

Completed acquisition by Sims Group UK Limited of Dunn Brothers (1995) Limited

ME/5037/11

The OFT's decision on reference under section 22(1) given on 11 August 2011. Full text of decision published 18 August 2011

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

PARTIES

1. **Sims Group UK Limited** is a subsidiary of Sims Metal Management Limited (jointly with its group of companies, '**Sims**'), which is headquartered in the US and listed on the Australian and New York stock exchanges. Sims is the world's largest metals and electronics recycler and had revenues of around £5 billion in 2010.
2. **Dunn Brothers (1995) Limited ('Dunn')** is a metals recycler. Its main facilities are near Birmingham, with further facilities in Southampton, Ipswich, Liverpool, Avonmouth and Barry. Dunn's total turnover was around £136 million and its UK turnover was around £31.6 million in its financial year ended 30 September 2010.

TRANSACTION

3. Sims acquired all shares in Dunn on 7 May 2011 ('**the Transaction**'). Sims announced the Transaction on 9 May 2011.

JURISDICTION

4. As a result of the Transaction Sims and Dunn ceased to be distinct. These enterprises overlap in the purchasing, processing and sale of scrap metals. The parties' combined share of sales in the UK is below 25 per cent and, for the purposes of the share of supply test in section 23 of the Enterprise

Act 2002 ('the Act') and in view of the evidence obtained during the investigation, as set out below, it did not appear to be reasonable to consider the parties' share of sales on a smaller geographic basis.

5. However, some third parties submitted that the parties have a combined share exceeding 25 per cent of purchases of scrap metals in South Wales, the South West of England and possibly the Midlands. Sims disputed that this was the case. Neither third parties nor Sims were able to provide evidence to support their submissions, but figures provided by Sims regarding the parties' purchases and a rough estimate of scrap metal 'arisings' in South Wales and the South West of England suggested that the parties' combined shares in these regions were significantly higher than 25 per cent. This is supported by the fact that, with their competitor EMR, Sims and Dunn are the only of the largest group of scrap metal merchants with facilities in these regions (see at paragraphs 48 and 49 below). The OFT also believes that regional purchases of scrap metal is a reasonable description of a set of goods or services for the purposes of the share of supply test,¹ as the evidence regarding transport costs and location of sellers to Sims' and Dunn's facilities (see further at paragraphs 27 and 28 below) suggests that at least a significant group of small scrap metal merchants can only economically sell their scrap metal within the region they are located in.
6. The OFT therefore believes that it is or may be the case that the share of supply test is met and that the Transaction has resulted in the creation of a relevant merger situation.
7. The Transaction was announced on 9 May 2011. The OFT launched an own-initiative merger investigation by sending an enquiry letter on 19 May 2011. The statutory deadline is 9 September 2011 and the administrative deadline is 11 August 2011.

MARKET DEFINITION

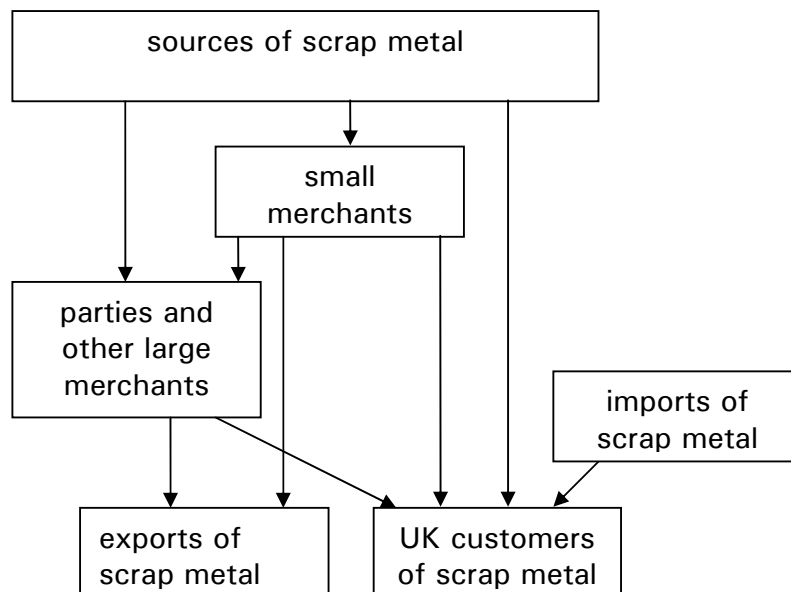
Background

8. The parties overlap in the collection, processing and trade of ferrous and non-ferrous scrap metal 'arisings'. Evidence obtained from Sims and third parties shows that the main sources of these are vehicles, such as

