Sonoco and Weidenhammer

A report on the completed acquisition by Sonoco Products Company of Weidenhammer Packaging Group GmbH

3 July 2015

Website: www.gov.uk/cma

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The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets.

Contents

Page

Appendices

Summary

1. On 27 January 2015, the Competition and Markets Authority (CMA) referred the completed acquisition by Sonoco Products Company (Sonoco) of Weidenhammer Packaging Group GmbH (Weidenhammer) (the Transaction) for an in-depth (phase 2) merger inquiry. The CMA is required to address the following questions:

   (a) whether a relevant merger situation has been created; and

   (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.[1]

2. Sonoco is a US corporation and manufacturer of industrial and consumer packaging products and provider of packaging services. Sonoco's UK subsidiary for consumer packaging is Sonoco Limited (Sonoco UK) with UK plants in Chesterfield and Manchester.

3. Weidenhammer is a German company that manufactures and supplies consumer packaging products. Weidenhammer's UK subsidiary is Weidenhammer UK Limited (Weidenhammer UK) with one UK plant in Bradford.

4. Sonoco and Weidenhammer (the parties) overlap in the production of composite cans. These are supplied to customers for packaging both food and non-food products.

5. Sonoco completed its acquisition of Weidenhammer on 31 October 2014. Sonoco told us that the rationale for the acquisition was to enhance Sonoco's consumer packaging presence in Europe, and to leverage Weidenhammer's engineering technology and capabilities. Sonoco also stated that it would benefit from the technical expertise, facilities and personnel in place at Weidenhammer, which would enable it to fulfil a recently obtained contract efficiently without having to build a new plant.

6. Weidenhammer told us that a combination of personal and business reasons, particularly following the loss of a significant European contract, led to the sale of the global Weidenhammer company.

[1] Enterprise Act 2002 (the Act), section 35.

Counterfactual

7. We expect that, in the absence of the merger, Weidenhammer would have continued to operate at the same or a similar competitive level in the supply of composite cans for both food and non-food use in the UK as it had done before the merger. Having reviewed expected changes to its financial results over the next two to three years, we consider it likely that Weidenhammer UK would have been able to meet its financial obligations and therefore that it would not have exited the supply of composite cans in the UK for reasons of financial failure. Nor, in the light of that projected future performance, do we consider that there are sufficient grounds to conclude that Weidenhammer would have closed its UK operations, which are at its Bradford plant, for strategic reasons in the absence of the merger.

8. We conclude that even if Sonoco closed its Manchester plant in the absence of the merger, most of the Manchester capacity would have been moved to the Sonoco Chesterfield plant, and therefore the supply conditions would have been similar to the prevailing conditions at the time of the merger, albeit with a slight decrease in capacity. We have therefore considered the competitive effects of the merger against a counterfactual that assumes that the global Sonoco and Weidenhammer merger did not take place, and where Weidenhammer is continuing to operate the Bradford plant in competition with Sonoco.

Market definition

9. The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. We find that there are two relevant markets to consider: composite cans[2] for food use in the UK, and composite cans for non-food use in the UK. Nevertheless, in our assessment of the competitive effects of the merger we have considered competitive constraints from outside the scope of the markets, including the possibility of constraints from alternative packaging formats, from imports and from other constraints.

Competitive assessment – composite cans for food use

10. Total revenues in the UK from sales of composite cans for food use were £[30–40] million in 2014 and were declining. Before the merger, the parties overlapped in three diameters of composite cans for food use and were the two largest suppliers of such cans, with a high market share post-merger. The

[2] See paragraphs 2.9 & 2.10 for definition of a composite can.

evidence we have received from customers and our own analysis therefore suggests that the starting point for the assessment of the impact of the merger on competition should be that the parties were close actual competitors for many customers and were also close potential competitors where there was no existing direct overlap of diameter.

11. However, evidence from the parties and from third parties suggested that there were additional constraints on the parties before the merger. This evidence is consistent with our margin analysis and some of the tender analysis.

12. We recognise that these other potential competitive constraints on the parties include existing competitors, imports, alternative packaging formats, entry or expansion and countervailing buyer power.

13. We observed that the likely effects of the merger vary by customer, given differing sizes and volumes of composite cans required, differing abilities to switch to alternative packaging and differing abilities to sponsor entry or self-supply. We have therefore considered the potential range of options available to different customers and the competitive constraints these would impose on the merged entity.

Other UK composite can suppliers

14. We find that for 'smaller'[3] customers there is likely to be a competitive constraint on the merged entity from existing suppliers of composite cans for food use in the UK.

15. On the evidence provided to us we find that it is likely that existing UK competitors are currently not able to provide an effective constraint on the merged parties for the supply of larger volumes of composite cans for food use.[4]

16. We therefore considered other options available to customers, such as imports and alternative packaging formats (including self-supply of in-line composite cans), as well as entry or expansion (including sponsored entry and self-supply by customers) and the extent to which this might provide larger customers with countervailing buyer power.

[3] Customers spending less than £100,000 a year are regarded as 'smaller' for the purposes of our assessment. While the size of purchases affected customers' options, we recognised that other factors, including the characteristics of the can purchased, also affected their ability to use alternative sources of supply. See further Appendix E.
[4] Although we note that at least two larger customers have been looking into alternative suppliers since the merger was announced.

Imports

17. There is some evidence that imports of composite cans into the UK are feasible, but the evidence from third parties and the transport cost data we have received suggests that a material price increase in the UK would be needed for imports to be a credible alternative supply of composite cans for food use. Sonoco and Weidenhammer import composite cans into the UK, but we have received only limited evidence of other suppliers doing so. We note that one composite can producer is considering supplying the UK market for composite cans for food use by importing from continental Europe, but we do not consider this to be strong evidence of an immediate competitive constraint on the merged parties posed by imports.

18. We therefore find that it is likely that imports currently provide a limited element of competitive constraint on the merged parties, although indications are that imports might be expected to have a greater role in the future. We considered the potential for overseas suppliers to establish production facilities in the UK when assessing the potential entry of new suppliers to the UK.

Alternative packaging formats

19. Trends in the consumer packaging industry are towards alternative formats, particularly rigid plastics and flexible packaging, and these are reflected in the declining sales of composite cans and the fact that new products tend not to adopt the composite can format. Many products that were previously in composite cans are now, wholly or partly, in alternative packaging formats. It seems, from the evidence we have seen, that a number of larger customers can constrain pricing in composite cans in the UK through the option of a switch to alternative forms of packaging. For example, we note the recent decisions of some customers to switch away from composite cans, despite either a long history of using the format or previously expressed views that switching would not be appropriate, and also an instance of a larger customer's threat to switch to plastics securing for that customer a substantial discount from the UK composite can supplier concerned.

