks industry. One of the Parties' internal documents⁸ compares specific drinks customers' spend with MPS as compared to "Competitors" for different packaging types, including rigid box. For each customer, this document divides spend across the world into regions, with Scotland being identified as a separate region (the others being Europe, USA, Asia and Other).
54. From the demand side, customers in general indicated that lead-time was important, with one customer noting that this can be more important than price, and customers also expressed a preference for using local suppliers. Advantages that customers gave of using local suppliers included shorter lead-times, the ability to visit suppliers and resolve issues faster, and that it gives flexibility as it is possible to order smaller volumes and adapt orders to fluctuations in demand.
55. However, third party submissions also indicated that Scotch whisky companies currently purchase rigid box packaging from suppliers located across the UK. A number of these suppliers outsource production of rigid boxes overseas, predominantly from China. The CMA has also received evidence indicating that Scotch whisky companies source some of their rigid box requirements directly from overseas, for example from France and Germany.

⁸ Spreadsheet [Internal document from MPS].

56. In line with this third party evidence, the Parties' win/loss data also indicates that both Parties compete with, and have won and lost business to suppliers outside Scotland. According to this data, of the approximately [X] orders won, the Parties have shared [X] orders with [X], and of the approximately [X] orders lost, the Parties have lost [X] orders to [X], over the last three years. In the Parties' view, the data understates this effect as the Parties have been unable to identify in the data the winning bidder for every lost order.
57. The majority of customers that the CMA contacted during its investigation also stated that they would be willing, in response to a 5% increase in price charged by UK-based rigid box suppliers, to switch to using suppliers located outside the UK. However, some customers also indicated that it can be difficult to establish a working relationship with new overseas suppliers and that doing so would require planning, and one customer stated that it would prefer not to have to change to a non-UK supplier.
58. On the supply side, the majority of competitors contacted by the CMA during its investigation stated that they have the capability to supply to locations across the UK. One competitor noted that transport costs are high for rigid boxes, and estimated there to be a premium of around 5% due to transport costs when supplying rigid boxes across the UK to Scotland, as compared to a local supplier in Scotland. However, a further competitor noted that, although transport costs are high, because you are essentially shipping air, this is worth it for high value boxes. Another third party told the CMA that it had recently received quotes for a rigid box product from UK and China based producers and that the end price (including delivery) quoted by the Chinese supplier was significantly cheaper.
59. A competitor also explained that Scotch whisky producers often want innovative products, and may prefer more complicated boxes that need to be made by hand. The production of these boxes needs to be carried out in a lower cost country, such as China, and it is labour costs, rather than freight costs, driving the cost of these boxes.
60. On a cautious basis, the CMA has considered the Merger on the narrowest geographic market. Based on the evidence set out above, in particular that Scotland-based customers currently purchase rigid box packaging from suppliers located across the UK, and that most competitors the CMA contacted have the capability to supply to locations across the UK, the CMA considers that a narrower geographic market than national would not be appropriate. The CMA has therefore considered the impact of the Merger on a UK-wide basis. The CMA acknowledges that some customers source rigid box packaging directly from suppliers located outside the UK, and the

potential constraint exerted on the Parties from such suppliers has been considered in the competitive assessment.

Conclusion on frame of reference

61. For the reasons set out above, the CMA has considered the impact of the Merger in the frame of reference of the supply of rigid box packaging for drinks products in the UK.
62. However, it was not necessary for the CMA to reach a conclusion on the frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Competitive assessment

Horizontal unilateral effects

63. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.⁹ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the supply of rigid box packaging for drinks products in the UK.

Shares of supply

64. The Parties provided the CMA with estimated shares of supply for the supply of rigid box packaging to the drinks industry in the UK. Through its market testing, the CMA was able to obtain more accurate figures from a number of rigid box suppliers, but was not able to verify revenue figures for every competitor in the market. The CMA revised the estimated shares of supply provided by the Parties based on the additional information received during its market testing, and these revised figures are set out in Table 1 below. The main adjustments to the share of supply figures provided by the Parties were a small reduction in the shares of supply of PP and MPS and some modest changes, mostly increases, in the shares of supply of some of the other suppliers.