¹ OFT's Mergers Jurisdictional and procedural guidance, June 2009 (OFT527), paragraph 3.55.

scrapped cars; surplus metals from industrial processes, such as off-cuts from car factories; the construction industry, including building demolition; industrial and agricultural equipment; electronics and electrical equipment; and packaging material, such as food and beverage cans.

9. Scrap metal can be characterised as ferrous scrap and non-ferrous scrap. Ferrous scrap is iron-based and includes steel. Non-ferrous scrap includes metals such as aluminium, copper, lead and zinc. Non-ferrous scrap is collected in smaller volumes but is generally more valuable.
10. The metals recycling industry chain consists of a significant number of small to medium-sized businesses as well as some large, nationally active businesses, including the parties. The smaller businesses often sell their scrap metals on to larger businesses, but some also sell directly to users of scrap metals such as steel manufacturers. More than two thirds of scrap metal collected in the UK is exported, mostly by the largest businesses but also by some of the smaller businesses. The main structure of the industry is summarised in the diagram below.



11. Sims submitted that it collects arisings directly from demolition sites, factories, vehicle dismantling treatment facilities and tradesmen such as plumbers. Sims also collects arisings from smaller scrap metal merchants and local authority waste transfer stations. Sims noted that by their nature, arisings are often collected in small quantities and are often handled in the first instance by a multitude of small scrap metal merchants, including 'one man and a van' traders.

12. The processing of scrap metals after collection includes sorting and weighing, and may also include shearing (reducing the size of large pieces of metal by cutting them to parameters set by the US-based Institute of Scrap Recycling Industries) and baling/compacting (to improve ease of handling and transportation). These first stages of processing are often carried out by the smaller merchants, which then sell the scrap metal to the larger merchants such as the parties for further processing (although these merchants also carry out the first stages of processing themselves) or, in some cases, directly to scrap metal users such as steel manufacturers. At the scrap processing plants owned by the larger merchants the scrap metals undergo multiple-step separation, cleaning and shredding (turning the remaining scrap into fist-size lumps). These larger merchants sell their scrap to UK users and/or export their scrap.
13. The UK users of scrap metals are mainly steel plants and smelting foundries. Steel plants also use arisings from their own manufacturing processes. Most scrap metals are exported, with Turkey, India and Spain the largest buyers of ferrous scrap metals and China, Germany and India the largest buyers of non-ferrous scrap metals. The UK also imports small quantities of scrap metals, mostly from the Republic of Ireland for ferrous scrap.²
14. Scrap metal may be bought by processors on a spot basis or, more rarely, on a contract basis. Contract prices for ferrous metals are often linked to the prices listed in trade publications, such as the Metals Bulletin or Let's Recycle, and for non-ferrous metals to the prices on the London Metal Exchange.³ Other factors relevant to contract and spot prices include the balance between supply and demand of scrap at the moment the price is determined, metal grade, quantity, international prices, and transportation costs.

Product market

15. Scrap metal may be classified according to whether it is ferrous or non-ferrous, or more granularly by metal type (for example, aluminium or copper) and by grade. The scrap metal industry may further be divided into collection and processing on the one hand, and trade (that is, sale of scrap to users after processing) on the other hand.

² ISSB Limited (International Steel Statistics Bureau).

³ The London Metal Exchange is a non-ferrous metals market, with the exception of steel billets.

16. In a 2007 decision, the European Commission left open whether collection/processing and trade are separate markets as well as whether a distinction should be made between carbon steel scrap and stainless (or alloyed) steel scrap. The European Commission did not consider non-ferrous metals in its decision.⁴
17. These distinctions are considered below.