20. We also note the increasing interest of customers in switching to the self-supply of in-line paperboard containers where the container is formed in the customer's packing line. Although this is an alternative format of packaging, the packaging produced can closely resemble composite cans.

21. We find that it is likely that the credible threat to switch to alternative packaging formats is a competitive constraint on the merged entity for some, but not all, customers, and that the industry trends suggest that over time

customers may be increasingly able to switch to alternative packaging formats. The ability of the merged entity to charge higher prices to customers less likely to switch to alternative formats may have some impact, and therefore alternative packaging is a stronger constraint for some customers than others.

Entry or expansion

22. We find that, for some customers, it is likely that sponsored entry (which lessens the entry cost and risk to new suppliers of high volume lines) would be a credible alternative to the merged parties, thus imposing a competitive threat, and could be considered timely, likely and sufficient.

23. In particular, we have received evidence that a continental European supplier is actively considering entering the UK market for composite cans for food use through establishing a UK presence.

24. It is also our view that other customers, while not being able to sponsor entry directly, could benefit indirectly from a new sponsored plant established in the UK, which would be likely to provide an additional source of supply of composite cans beyond that required by the sponsoring customer.

25. For a few customers with sufficient volumes, self-supply may also be a credible option, although we note that few customers expressed an interest in this option, or required sufficient volumes of cans to make this option viable.

26. We note that imports may also become a credible option in the longer term (notwithstanding the transport cost disadvantages discussed earlier) if an overseas supplier is exporting in order to inform the development of an entry strategy. We do not, however, consider this to be as likely a competitive constraint as sponsored entry, sponsored expansion or self-supply.

Countervailing buyer power

27. We find that some larger customers, where they have a credible alternative option, have an element of countervailing buyer power that is likely to act as a competitive constraint on the merged entity.

Assessment

28. In summary, notwithstanding the post-merger market position of the merged entity, the available evidence indicates that there exists a range of alternative options available to customers. These include constraints from other composite can suppliers (for smaller customers), from the credible threat of

switching to alternative packaging formats, from the possibility of entry into the supply of composite cans for food use in the UK (particularly through some form of sponsored entry), and the possibility of self-supply. Although the evidence suggests that the viability and suitability of the different options will vary by customer, it seems likely that, taken together, these constraints provide customers with credible options to switch away from the merged entity. In the light of these factors, along with any mutual dependence between suppliers and larger customers and the protection offered by long-term contracts, we find that the merger has not resulted, and may not be expected to result, in an SLC in the supply of composite cans for food use.

Competitive assessment – composite cans for non-food use

29. The increment in market share in the supply of composite cans for non-food use due to the merger is small ([0–10]% in 2014). In addition to this, the parties will continue to face competition from four suppliers of composite cans for non-food use, all of which have larger market shares than the parties.

30. This evidence, and the fact that none of the customers expressed concerns regarding the merger, led us to find that the merger has not resulted, and may not be expected to result, in an SLC in the supply of composite cans for non-food use in the UK.

Findings

31. We find that the merger has not resulted, and may not be expected to result, in an SLC in the UK markets for composite cans for food use and composite cans for non-food use.

Findings

1. The reference

1.1 On 27 January 2015, the CMA referred the Transaction for an in-depth phase 2 inquiry. In exercise of its duty under section 22(1) of the Act, the CMA made a reference to its chair for the constitution of a group[5] of CMA panel members (the inquiry group) in order to investigate and report on the following questions in accordance with section 35(1) of the Act:

(a) whether a relevant merger situation has been created; and

(b) if so, whether the creation of that situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.

1.2 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. We are required to take our final decision by 13 July 2015.

1.3 This document, together with its appendices, constitutes our findings. Further information, including non-confidential versions of Sonoco's submission and summaries of evidence received in oral hearings, can be found on our webpages.[6]

2. The companies and the industry in which they operate

2.1 The following section gives an overview of the global and UK consumer packaging sectors before describing the supply of composite cans in the UK and alternative packaging formats, the parties, other suppliers and customers of composite cans. Further information on these areas can be found in Appendix B.

[5] Section 22(1) of the Act provides that the group is to be constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.
[6] Sonoco/Weidenhammer merger inquiry case page.

Global packaging sector

2.2 The global consumer packaging industry was valued at approximately £503 billion in 2014, over £150 billion of which is used for packaging food products.[7]

2.3 Consumer packaging products fit into five main categories:

- paper and board packaging, which includes composite cans;
- flexible packaging;
- plastic containers;
- metal packaging; and
- glass packaging.

2.4 Revenues from packaging consumption were estimated to have grown at approximately 4.1% between 2013 and 2014, driven predominantly by growth in the Middle East and Asia. This growth is driven by flexible and rigid plastics[8] which were predicted to experience compounded annual growth rates (CAGR) of 4.8% and 5.4% respectively between 2013 and 2018. The board sector, which includes composite cans, was estimated to experience a CAGR of 4.3% over this period.[9]

2.5 This trend is similar in western Europe where total packaging consumption was forecast to experience a CAGR of 1.3% between 2013 and 2018. Flexible and rigid plastics were expected to be the main drivers behind this growth, at CAGRs of 3.1% and 2.1% respectively whilst the board packaging sector was expected to experience a CAGR of 0.6%.[10]

UK packaging sector

2.6 In 2013, UK packaging sales were just over £15.2 billion, of which £5.6 billion was spent on food packaging. This sector is expected to experience a CAGR of 1.5% between 2013 and 2018, meaning that demand was expected to amount to £5.7 billion in 2014.[11]

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[7] Smithers PIRA International 'Future of Global Packaging to 2018', table 2.30. The figures in this table have been extrapolated to 2014 using their forecasted compounded average growth rates and converting them into GBP using the average 2014 rate of $1.6484/£, obtained from OANDA, the independent currency conversion provider.
[8] Smithers PIRA International 'Future of Global Packaging to 2018', table 2.3.
[9] Smithers PIRA International 'Future of Global Packaging to 2018', table 2.6.
[10] Smithers PIRA International 'Future of Global Packaging to 2018', table 3.5.
[11] Smithers PIRA International 'Future of Global Packaging to 2018', table 3.28.