⁹ [Merger Assessment Guidelines](#), paragraph 5.4.1 et seq.

65. The CMA considers that the estimated shares of supply in Table 1 below provide an indication of the current market position in the supply of rigid box packaging to the UK drinks industry, but must be interpreted with a degree of caution due to the inability to fully verify the figures with all market participants.
66. Table 1 highlights the main players in the industry. This indicates that PP is the largest and MPS is the third largest supplier of rigid box packaging to the drinks industry in the UK, and that the combined entity would be by far the largest supplier in this market.
67. However, Table 1 also shows that there are a significant number of other, smaller players in the market. The CMA has considered whether the Parties compete particularly closely, as well as the competitive constraint imposed on the Parties by smaller suppliers, to determine whether the degree of competition lost as a result of the Merger might be understated by the share of supply estimates in Table 1.

Table 1: Estimated shares of supply – rigid box packaging supplied to the drinks industry in the UK (in no particular order)

<i>Company name</i>	<i>Location</i>	<i>Estimated share of supply</i>
Presentation Products (PP)	Arbroath	[20-30]
Armstrong Packaging (MPS)	Arbroath	[10-20]
<i>Total</i>		[30-40]
London Fancy Box	Kent	[0-10]
Pollard Boxes	Leicester	[0-10]
Supremia	Middlesex	[0-10]
MW Luxury Packaging	Royston	[10-20]
Clarke Rubicon	Leicester	[0-10]
Robinson Paperbox	Chesterfield	[0-10]
McLaren Blue Box Design	Stirling	[0-10]
Leo Luxe	Reading	[0-10]
New Vision Packaging	Bedfordshire	[0-10]
Box Perfect (Maurice Fish)	Clacton-on-Sea	[0-10]
Pendragon Presentation	Malvern	[0-10]
Professional Packaging Services (PPS)	Bradford	[0-10]
Differenti-8	Derby	[0-10]
International Procurement Ltd	Bradford	[0-10]
Other suppliers		[20-30]
<i>Total</i>		100*

*Note that due to rounding the individual share of supply figures may not add up to 100%.

Closeness of competition and competitive constraints

68. The Parties submitted that, whilst they do operate in the same market segment and are, to a limited extent, in competition with each other, the

supply of rigid box packaging is competitive and there are several alternative suppliers. The Parties identified a number of other rigid box suppliers that supply the UK drinks industry, and specifically the Scotch whisky industry, and submitted that they also face competition from suppliers outside the UK as well as from manufacturers of other types of packaging.

Win/loss data

69. The Parties submitted that Armstrong has not engaged in any significant bidding activities over the past few years due to its focus on its main customer.
70. The win/loss data (described above in paragraph 33) indicates that in the last three years the Parties have bid for the same contracts on relatively few occasions. Of the approximately [redacted] contracts identified in the win/loss data, the Parties have bid for the same customer on [redacted] occasions, with PP winning [redacted] of these orders and MPS winning the other [redacted], and having shared contracts on a further [redacted] orders.
71. The win/loss data also indicates that the Parties have lost orders to a number of alternative suppliers over the last three years. As noted at paragraph 56 above, the data identifies two competitors in particular that the Parties have been competing with to a similar or greater degree than with each other, the Parties having shared orders with [redacted] on at least [redacted] occasions and having lost orders to [redacted] on [redacted] occasions over the last three years.
72. The Parties submitted that it has not been possible to identify comprehensively all competitors who bid for different orders, and for over [redacted] of the around [redacted] lost orders the Parties have not been able to identify who they have lost orders to. The Parties submitted that it was therefore likely that the win/loss data understates the number of times the Parties bid for orders alongside other competitors, and won and lost business to competitors. Whilst the CMA has been unable to verify with third parties which orders they bid for, it is consistent with the third party evidence set out below that there are a number of suppliers actively competing in the market.
73. As explained above in paragraph 33, the CMA considers that there are a number of limitations to the win/loss data, and also notes that even in the absence of bidding against each other the Parties could have been placing a constraint on each other through the threat of customer switching outside the bidding processes. Nonetheless, the CMA considers that the win/loss data provides relatively little evidence of the Parties competing for the same orders, especially relative to other competitors, suggesting that whilst they are competing, they may not be each other's closest competitors.