Types of scrap

18. In terms of the trade of ferrous/non-ferrous scrap and different metal types, third parties advised the OFT that the different metals have distinct uses and properties, including durability and price. This is likely to mean that they are not demand-side substitutes.
19. That said, the OFT did not receive any evidence to suggest that, in line with the European Commission's decision (paragraph 16 above), a distinction should be made in this case between different types of steel scrap on the demand side.
20. The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the OFT may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in prices. They may do so when the same firms compete to supply these different products and the conditions of competition between the firms are the same for each product.⁵
21. Sims stated that at its and Dunn's processing plants, different types of metals are separated, cleaned and prepared for shredding/baling for onward sale to ferrous and non-ferrous metal users. The similarity in the technology and production processes would tend to indicate that ferrous and non-ferrous scrap are supply-side substitutes. Moreover, the parties' main competitors all supply both ferrous and non-ferrous scrap, although it is not clear if they also all supply each type of non-ferrous scrap. The parties' shares in the trade of ferrous and non-ferrous metals are significantly different and also vary between types of non-ferrous metals (see Tables 1 and 2 below), which suggests that supply-side substitution may be limited.

⁴ Case COMP/M.4495, *ALFA Acciai/Cronime/Remondis/TSR Group*, Article 6(1)(b) decision of 6 February 2007, paragraphs 14 to 19.

⁵ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.2.17.

Metal grades

22. Scrap metal is generally produced in different grades, distinguishing, for example, exact metal composition, size and shape, which have different prices. Most third parties stated that the relative prices of different grades mean that it would be uneconomic to switch between the different grades following a small but significant non-transitory increase in price. Further, a user of scrap metal told the OFT that, occasionally, it is unable to fulfil its demand for particular grades of metal and that it does not believe that it can substitute to different grades.
23. Set against this, Sims' view is that the demand for ferrous scrap is driven by steel production and global demand for steel, implying that demand conditions for different grades of ferrous scrap metal are similar. Third parties generally agreed that these conditions are indeed similar, even if customers cannot substitute between the different metal grades. Moreover, the supply-side factors identified above in relation to different metal types apply even more strongly for both ferrous and non-ferrous metal grades.

Collection/processing and trade of scrap metal

24. The evidence received by the OFT on the possible existence of separate markets for the collection and processing of scrap metal on the one hand and the trade of scrap metal on the other hand was mixed. As discussed in more detail below, Sims and third parties referred to the different geographic dimensions of these activities. The European Commission stated that the German competition authority, the Bundeskartellamt, had found that these activities form separate markets, and that its own market investigation broadly confirmed this, although it left the final market determination open.⁶ However, many scrap merchants are active in all of collecting, processing and trade, although the trade activities of in particular small merchants may be limited.

Conclusion

25. Overall, there appears to be limited or no demand-side substitutability between the types and grades of metal. There does appear to be supply-side substitutability between at least the different grades of ferrous and non-ferrous scrap metal. The evidence on the degree of supply-side

⁶ Case COMP/M.4495, *ALFA Acciai / Cronimet/Remondis/TSR Group*, Article 6(1)(b) decision of 6 February 2007, paragraphs 14 to 19.

substitutability between ferrous and (different types of) non-ferrous scrap metal is mixed. On a cautious basis, the OFT has therefore considered separate markets for the supply of ferrous scrap metal of all grades and different types of non-ferrous scrap metal of all grades. The OFT has further, also on a cautious basis, distinguished between collecting/ processing on the one hand and trade on the other hand. It was not necessary for the OFT to reach a conclusion on the exact scope of the relevant product market given that no competition concerns arise on any plausible narrow product market, as set out below.

Geographic scope

26. Both Sims and third parties identified different geographic markets for the collection and processing of scrap metal on the one hand, and trade of scrap metal on the other hand.