2.7 Given that total revenues in the UK from the sales of composite cans for food use were valued at £[30–40] million in 2014, composite cans make up 0.5% of food packaging spend and 0.2% of the total packaging spend.

2.8 Regarding the growth rates of different packaging formats in the UK, board, which includes composite cans, was estimated to experience a CAGR of 0.5% between 2013 and 2018 whilst flexible and rigid plastics were estimated to grow at CAGRs of 3.9% and 1.2% respectively between 2013 and 2018.[12]

Composite cans

Description of composite cans

2.9 Composite cans are rigid containers with closures on each end, in which the walls of the container are made up of layers of paper-based materials and other materials, which are selected to give the container the physical properties (such as rigidity and moisture barrier) required for the product to be packaged.

2.10 Being rigid, composite cans protect the product inside (helping to prevent breakages), can have an airtight seal (a 'membrane') to keep the product fresh until first opened, and are re-sealable with lids (which protect the contents and allow multiple use).

Production of composite cans

2.11 Composite cans are constructed by wrapping the composite material around a form (single-wrap cans)[13] or by spirally winding the composite material around a form (spiral-wound cans). The closures on each end are typically made of metal, but paper is also used.

2.12 Composite cans are usually produced by a packaging supplier and transported as rigid containers to the customer with a membrane in place and with the lids on. They are then filled upside down and the bottom sealed by the customer's packing line. Single-wrap composite cans can also be converted from flat blanks in-line in the customer's packing line. These cans are considered under 'alternative packaging formats' (see paragraph 7.106).

2.13 It is generally straightforward to alter the height of a composite can being produced. Changing its diameter is less straightforward, as this may require

[12] Smithers PIRA International 'Future of Global Packaging to 2018', table 3.25.
[13] For consistency, we have referred to this type of can as a 'single-wrap' can throughout. However, this definition also applies to non-spiral-wound cans, as well as converted and single-ply packaging. Single-wrap cans that are tapered (eg ice cream containers) are not considered to be composite cans.

changing or re-tooling parts of the production line, which can have both time and financial costs.

2.14 Customers have the option to specify the use of flat labels or spiral-wound labels which are attached to the cans by the supplier using different machinery.

Use of composite cans

2.15 Composite cans are most commonly used as packaging for food (eg gravy and crisps) and powdered beverages (eg coffee and tea). They are also commonly used for non-food products such as hand rolled tobacco and various other products such as insect repellents and carpet cleaners, and as decorative packaging to enclose alcohol bottles. Composite cans are also commonly used to provide a premium image, for example when used as packaging for luxury alcohol bottles and premium coffees.

2.16 Composite cans are typically made to a customer's specific requirements and can differ depending on materials used and whether they are used for food or non-food packaging. In particular, composite cans will differ according to their barrier properties (the materials used to keep the can's contents fresh, which could include a liner and/or a membrane), diameter and height, ends and overcaps, and labelling. For further details, see Appendix B.

Composite cans for food and non-food use

2.17 Food products can be wrapped or bagged before packing into composite cans, or the food can be in direct contact with the can.

2.18 Where the food is in direct contact with the can, there are increased requirements for the manufacturing process:

- Production needs to be in accordance with the British Retail Consortium (BRC) Global Standard for hygiene.[14]
- A barrier layer will be required, depending on the characteristics of the food.
- Increased allergy and contamination concerns, leading to a greater need for traceability of component materials.

[14] For example, see Specialty Paperboard Containers Limited's (SP Containers) Certificate of Registration.

2.19 For the remainder of the report, we use the term 'composite cans for food use' to refer to cans designed to contain products with the following properties:

- Food (including powdered beverages) consumed by humans (as opposed to animal food).
- Edible products (as opposed to, for example, tobacco).
- Food in direct contact with the composite can (as opposed to food in another container such as a plastic wrap, which is then placed inside a can).

2.20 Composite cans for all products that are not edible, not in direct contact to the composite can or not for human consumption are considered to be composite cans for non-food use.

Alternative packaging formats to composite cans

2.21 The parties told us that alternative packaging formats could offer similar characteristics and functionality to those of composite cans. They said that the special requirements of the composite can packaging, such as tamper-proof protection, re-sealable lids or barrier properties could be met by most forms and materials of consumer packaging.[15]

2.22 In addition, alternative packaging formats could offer additional benefits that composite cans could not:[16]

- Cheaper materials and production costs.
- Cross-section shapes other than circular.[17]
- Reduced storage and transport costs, due to stackability or being flat (rather than rigid).
- 'In-line conversion', allowing the container to be formed in the customer's packing line (see paragraphs 2.12 and 7.106).
- Transparency, allowing the product to be seen by the consumer before purchase.

[15] Sonoco initial submission, paragraphs 5.6 & 5.7.
[16] Sonoco initial submission, paragraph 2.4
[17] We were told that some round composite cans can be 'squashed' to form an oval shape during the production process, but this was not feasible for high volume lines.

- Windows to view the product.

The supply of composite cans

2.23 Customers of composite cans are:

- product manufacturers, who may be packaging branded goods or own-label products; and
- co-packers, who carry out the packaging of goods from a number of product manufacturers, and typically specialise in particular packaging types.

2.24 The filled composite cans are then distributed to retailers that sell them to the end consumer.

2.25 The customer base in the UK for composite cans for food use is highly concentrated, with a small number of larger customers representing a high proportion of the total sales (see paragraph 2.58 for more details).

Composite can buying process

2.26 Composite can prices are agreed bilaterally between customers and suppliers, as they are bespoke products (with customer-specific dimensions, materials and labels).

- *Factors influencing the price*

2.27 The parties told us that the price negotiated depended on a number of factors:

- Volumes.
- Specifications (including barrier requirements, end caps and labelling).
- Length of contract.
- Risk (ie importance of meeting quality standards that might be high, for example for powdered infant formula).

- *Contracts*

2.28 Although some customers do source from both Sonoco UK and Weidenhammer UK, some of the largest customers source from one supplier, as shown in Figure 2. 1 (see paragraph 2.58).