Third party views

74. The CMA received mixed views from third parties on the closeness of competition between the Parties.
75. A number of third party responses, including customers and competitors, indicated that the Parties were likely to be close competitors in the supply of rigid box packaging to the Scotch whisky industry, largely due to their location and history of supplying to large Scotch whisky customers. Two competitors were concerned that the Merger would reduce competition. One of these competitors was of the view that prices could increase, and the other considered that there was little chance of new entrants succeeding.
76. A number of customers noted that they use both of the Parties to supply them with rigid box packaging, and one customer told the CMA that it had switched between the Parties in the past. This customer was also concerned that the Merger will reduce competition as both Parties are significant suppliers to the drinks industry, and that it could reduce capacity available to customers if the Parties close or relocate some capacity.
77. However, other similar customers told the CMA that the Parties were not particularly close competitors, and that they had not requested quotes for the same products from both Parties. Further, one major whisky supplier did not list the Parties as one of the main credible suppliers of rigid box packaging to the drinks industry.
78. As part of the CMA's market testing, the CMA also sought to understand from third parties the extent to which other suppliers competed closely with the Parties and would constrain the Parties going forwards.
79. The estimated shares of supply in Table 1 reveal that there are a large number of companies supplying rigid box packaging to the UK drinks market, and third parties generally confirmed that a significant number of credible competitors will remain in this market post-Merger.
80. Customers provided the CMA with information on the suppliers of rigid box packaging that they used, and who they considered to be the main credible suppliers of rigid box packaging to the drinks industry. Whilst the number of competitors used and listed varied between customers, a majority of customers were not concerned about the Merger and named three or four alternatives to the Parties, and one major UK Scotch whisky producer named eight suppliers.
81. A competitor also identified two UK manufacturers other than the Parties as the main credible suppliers in the UK of rigid box packaging for the drinks

industry, and noted that in addition there are a substantial number of UK suppliers that source rigid box packaging from outside the UK, particularly from China.

82. UK suppliers identified by third parties included London Fancy Box, MW Creative, PPS and Pollard Boxes, amongst others, and one customer told the CMA that it had previously split an order [REDACTED]. Third parties also identified non-UK based suppliers as credible competitors, such as Cosfibel – based in France.

Internal documents

83. An internal document¹⁰ identified above at paragraph 24, prepared by MPS prior to the acquisition of Armstrong, indicates that [REDACTED].
84. The Parties submitted that this and other MPS internal documents [REDACTED]. The CMA has found that these internal documents are inconsistent with evidence the CMA received throughout its investigation, in particular evidence from third parties and the win/loss data. This evidence suggests that whilst the Parties are competing closely, the degree of competition may not be as close as suggested by the internal documents.
85. The CMA therefore considers that although this document provides strong *prima facie* evidence that the Parties are competing closely and would have continued to do so absent the transaction, it may overstate the position and must be read in conjunction with all the evidence.

Capacity of competitors

86. The CMA considered the extent to which other suppliers present in the market might be capacity constrained and therefore limited in their ability to exert a constraint on the Parties post-Merger.
87. The Parties submitted that neither of them considers capacity to be a constraint on themselves or other competitors within the market. To evidence this, they submitted that both Parties currently have spare capacity and would be able to increase capacity through the introduction of double, or even triple, shift patterns if necessary.
88. The CMA asked competitors whether they had spare capacity and would be able to expand in order to meet additional customer orders. Whilst the CMA has been unable to verify whether every competitor had the ability to expand,

¹⁰ [Internal document from MPS].

a number of competitors confirmed to the CMA that they had spare capacity and could accommodate significant expansion in demand for the supply of rigid boxes to the drinks industry.

89. No competitor told the CMA that they were significantly constrained by capacity.
90. One rigid box packaging supplier, [redacted], told the CMA that it intended to expand its Scotch whisky business in the future, noting that it had the capacity to do so.
91. The CMA considers that the evidence suggests that several competitors remaining in the market post-Merger would be able to expand supply and exert a significant constraint on the Parties.