Collection and processing

27. Sims submitted that the geographic scope of the collection and processing of scrap is national. It stated that most merchants source across a wide geographic area and that its main competitors are all active throughout the UK, with scrap metal being transported over significant distances to processing plants. Information provided by Sims about the distance between its and Dunn's facilities and their suppliers of scrap metal show that there is large variation in distances between facilities. The information suggests that at least some suppliers travel significant distances (up to around [] miles), but the average distance for most of the parties' facilities in at least South Wales and the South West of England was significantly below [] miles. Sims estimated the transport costs of its and Dunn's main suppliers in these regions and the Midlands to be around [] per cent.
28. Third-party comments on the geographic scope of the collection and processing of scrap metal were mixed. Some third parties indicated to the OFT that in particular smaller scrap merchants are limited in the geographic range over which they can supply scrap metal to processors. This is likely to be because of the small volumes that they sell and their inability to transport scrap metal by rail. Typically they will supply scrap to processors in their region. Third-party estimates of transport costs for merchants supplying ferrous metal ranged from two to 10 per cent. For non-ferrous metals, third parties indicated that transport costs were significantly lower due to their higher unit price.

29. By contrast, sales by industrial scrap providers such as car factories may attract international bidders. For example, one third party advised that in a recent tender, a German firm bid against the parties to purchase unprocessed 'cast-offs' from an industrial supplier.
30. In its recent decision, the European Commission suggested that the market for the collection and processing of ferrous scrap was regional. The German competition authority, the Bundeskartellamt, stated the regional markets were around 50 to 200 kilometres (around 31 to 125 miles) wide.⁷
31. The evidence on whether the market for collecting scrap is regional or wider is therefore mixed. Taking a cautious approach, the OFT has considered this element of the Transaction on a regional basis for both ferrous and non-ferrous metals.

Trade

32. Scrap metal is purchased in the UK mainly by steel plants and smelting foundries. Estimates by Sims and third parties show that most scrap metal processed in the UK is exported (around two thirds). The OFT understands that most of the parties' main competitors export at least some of their scrap metal and that at least one competitor exports nearly all of its scrap. Imports into the UK are small (less than 10 per cent), which is likely due to the fact that the UK generates a significant surplus of scrap metal.
33. Sims submitted that the market for trade in scrap metals is international in scope, given the large export volumes and the ability of all merchants to export scrap since the advent of containerisation. Sims also noted that international prices were important in determining domestic prices. Sims further submitted that UK users of scrap metal buy scrap across the country rather than on a regional basis, with steel companies for example having railheads located in different regions from their factories, and also import some scrap.
34. This was broadly confirmed by third parties. Also, most third parties believed that a non-transitory five per cent increase in international prices would lead to an increase in exports by a hypothetical UK monopolist, whether of ferrous scrap metal, non-ferrous scrap metal, or both. The

⁷ Case COMP/M.4495, *ALFA Acciai/Cronimet/Remondis/TSR Group*, Article 9(3) decision of 6 February 2007 (referring part of the merger to the German competition authority), paragraphs 18 to 21.

European Commission's recent decision also strongly suggested that the market is at least EEA-wide, if not worldwide.⁸

35. The overwhelming evidence from the parties and third parties is therefore that the market for trade in scrap metal is international in scope. The OFT, however, has not needed to conclude on this point as the Transaction does not raise concerns even when the market is assessed at the UK level.

Conclusion

36. For the reasons set out above, the OFT has considered the competitive impact of this merger by reference to the trade in ferrous and non-ferrous scrap metals in the UK, and the regional collection and processing of ferrous and non-ferrous scrap metals.

Unilateral effects

Trade

37. Table 1 below shows the shares of the parties and their main competitors in the sale of ferrous scrap metals.

⁸ Case COMP/M.4495, *ALFA Acciai/Cronimet/Remondis/TSR Group*, Article 6(1)(b) decision of 6 February 2007, paragraphs 24 to 26.

Table 1: Share of supply of ferrous scrap metal (volumes in thousands of tonnes)

	UK sales of ferrous scrap metal	Share of sales in the UK, per cent
Sims	[]	[10-20]
Dunn	[]	[0-10]
Merged firm	[]	[10-20]
EMR	[]	[25-35]
Norton	[]	[0-10]
Metal & Waste	[]	[5-15]
SITA	[]	[0-10]
Van Dalen	[]	[0-10]
Sub-total	[]	[60-70]
Imports	265	8.3
Others	[]	[25-35]
Total	3,200	100

Sources: Sims (for the merged parties' figures and an estimate of the total market figure), Sims' competitors (for their own figures) and ISSB Ltd (import figure).