2.29 Long-term contracts for the supply of composite cans are relatively rare in the UK market. Contracts can last up to ten years, but more typically are for one year or are contracts with no fixed term.[18]

- *Open book pricing*

2.30 Prices are set between the parties and some of their customers using an open book pricing method.[19] In these contracts, the prices paid are broken down into the costs of input materials, plus a conversion margin to offer a return on capital (following negotiations) and cover indirect costs such as administrative and management expenses. Sonoco's prices are then updated annually or semi-annually according to the changes in the costs of these material inputs, based on mutually recognised indices for items like paper and metal costs. Any renegotiation of prices leads to a new starting cost for each component of the open book pricing model which then moves according to the indices. The advantage of open book pricing is that the costs are more transparent for the customers, and the price does not need to be renegotiated if the price of raw materials changes, as the negotiated price will adapt.[20]

Seasonality and demand

2.31 The supply of composite cans for food use is highly seasonal. The high volume products packaged in composite cans (such as gravy granules and hot drink powders) tend to be consumed outside the summer months, with peaks experienced over the Christmas and Easter holidays. To meet this increased demand, rather than maintaining a steady production process over the whole year, the parties tend to work at close to full capacity to supply the increased seasonal demand and operate with excess capacity during other periods. This is due to the high storage costs of composite cans, because of the space requirements.

2.32 The high storage costs of composite cans also mean that once volume reaches a certain threshold, it becomes more economical to build new production lines and operate at lower capacity, than to produce additional cans in advance of delivery with the existing machinery and store the additional output for long periods of time.

2.33 Seasonality affects the way the plants are operated. Staff work to annualised hours, working longer hours during the more busy periods. Periods of lower activity are used as an opportunity to train staff, perform maintenance work on

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[18] Evidence given to us showed only two contracts that were for five years or longer.
[19] Sonoco sets 80-90% of its prices through an open book method.
[20] Sonoco initial submission, paragraph 6.4.

the machines and perform operational changes to the business such as building new production lines or transferring lines across sites.

Suppliers

Sonoco

2.34 Sonoco Products Company (Sonoco) is a US corporation and manufacturer of industrial and consumer packaging products and provider of packaging services, with operations in 33 countries. Sonoco's UK subsidiary for consumer packaging is Sonoco Limited (Sonoco UK).

2.35 Sonoco operates four business divisions in the UK: consumer packaging, paper and industrial converted products, protective solutions, and display and packaging. The only type of consumer packaging produced by Sonoco in the UK is composite cans. At the time of the merger, Sonoco had two plants producing composite cans in the UK,[21] producing a total of [✂] million composite cans in 2014:

- Manchester had [✂] lines producing composite cans.
- Chesterfield had [✂] lines producing composite cans.

2.36 Sonoco has made two acquisitions of composite can producers in the UK in recent years:

- Robinson Paperboard Packaging (Robinson) was purchased in 2011 for £2.6 million, which gave Sonoco control of the plant in Chesterfield.
- The assets and order book of ABPS (North West) Limited (ABPS) were purchased in April 2012 for £[✂]. This purchase included ABPS's rigid paper container production line, based in Lancashire, which was subsequently integrated into the Chesterfield plant.[22]

2.37 In 2014, Sonoco UK generated £[✂] million of revenue in the UK from the sale of composite cans. This equated to £[✂] million from the sale of composite cans for food products in the UK and £[✂] from the sale of composite cans for non-food products. In terms of volumes, [✂]% of composite cans manufactured by Sonoco are for food products. Sonoco also exported composite cans to customers outside the UK. For a further

[21] For more details of production lines, see Appendix B.
[22] Sonoco initial submission, paragraph 3.3.

breakdown of Sonoco's sales of food and non-food composite cans, see Appendix B.

2.38 Earnings before interest, taxes, depreciation and amortisation (EBITDA) stood at £[✂] and £[✂] but Sonoco UK was in a [✂] EBIT position of £[✂] and £[✂] in 2014 and 2013 respectively.

Weidenhammer

2.39 Weidenhammer Packaging Group GmbH (Weidenhammer) is a German company that manufactures and supplies consumer packaging products in 12 countries. Weidenhammer's UK subsidiary is Weidenhammer UK Limited (Weidenhammer UK).

2.40 Weidenhammer entered the supply of composite cans in the UK in 2008 by buying a plant in Bradford from Chesapeake [✂]. In July 2011, Weidenhammer purchased L&D Mouldings and integrated these assets into Weidenhammer UK which opened a new site in Bradford.[23] The Bradford plant at the time of the merger had [✂] composite can production lines, producing packaging for both food and non-food products, and [✂] injection moulding machines.

2.41 With output of [✂] cans in 2014, Weidenhammer UK's turnover in 2014 from the sale of composite cans for food products to UK customers was £[✂] and its revenues from the sale of composite cans for non-food products to UK customers was £[✂] ([✂]% of Weidenhammer UK's composite can sales). Weidenhammer UK's turnover from plastic packaging was £[✂] in 2013 and £[✂] in 2014.[24]

2.42 Weidenhammer UK's total revenue was £[✂] and £[✂] in 2013 and 2014 respectively. EBITDA amounted to £[✂] and £[✂] whilst EBIT amounted to £[✂] and £[✂] in 2013 and 2014 respectively.[25]

Other UK composite can suppliers[26]

2.43 In recent years the UK composite can industry has become more concentrated. Suppliers such as Robinson, ABPS, Smurfit Kappa and Chesapeake have all exited the industry. Robinson and ABPS were bought by

[23] Sonoco initial submission, paragraph 3.7.
[24] This drop in sales was due to [✂] cancelling its contract following a move to cardboard packaging. For a further breakdown of Weidenhammer UK's sales, see Appendix B.
[25] These figures also include sales of composite cans to customers outside of the UK.
[26] Note that SP Containers described its products as 'composite cans', but they were supplied flat and formed in-line, so we have considered the company to be a provider of alternative packaging.

Sonoco (see paragraph 2.36) whilst Weidenhammer entered the UK via a joint venture with Chesapeake in 2008 before buying out its partner's share (see paragraph 2.40).

2.44 We describe below the main existing and potential competitors in the UK composite can industry, covering those already supplying composite cans for food use, those producing composite cans for non-food use, overseas suppliers and other packaging suppliers.

Suppliers of composite cans for food use

2.45 The following are the main suppliers of composite cans for food use in the UK, and the firms that appear to have the potential to begin supplying composite cans for food use in the UK. For further details, please see Appendix B.

- *Can Packaging*

2.46 Can Packaging produces composite cans at its sites in Ancenis and Habsheim in France. [✄] including UK retailers, such as Waitrose,[27] Asda, and Sainsbury's. [✄] a year.[28] Can Packaging produces a 'Greencan' that is made out of cardboard only and therefore does not include a plastic cover or metal bottom. Can Packaging told us that this provided environmental benefits.