Constraints from suppliers outside the drinks industry

92. As noted above in the frame of reference section, the Parties submitted that they face competition from a wide range of different suppliers, including those focusing on packaging outside the drinks industry, those located outside the UK and from suppliers of different types of packaging.
93. As set out above, the CMA considers that none of these constraints on their own is likely to sufficiently constrain the Parties such that they should be included within the same frame of reference.
94. Nonetheless, the CMA considers that there is some evidence that the Parties will face a constraint from these other suppliers, albeit weaker than from other rigid box suppliers supplying to the drinks industry.
95. For example, the win/loss data shows that the Parties have lost orders to suppliers of different forms of packaging. This was also supported by responses from third parties.
96. Further, a number of customers, but not all, told the CMA that they currently use suppliers outside the UK and would consider switching from UK suppliers to suppliers located outside the UK. One such supplier mentioned by more than one customer was Cosfibel, a rigid box packaging supplier based in France that supplies to the UK drinks industry.
97. The CMA received less evidence that suppliers of rigid box packaging for other types of product would constrain the Parties significantly. However, suppliers of rigid box packaging told the CMA that there were not significant differences in the manufacturing process of rigid box packaging for different products and that it was possible to refocus on different sectors.

98. The CMA therefore considers that in addition to the constraints from other suppliers of rigid box packaging for the drinks industry, there are a number of constraints outside this frame of reference that will continue to apply some additional competitive pressure on the Parties post-Merger, including suppliers of other types of premium packaging and suppliers located outside the UK.

Conclusion on horizontal unilateral effects

99. As set out above, the CMA considers that despite the Parties being close competitors, a sufficient number of rigid box packaging suppliers for drinks products in the UK will remain to constrain the Parties post-Merger, and the Parties will also face competitive constraints from outside this frame of reference. Accordingly, the CMA has found that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of rigid box packaging for drinks products in the UK.

Barriers to entry and expansion

100. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹¹
101. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

102. The CMA contacted customers and competitors of the Parties. The majority of customers did not raise concerns regarding the Merger. One customer raised a concern, which has been taken into account in the competitive assessment above.
103. Three competitors raised concerns regarding the Merger. One competitor raised the concern that as a result of the Merger, PP, Armstrong and Chesapeake¹² (now MPS) would all be under the same control. This

¹¹ [Merger Assessment Guidelines](#), paragraph 5.8.1 et seq.

¹² MPS results from the transaction by which the Carlyle Group and Madison Dearborn Partners LLC (MDP) acquired joint control, through a joint holding structure, of: (i) Chesapeake Service Ltd (UK) and its subsidiaries, previously solely controlled by Carlyle; and (ii) Multi Packaging Solutions Inc. and its subsidiaries (USA), previously solely controlled by MDP.

competitor was concerned that the merged group would have a sizeable amount of business across various sectors and products within the Scotch whisky market, potentially providing it with an unfair advantage enabling it to lower margins across a number of products.

104. The CMA considers that this complaint is not specific to the Merger being reviewed in this case, as it concerns the combined effect of this Merger together with two previous transactions carried out by MPS (ie relating to Armstrong and Chesapeake). Looking specifically at the effects of the Merger under review, the CMA does not consider this complaint to raise concerns that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition. PP is mainly active in the design and supply of rigid box packaging to the drinks industry, and MPS already has such capabilities due to its acquisition of Armstrong. The Merger therefore does not expand the portfolio of products offered by MPS. Furthermore, as established above, the CMA considers the Parties will continue to face several constraints post-Merger. As such, the CMA considers that the Merger will not give rise to the concern that the Parties will have an unfair advantage within the Scotch whisky market.¹³
105. Other third party concerns and comments have been taken into account, where appropriate, in the competitive assessment above.

Decision

106. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the UK.
107. The Merger will therefore **not be referred** under section 33(1) of the Act.

Jonathan Parker
Director of Mergers
Competition and Markets Authority
26 February 2015

¹³ For the CMA's assessment of conglomerate effects, see [Merger Assessment Guidelines](#), paragraph 5.6.13.