38. Sims noted that the total market size in Table 1 may slightly over-estimate the volume of sales to UK users of ferrous scrap, since some of the imports of ferrous scrap are re-exported. As a result, the shares of the parties and their competitors may be slightly under-estimated. However, even if all imports were re-exported, the merged parties' combined share would increase only to around [15-25] per cent, with an increment of around [0-10] per cent.
39. The OFT also received an estimate of the size of UK sales from a third party, which is somewhat smaller than Sims' estimate (2.8 million tonnes). However, on the basis of this estimate the merged parties' combined share would not change significantly, increasing to around [15-25] per cent, with an increment of around [0-10] per cent.
40. Table 2 below shows the parties' shares in the sale of several types of non-ferrous scrap metals. The OFT did not receive sufficient information to calculate the parties' competitors' shares.

Table 2: The parties' shares of supply of some non-ferrous metal types (volumes in tonnes)

	Aluminium	Share, per cent	Copper	Share, per cent	Lead	Share, per cent
Sims	[]*	[0-10]	[]	[10-20]	[]	[0-10]
Dunn	[]*	[0-10]	[]	[0-10]	[]	[0-10]
Merged firm	[]*	[0-10]	[]	[10-20]	[]	[0-10]
UK domestic sales	412,130		21,335		160,465	
Imports into UK	147,870		21,465		4,535	
Total	560,000	100	42,800	100	165,000	100

* Consisting of aluminium solids and aluminium swarf/foil.

Source: Key Note 2009 Metal Recycling Report and parties' sales figures.

41. There are several types of non-ferrous metals for which the OFT did not receive sufficient information to calculate the parties' combined shares. The OFT has not, however, received any evidence to suggest that these shares in other types of non-ferrous metal, such as brass or tin, are significantly higher than the parties' shares in the types presented above. This also applies if, as for ferrous scrap, some of the imports of types of non-ferrous scrap were re-exported rather than sold in the UK. The greatest change would be for copper, where, if all imported copper was re-exported, the parties' combined share of domestic sales would be around [30-40] per cent, with an increment of around [five-15] per cent. However, this combined share is still below the level that would normally give the OFT cause for concern, as set out below.
42. The parties' combined shares for both ferrous scrap and non-ferrous scrap as set out above are not at a level that would normally give the OFT cause for concern over unilateral effects, given that the OFT has drawn the markets narrowly.⁹
43. Moreover, Sims submitted that it faces competition from a number of firms, including EMR, Metal & Waste, SITA and Van Dalen, as well as Norton (which currently has low UK sales but significant exports) and a large number of other large and medium-sized firms. Third parties broadly confirmed this and told the OFT that several competitors have sufficient

⁹ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.3.5.

scale to be able to supply a range of metals in relatively large quantities. Apart from the direct constraint placed on the parties from these firms, Sims and third parties suggested that some customers already collect unprocessed scrap to process themselves and others are able to develop their own processing facilities.

44. Some third parties expressed concern that the merged parties will be able to raise prices in the UK by exporting Dunn's volumes of scrap metal, reducing the supply of scrap metal in the UK and converging national and international prices. In this regard, one third party told the OFT that it believed Dunn maintained some supplies to UK customers pre-merger as a method of diversifying its customer base and reducing its exposure to the risks associated with international sales, such as exchange rate risk or customers defaulting on sales credit.
45. Set against this, other evidence available to the OFT indicates that:
- exports accounted for around three quarters of Dunn's total sales pre-merger and there is no suggestion that Dunn was physically unable to export a higher percentage
 - the parties' combined share in the UK is not at a level which would typically suggest that the merged parties have sufficient market share to substantially change UK prices
 - even if the merged parties were to export all of Dunn's scrap metal volumes, the net effect would in fact be a reduction in the combined firm's UK market share
 - Sims submitted that there are commonly used financial products available to exporters which can be used to limit their exposure to the risks associated with international sales¹⁰ and
 - pricing information provided by Sims suggests that Dunn's prices pre-merger were []. In particular, there was no systematic difference in unit prices charged by Sims and Dunn to their largest common customer over the past two years. In fact, in the past year Dunn's price was [].
46. Based on the evidence presented above, the OFT believes that there is no realistic prospect of a substantial lessening of competition on the basis of

¹⁰ Typically irrevocable letters of credit, often in the form of a guarantee from the customer's bank to the seller promising that the seller will receive the customer's payment for the full amount of the purchase and at the agreed time.

unilateral effects in the markets for trade in ferrous and (types of) non-ferrous scrap metal as a result of the merger. The merger does not significantly alter Sims' market shares in the UK. Moreover, the merged firm will continue to face competition from several competitors.