- *CBT Packaging*

2.47 CBT Packaging (CBT) supplies round paper board drums and composite cans to the food, beverage and household sectors. In 2014, CBT had UK sales of £[✄], producing [✄] cans. Of this, £[✄] were sales of direct food contact composite cans, with volumes of [✄]. CBT told us that its capacity was [✄] containers per year, having recently expanded capacity. [✄]

- *Visican*

2.48 Visican supplies cardboard tubes, cardboard containers with a fixed base and a removable lid, telescopic containers made from board, plastic containers, spiral-wound cores and composite mailing tubes. Visican said that its sales of cardboard tubes with some form of closure were £[✄] in 2014. Only a small

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[27] [✄]
[28] Can Packaging hearing summary, paragraph 1.

percentage of its sales, less than [✂]%, were composite cans for food products.[29]

Suppliers of composite cans for non-food use

2.49 Multi Packaging Solutions (MPS) sells spiral-wound composite cans for food and non-food products, single-wrap composite cans for food and non-food products in the UK and other forms of paper and board packaging. The composite cans are used for alcoholic drinks (whisky, rum and vodka), baked products (biscuits), confectionery, dried beverages (tea), personal care gift sets or jewellery. MPS does not supply cans with direct food contact properties (with barrier properties) so an inner bag is used to seal the products prior to insertion.

2.50 [✂] sells composite cans for premium drinks, especially [✂], and corrugated cases and solid board to the drinks industry and other industries, but is unable to produce composite cans for the food industry. Its UK revenue from spiral-wound composite cans for non-food use was £[✂] and its revenue from single-wrap composite cans for non-food use was £[✂].

Other suppliers of packaging products for food use

2.51 We describe below some of the major suppliers of other packaging formats for food products that could be used as alternatives to composite cans.

2.52 [✂]

2.53 Crown Packaging (Crown) sells metal containers in the UK for powders (infant nutrition milk and others) and promotional metal packaging for biscuits, confectionery, coffee, tea, cosmetics (perfumes), wines, spirits, tobacco and gifting. [✂]

2.54 Huhtamaki, through its plant in Gosport, sells plastic cups and lids for use in dairy dessert products and plastic pots for syrups and dips, for example ketchup.[30]

2.55 Optima supplies filling machinery to food manufacturers that can create a packaging format including the Softcan, a non-rigid container that can be used to pack powdered beverages. Optima said that although no companies in the UK were currently using the Softcan, it expected the packaging format to be used in the future in the UK and was targeting large potential UK customers.

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[29] Visican hearing summary, paragraph 2.
[30] [✂]

2.56 [✄]

Customers

2.57 The parties' customers range from larger customers like [✄], which spent £[✄] with Sonoco in 2014, to smaller customers spending less than £1,000. Sonoco currently has [✄] UK customers while Weidenhammer has [✄] UK customers.

Customers for food use

2.58 The seven customers that each purchased more than £[✄] worth of composite cans for food use in the UK in 2014 make up over three quarters of the parties' total revenue in this industry. These figures are outlined in Figure 2. 1 and Table 2. 1 below.

Figure 2. 1: [✄]

[✄]

Source: [✄]

Table 2. 1: Revenue from sales of composite cans for food use to top seven UK customers in 2014

[✄]

Source: [✄]

2.59 As shown above, Sonoco's five largest customers, based on 2014 sales, made up [✄]% of its total sales whilst Weidenhammer's five largest customers made up [✄]% of its total revenue, based on 2014 sales.

2.60 See Appendix B for more details on customers of composite cans for food use.

Customers for non-food use

2.61 In 2014, Sonoco generated revenues of £[✄] from the sale of composite cans for non-food use in the UK. This was much smaller than the £[✄] it obtained from the sale of composite cans for food use. Sonoco's non-food customers sold a variety of products in its composite cans, including alcohol, paint and presentational items.

2.62 In 2014, Sonoco's Manchester plant only had [✄] non-food UK customer. [✄], which spent £[✄], so [✄] represented [✄]% of Sonoco's 2014 non-food sales. Sonoco's Chesterfield plant had more extensive sales of composite cans for non-food use and the largest five customers' purchases are summarised in Table 2.2 below.

Table 2.2: [✂]

[✂]

Source: CMA analysis.

2.63 Weidenhammer had [✂] non-food UK customers in 2014. [✂]

3. The Transaction and rationale for the merger

The Transaction

3.1 In February 2014, Ralf Weidenhammer (Mr Weidenhammer), then CEO of Weidenhammer, approached Sonoco to discuss the acquisition of Weidenhammer. These preliminary discussions were of an informal nature and continued in March 2014, culminating in a negotiation session that took place in April 2014. At this session, a framework for the purchase price was agreed.

3.2 Sonoco's due diligence process began in May 2014 and a management presentation was presented to the Sonoco board on 19 May 2014 by Weidenhammer's managers.

3.3 Sonoco entered into an agreement to purchase Weidenhammer in its entirety and the sale of Weidenhammer took place on a global basis, rather than on a territory-by-territory basis. The Transaction was announced on 25 August 2014 and completed on 31 October 2014. Sonoco acquired the entire issued share capital of Weidenhammer for €286 million (approximately £224 million).

Involvement of competition authorities

3.4 The completion of the acquisition was subject to competition authority clearances in Germany, Russia and Turkey. The merger obtained clearance in Germany and Russia[31] and was completed on 31 October 2014.

3.5 The CMA issued an initial enforcement order on 5 November 2014, in order to prevent actions that may prejudice any reference to phase 2 or impede any remedial action taken or required by the CMA following its phase 2 inquiry.[32] The CMA granted a derogation to its initial enforcement order,[33] consenting to

[32] See the initial enforcement order regarding the merger.
[33] See the derogation to the initial enforcement order of 6 November 2015.

the integration of the Sonoco and Weidenhammer businesses outside the UK.[34]

3.6 The CMA launched a phase 1 assessment of the merger[35] on 13 November 2014. On 13 January 2015, the CMA decided under section 22(1) of the Act that the merger constitutes a relevant merger situation that has resulted, or may be expected to result, in a realistic prospect of an SLC within a market or markets in the United Kingdom.[36]

3.7 The CMA allowed Sonoco the opportunity to offer undertakings for the purpose of section 73(2) of the Act. However, the CMA did not consider that the proposed remedy offered by Sonoco was a clear-cut solution to the competition concerns identified as arising from the merger and capable of ready implementation.[37]

3.8 The CMA therefore referred the merger to its chair on 27 January 2015 for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to conduct a phase 2 inquiry.[38]

3.9 The CMA announced its provisional findings on 29 May 2015 and invited comments, and published the provisional findings report on 2 June 2015. No submissions were received from the parties or from third parties during the three week consultation period.