Collection and processing

47. As stated above with regard to the OFT's jurisdiction to investigate the Transaction (paragraph 5), some third parties submitted that the parties have a combined share exceeding 25 per cent in the collection and processing of scrap metals in South Wales, South West England and possibly the Midlands, although Sims disputed this.
48. Neither the parties nor third parties could provide the OFT with reliable evidence as to the parties' regional shares of purchases. Sims provided a rough estimate of scrap metal arisings in South Wales and South West England, based on average arisings per person in the UK multiplied by the population of these regions. Taking the combined purchases of scrap by the parties' facilities located in these regions as a percentage of these estimated arisings suggested shares of around [75-85] per cent in South Wales and [35-45] per cent in South West England. However, Sims submitted that this is likely to substantially over-estimate the parties' share of purchases in these regions because the purchases made by their local facilities are likely to include purchases of arisings from other areas, and because the estimate of arisings for in particular South Wales is likely substantially to under-estimate actual arisings in South Wales due to the relatively high concentration of heavy industry in this region.
49. A qualitative assessment of maps provided by Sims and a third party is consistent with the merged parties having at least a substantial share of purchases in South West England and South Wales, as the maps show that there are few major competitors to the parties in these regions. Sims, Dunn and EMR are the only merchants out of the largest seven listed in Table 1 above that are present in the South West and South Wales. The OFT noted that there are also some other purchasers in these areas (including smaller merchants and, in South Wales, the steel manufacturer Celsa), but it is not clear how big they are in the collection of scrap and to what extent the smaller merchants may be only intermediate purchasers.

50. In the Midlands, a significant number of the parties' competitors have sites in this or adjacent regions. The OFT has therefore not further considered the parties' shares in the Midlands.
51. On the basis of these shares of purchases, some third parties raised concerns in relation to the parties' buyer power in the purchase of scrap metal in South West England and South Wales.¹¹ Generally, an increase in buyer power as a result of a merger is not likely to give rise to unilateral effects. However, unilateral effects may arise from anticompetitive buyer power when (i) a merged firm has an incentive to reduce the amount it purchases (of scrap from scrap merchants, in this case) so as to reduce the purchase price and (ii) also has sufficient market power over its customers so that, as it reduces the quantity sold to them in the market for the trade of scrap, it can increase the selling price there.¹²
52. In the current case, however, neither limb (i) or (ii) of this theory of harm appears to be satisfied. For ease of exposition, it is easier to discuss limb (ii) first: here, the parties' combined market shares in the trade of scrap set out above do not appear to give them sufficient market power to increase national prices much to their customers.
53. On limb (i), the OFT notes that Dunn's purchases in South West England and South Wales – that is, the increment to any buyer power that Sims has – are very small. Dunn's purchases at its sites in these regions in the past year amounted to [0-10] per cent of arisings in each of these regions, as estimated by Sims. Sims submitted that this is likely to be an overestimate, as Dunn would also have purchased arisings from other regions at these sites. Dunn's purchases in these regions are also significantly below 10 per cent of Sims' pre-merger purchases in these regions. The merger therefore does not result in a substantial change in the buyer power, if any, that Sims already had before the merger.
54. Further on limb (i), the anticompetitive buyer power theory of harm requires that, if the merged parties were to reduce purchase prices, then scrap merchants would not find it profitable to sell to processors outside of their region. As noted above (paragraphs 27 and 28), although at least some of the parties' suppliers of scrap travel significant distances to deliver their

¹¹ Sims advised that, while it was historically the case that a customer would pay a scrap merchant to take away the customer's scrap metal, current metal prices have now led to merchants to **pay** customers for their scrap.

¹² *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.4.20.

scrap to the parties' sites in the relevant regions, the average distances were significantly below [] miles.