Weidenhammer's rationale for the merger

3.10 The former CEO of Weidenhammer, Mr Weidenhammer, told us that a combination of personal and business reasons led to the sale of Weidenhammer. Weidenhammer was a family firm [✂]. The decision to sell the company was brought forward following the changes in the contracts with two large customers,[39] with consequent loss of volume, which meant that Weidenhammer was likely to require significant restructuring.

Sonoco's rationale for the merger

3.11 Sonoco told us that it considered Weidenhammer to be a premium asset, well known for its engineering technology and capabilities. Sonoco believed it could create significant synergies by leveraging Weidenhammer's expertise in

[34] Details of derogations granted are available on the case page.
[35] *Mergers: the CMA's jurisdiction and procedure* (CMA2).
[36] See phase 1 reference decision.
[37] See phase 1 reference decision for more details on the assessment of undertakings offered by Sonoco.
[38] See Appendix A for further details.
[39] See paragraphs 5.32 to 5.36 for more details.

non-round cans, recessed membrane closures, paper bottoms and by internalising the supply of certain materials.

3.12 This acquisition also increased Sonoco's geographic footprint. Sonoco's consumer packaging presence in Europe was limited, and its operations Germany had been restricted to paper and industrial products.

3.13 As the new supplier of [✂] in [✂],[40] Sonoco also gained the technical expertise, facilities and personnel in place at Weidenhammer, which would enable it to fulfil the [✂] contract efficiently. The acquisition also meant Sonoco did not need to build a new plant in [✂], which it had already begun setting up before being approached by Weidenhammer.

3.14 Furthermore, Weidenhammer's production facilities in Chile and Russia complemented Sonoco's expansion strategy for composite cans in emerging markets.

4. The relevant merger situation

4.1 Under section 35 of the Act, and pursuant to our terms of reference (see Appendix A), we are required to decide first whether a relevant merger situation has been created by the acquisition of Weidenhammer by Sonoco. Section 23 of the Act provides that a relevant merger situation is created if:

(a) two or more enterprises have ceased to be distinct enterprises within the statutory period for reference; and

(b) either the UK turnover test or the UK share of supply test is satisfied.

4.2 We considered that the part of the test that requires us to decide whether two or more enterprises have ceased to be distinct within the specified time had been satisfied in this case. The completed acquisition by Sonoco of the entire issued share capital of Weidenhammer had brought these two enterprises under common control for the purposes of the Act.[41] The acquisition was completed on 31 October 2014, within the specified time of four months prior to the phase 2 reference which was made on 27 January 2015.[42]

4.3 The turnover test is satisfied where the value of the turnover in the UK of the acquired enterprise exceeds £70 million.[43] The turnover of Weidenhammer in

[40] See paragraphs 5.32 to 5.36 for more details.
[41] Section 26 of the Act.
[42] Section 24 of the Act.
[43] Section 23(1)(b) of the Act.

the UK for the financial year ending 31 December 2013 was £[✂],[44] which is substantially below the £70 million threshold. The turnover test is therefore not satisfied. Accordingly, we considered the share of supply test.

4.4 The share of supply test is satisfied where, as a result of enterprises ceasing to be distinct, at least one quarter of goods or services of any description that are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.[45] The merger must result in an increase in the share of supply of goods or services of a particular description and the resulting share must be 25% or more.

4.5 We are able to measure share of supply by reference to such criterion or such combination of criteria as we consider appropriate.[46] The concept of goods or services of 'any description' is very broad. The description of goods or services identified for the purposes of the jurisdictional test does not have to correspond with the economic market definition adopted for the purposes of the substantive assessment. We consider that the share of supply test in this case is met on the basis of the assessment of the parties' share of supply of composite cans in the UK.

4.6 In this case, the products which both parties supply in the UK are composite cans.

4.7 The estimates provided by the parties on the total supply of composite cans for both food and non-food use suggest that, prior to the reference,[47] Sonoco had a share, by revenue, of [✂]% of the supply of composite cans in 2014 in the UK; and Weidenhammer had a share, by revenue, of [✂]% of the supply of composite cans in 2014 in the UK. Taken together, Sonoco and Weidenhammer had a share, by revenue, of around [✂]% of the supply of composite cans in 2014 in the UK, with an increment created by the merger of [✂]%.[48]

4.8 Therefore, we conclude that the completed acquisition of Weidenhammer by Sonoco constitutes a relevant merger situation. Accordingly, we go on to

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[44] Turnover in 2014 was £[✂]. The CMA considered the turnover of the acquired enterprise in the business year preceding the date of the completion of the merger, ie 2013, according to paragraph 3.3.2 of the Merger Assessment Guidelines (the Guidelines).
[45] Section 23(3) and (4) of the Act.
[46] Section 23(5) of the Act.
[47] The relevant point in time for calculation of the share of supply is immediately before the reference is made – section 23(9) of the Act.
[48] The share of supply estimated by Sonoco differs from the share of supply calculated by the CMA due to a market definition adopted by the parties different from the market defined by the CMA in Section 6. This means that the market shares of both parties provided in paragraph 4.7 are underestimates of their shares in the market defined by the CMA. Nevertheless, we are comfortable using the estimates provided by Sonoco for the purpose of the jurisdictional test.

consider whether the creation of that merger situation has resulted, or may be expected to result, in an SLC within any market or markets in the UK for goods or services.[49]

5. The counterfactual

Our approach to the counterfactual assessment

5.1 This section sets out our assessment of the counterfactual to the Transaction (that is, the most likely competitive situation in the absence of the merger) against which we compare the expected competitive effects of the merger in order to determine whether the merger gives rise to an SLC. The CMA approach to the counterfactual is set out in the Guidelines[50].

5.2 The current merger situation arises as a result of Sonoco having entered into an agreement to purchase Weidenhammer in its entirety. The sale of Weidenhammer took place on a global basis, rather than on a territory-by-territory basis. Mr Weidenhammer, CEO of Weidenhammer and one of the four shareholders, stated that he 'only considered selling his business as a whole' and there is no evidence that the Transaction was ever contemplated as a piecemeal transaction that would complete in some countries before others. There is also no evidence that a stand-alone acquisition of the UK business was contemplated by any potential purchaser.

5.3 Hence, for the purposes of the counterfactual, we consider what the conditions of competition in the UK would have been in the absence of the global merger.

5.4 In establishing the most likely counterfactual, we consider three possible counterfactual situations:

- Would Weidenhammer UK have exited the supply of composite cans in the absence of the Transaction?
- In the absence of the merger with Sonoco, would Weidenhammer as a whole have been sold to a third party?
- Would Sonoco UK have reconfigured its UK business in the absence of the merger, and if so, what impact would this have had on the total production capacity of composite cans in the UK?

[49] Section 35(1)(b) of the Act.
[50] The Guidelines, section 4.3.

5.5 Finally, we reach a conclusion on the most likely counterfactual.

Would Weidenhammer UK have exited the supply of composite cans in the absence of the Transaction?

Overview of 'exiting firm test'

5.6 One of the situations in which the CMA may consider a counterfactual different from the prevailing conditions of competition (or the pre-merger situation) is the 'exiting firm' scenario. In forming a view on an exiting firm scenario, the CMA will consider:

(a) whether the firm would have exited (through failure or otherwise); and, if so

(b) whether there would have been an alternative purchaser for the firm or its assets to the acquirer under consideration; and

(c) what would have happened to the sales of the firm in the event of its exit.[51]

5.7 The exiting firm scenario is most commonly considered when one of the firms is said to be failing financially. However, exit may also be for other reasons, for example because the selling firm's corporate strategy has changed.[52]

5.8 We start our assessment with the first step, initially considering whether Weidenhammer UK would have exited through financial failure or for strategic reasons. If this condition is met, we will consider the second and third steps of the test.

Exit of Weidenhammer UK due to financial failure

Parties' views

5.9 Sonoco told us that Weidenhammer in the UK would not have been financially viable without some form of rationalisation.[53] Weidenhammer expanded in the UK as a result of a supply agreement with [✂] that accounted for [✂]% of its revenue in 2014. Weidenhammer's contract with [✂] was due to end around May 2016 following changes affecting [✂] operations.

[51] The Guidelines, paragraph 4.3.8.
[52] Ibid, paragraph 4.3.9.
[53] Sonoco initial submission, paragraph 1.4(b).

5.10 Sonoco also told us that, in the absence of the merger, it would not have assisted Weidenhammer to supply [✂] when it was encountering production difficulties and it is Sonoco's belief that [✂] would have cancelled the contract with Weidenhammer and entered into a long-term contract with Sonoco.

5.11 Furthermore, Sonoco told us that Weidenhammer had significant difficulties supplying its second largest customer, [✂] (the supply of [✂] diameter cans). It believed this explained Weidenhammer's inability to get [✂] to agree to a contract and the fact that Weidenhammer supplied only order-by-order.

5.12 Sonoco stated that these three factors, along with the declining demand for composite cans in the UK, would move Weidenhammer UK into a loss-making position that could not be rectified. It told us that Weidenhammer would have chosen to cease supporting its UK operations and that Weidenhammer would have exited the supply of composite cans in the UK.

5.13 However, we also note that Weidenhammer initially submitted to us that, if it lost the [✂] contract, it would have considered bringing more production into the UK plant. This could apply specifically to the production of plastic lids/overcaps production. Since these goods are less bulky, their lower transport cost per unit than composite cans may offer options to move production from France or Germany to the UK.

Third parties' views

5.14 [✂] told us that it planned on gradually reducing its demand for composite cans from Bradford, currently [✂] a year, before stopping altogether in May or June 2016.[54]

5.15 Weidenhammer won an exclusive supply agreement to supply [✂] from Bradford in December 2013. Due to technical difficulties, production did not start regularly until October 2014. This contract will last for either a minimum of [✂] or [✂]. At current demand of [✂] cans a year, the contract should last a minimum of [✂] years. According to the contract, early termination is limited to specific circumstances and unilateral early termination of the contract is not allowed without incurring liability to the other party.

5.16 Despite the problems [✂] had experienced with Weidenhammer [✂] cans, [✂] rated Weidenhammer's level of service as high. Furthermore, [✂] currently purchases [✂]% of its cans from Weidenhammer and prior to the merger had a strategy to [✂].

[54] [✂]

Our assessment

5.17 We considered three future events that might affect the financial performance of the Bradford facility and quantified what the impact would be on Weidenhammer UK's EBITDA. We then considered whether Weidenhammer UK should be considered an exiting firm for reasons of financial failure.

5.18 First, the most significant change to Weidenhammer UK's business will be the loss of the [✂] contract. This contract generated [✂]% of Weidenhammer UK's revenue in 2014, £[✂], at an average contribution rate of [✂]%. Therefore the negative impact on EBITDA is expected to be £[✂] by 2016. Our analysis assesses what the performance of Weidenhammer UK will be after the loss of this contract.

5.19 The second most important development was the exclusive supply agreement Weidenhammer signed with [✂] in December 2013. Weidenhammer encountered production difficulties when it began supplying [✂] and the shortfall in supply had to be met using Sonoco's UK production facilities. Sonoco told us that, in the absence of the merger, it would not have met this demand unless [✂] had cancelled its contract with Weidenhammer and signed a long-term contract with Sonoco.

5.20 However, although [✂] believed the supply difficulties were probably severe enough to break the conditions of the contract, in the absence of the merger it expected it would have been supplied using Weidenhammer's continental European sites in line with the contingency arrangements set out in their contract. Sonoco had already announced the acquisition of Weidenhammer at the time the supply shortfall became apparent and as such it made more sense to be supplied by Sonoco's UK facilities than the European sites Sonoco now owned.

5.21 As the supply problems were eventually rectified and Weidenhammer had European supply contingency plans in place, we consider it unlikely that [✂] would have cancelled this contract with Weidenhammer.

5.22 This agreement is worth approximately £[✂] of annual revenue to Weidenhammer UK. The contribution rate averages [✂]% and therefore we estimate that this contract will add approximately £0.5 million to the EBITDA of Weidenhammer UK annually.

5.23 Third, Mondelez's sole supplier strategy is likely to have increased its demand for composite cans from Weidenhammer UK. Mondelez is Weidenhammer UK's second largest customer, generating revenues of over £[✂] a year, at an average contribution rate of [✂]%. Therefore this change should contribute a further £[✂] to revenue and £[✂] to EBITDA.

5.24 In 2014, EBITDA amounted to £[✂], after accounting for a claim of £[✂] settled with United Biscuits (UB). After adjusting for this one-off item, and the expected changes discussed in paragraphs 5.18 to 5.23 above, our analysis suggests that in the next financial year, Weidenhammer UK's EBITDA would fall from £[✂] to £[✂] as revenue would have fallen by £[✂] overall.