55. However, the OFT also received significant evidence that at least a number of scrap merchants do sell to processors outside of their own regions. For example, the OFT was informed that the parties' customers have bid against the parties for arisings, even when these customers do not have a plant in the scrap seller's region. Sims also provided some examples of competition from merchants in the Midlands that competed with one of Sims' sites in South West England to buy scrap from merchants located in South West England, although the OFT notes that this site is located relatively close to the Midlands. Further, there is evidence from a third party that a German firm with no UK processing facility bid in a recent tender for large volumes of arisings from a UK provider of scrap.
56. This evidence about purchasing from other regions may apply mainly to medium- or large-sized merchants due to their ability to achieve lower transport costs per unit due to their larger volumes, rather than to small merchants. However, such small merchants are less likely to be immediately affected by any (increased) buyer power on the part of the merged firm since the merged firm's medium- or large-sized competitors are likely to be alternative buyers for small merchants.
57. Lastly on limb (i), no regional scrap merchants have raised concerns in relation to the merger. Also, both Sims and third parties told the OFT that international prices for processed scrap metal are the key determinant of prices throughout the supply chain. Therefore, the transparency of international prices may negate any regional buyer concentration.
58. The balance of evidence above suggests that, whilst the parties generally purchase arisings from regional scrap merchants, at least the larger scrap merchants have the ability to supply outside of their region and the smaller merchants have these larger merchants as alternative buyers to the parties.
59. On balance, on the basis of the evidence above, the OFT concludes that the transaction does not lead to a reasonable prospect of a substantial lessening of competition in the collection and processing of scrap metal on the basis of anticompetitive buyer power.

BARRIERS TO ENTRY OR EXPANSION

60. Sims submitted that barriers to entry are low, in particular for small scrap merchants, and that there is substantial spare capacity for processing plants (shredders). Third parties told the OFT that the processing plants scrap metal generally have spare capacity and that the main factor limiting expansion is the scarcity of arisings. Two competitors to the parties advised that several firms had recently installed shredders. However, a significant number of third parties told the OFT that new entry is unlikely. Factors highlighted included regulatory barriers and the cost of financing credit sales.
61. However, as the merger raises no concerns, the OFT has not needed to conclude on whether the barriers to entry and expansion in this market are high.

THIRD-PARTY VIEWS

62. Third-party views have been discussed above where relevant. Several of the parties' customers and competitors raised concerns about the merger, but there were equally several customers and competitors that did not believe the merger would have a significant impact on competition.

ASSESSMENT

63. The merged parties overlap in the collection, processing and trade of ferrous and non-ferrous scrap metal arisings. Given the lack of demand-side substitutability and the mixed evidence with regard to supply-side substitutability, on a cautious basis the OFT has considered separate markets for the supply of ferrous scrap metal of all grades and different types of non-ferrous scrap metal of all grades. The OFT has further distinguished between collecting/processing of scrap metal on the one hand and trade in scrap metal on the other hand. Also on a cautious basis, the OFT has considered the merger based on a regional geographic scope of the former and a national scope of the latter, although the evidence suggested that the trade market is likely to be international.
64. The merged firm's shares in the trade of ferrous and (types of) non-ferrous scrap metals are not at a level that would normally give the OFT cause for concern over unilateral effects, and the increment resulting from the merger is minor. The merged firm continues to face competition from several

competitors. The OFT has found insufficient evidence for the concern expressed by some third parties that the merged firm would be able to raise UK prices by exporting a larger share of Dunn's volumes.

65. The merged firm's share of the collection and processing of scrap metal appears to be significant in South Wales and South West England and some third parties raised a concern about the firm's buyer power in these regions. However, given the small volumes Dunn buys in these regions, the merger does not result in a substantial change in any buyer power that Sims already had before the merger. Also, the balance of the evidence suggests that at least a significant number of the larger scrap merchants can supply their scrap to alternative buyers outside of their regions and the smaller merchants have these larger merchants as alternative buyers to the merged firm. Therefore, and given also the lack of market power in the trade market, the OFT has concluded that there is insufficient evidence for anticompetitive buyer power resulting from the merger.
66. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

67. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.