5.25 In addition to the direct effect on Weidenhammer UK's performance of the new [✂] contract and additional supply to [✂], the two events are indicative that Weidenhammer UK would remain capable of winning new business, in the absence of the merger.

5.26 [✂]

5.27 Weidenhammer UK also has a strong balance sheet. It had net assets of £[✂] and £[✂] in 2013 and 2014 respectively whilst its net current assets amounted to £[✂] and £[✂]. Weidenhammer also had positive cash balances of £[✂] and £[✂] in 2013 and 2014 respectively.

5.28 We therefore conclude that Weidenhammer UK would not have exited the supply of composite cans through financial failure in the foreseeable future.

5.29 We now turn to consider whether Weidenhammer UK would have exited the supply of composite cans for any reason other than financial failure.

Exit of Weidenhammer UK for other (strategic) reasons

5.30 The Guidelines also state that a counterfactual of an exiting firm can be considered for reasons other than financial failure, such as due to a change in the selling firm's corporate strategy.[55]

5.31 We therefore now consider whether Weidenhammer would have closed the Bradford plant and exited the supply of composite cans in the UK for strategic reasons.

Parties' views on Weidenhammer UK strategic exit from UK market

5.32 Sonoco told us that Weidenhammer was facing financial difficulties following the loss of its contract with [✂] to supply [✂] cans in Europe, and the business needed to reduce costs and sell assets to meet debt covenant obligations.

[55] The Guidelines, paragraph 4.3.9.

5.33 However, Weidenhammer's management team told us that the Bradford plant still had a lot of potential. It was built in line with the company's strategy to also be able to produce plastics. The facility was built with sufficient electrical power and cooling devices to supply up to [✂] machines. Accordingly, it believed that Weidenhammer would have looked to bring in more plastics business before closing this facility.

Vendor's views on Weidenhammer strategic exit from UK market

5.34 Mr Weidenhammer stated that, without replacing the lost [✂] volume with new sales, there was no chance of a profit being made from Weidenhammer UK. However, he knew that Weidenhammer could subsidise the plant for a limited time by leaving a piece of [✂] business in Bradford, although this would be at a cost at group level.

5.35 Regarding the terms of Weidenhammer's loan agreements with its banks, Mr Weidenhammer told us that a material adverse change in the borrower or any other party liable on the loan was a good cause for termination, if the repayment of the loan was in jeopardy despite provided securities. The loan agreements also required the borrower to inform the lender of material adverse changes in the business. Therefore, it was possible that Weidenhammer would have been required to inform the banks of the loss of the [✂] business and it would have been up to the banks to determine whether such a loss would put the repayment of the loan in jeopardy.

5.36 Therefore after losing the [✂] contract, if the merger with Sonoco had not occurred, Mr Weidenhammer said he would have put his assets 'into a small circle' and Weidenhammer would most likely have exited the UK, focusing on Germany as a home market. Mr Weidenhammer said that he believed that he would have fulfilled any remaining contracts from Weidenhammer's facilities in continental Europe. However, Mr Weidenhammer explained that no documentation to confirm this policy existed.

Our assessment

5.37 We took account of Mr Weidenhammer's views expressed to us, notwithstanding the lack of written evidence of Weidenhammer's plans in the absence of the merger.

5.38 We do not agree with Mr Weidenhammer's view that the loss of the [✂] contract would make Weidenhammer UK unprofitable. Our analysis in paragraphs 5.17 to 5.24 above indicates that Weidenhammer UK would not have fallen into a loss-making position at an EBITDA level after losing the business from [✂].

5.39 Furthermore, evidence provided to us by Weidenhammer's customers suggests that Weidenhammer UK had opportunities to maintain and win new business.

5.40 Weidenhammer UK was recently approved to be a supplier for [✂] in the UK. As an incumbent packaging supplier of [✂] in Europe and given [✂] centralised European procurement structure, we consider that Mr Weidenhammer is unlikely to have wanted to damage his relationship with this customer, particularly having recently lost the [✂] contract.

5.41 In addition, Weidenhammer UK had a commitment to supply [✂] for approximately [✂] years or possibly longer, an agreement negotiated in person by Mr Weidenhammer. Mr Weidenhammer told us that if he had closed the UK operations, he would have supplied [✂] from Weidenhammer's production facilities in continental Europe. However, given the costs of transporting composite cans, this arrangement would reduce the profitability of this contract. Therefore Weidenhammer is unlikely to have wanted to supply [✂] from Germany if it were in a position to continue production in the UK, which we believe it would have had the capability of maintaining in the absence of the merger.

5.42 Regarding Weidenhammer's ability to meet its debt covenant obligations after the loss of the [✂] contract, Mr Weidenhammer stated that this contract contributed to between [✂] and [✂]% of Weidenhammer's profits. From Weidenhammer's consolidated accounts, 2013 EBIT amounted to €[✂] million. Therefore, adjusted for the loss of [✂], an adjusted EBIT figure would be at least €[✂] million.

5.43 Under the debt covenants in Weidenhammer's loan agreements with its creditors, loans can be recalled if a 'material deterioration of the financial situation of the borrower or of the intrinsic value of a security occurs or threatens to occur and thereby the repayment of the loan is in jeopardy'. Although the loss of the [✂] contract may have led to a material deterioration of the financial situation of Weidenhammer, given that interest charges in 2013 amounted to €[✂], Weidenhammer's interest cover ratio would have been [✂] after accounting for the loss of [✂]. This means that Weidenhammer's loan repayment would not have been in jeopardy through failing to meet its interest payment charges and so a cancellation of the loan is unlikely to have been permissible.

Conclusion on exit of Weidenhammer UK

5.44 We consider that Weidenhammer UK is in a sufficiently strong balance sheet and income statement position to have been able to continue supplying composite cans in the UK for the foreseeable future if the merger had not taken place.

5.45 We also consider there to be a lack of strategic reasons for Weidenhammer to close down the Bradford facility once it had had further discussions with customers and assessed Weidenhammer UK's opportunities for winning new business.

5.46 It is also our view that it is likely that Weidenhammer would not have moved composite can production capacity from Bradford to its other European plants and attempted to supply the UK from these overseas plants.

5.47 As set out in the Guidelines and outlined in paragraph 5.6, since the first step of the exiting firm test has not been satisfied, we have not considered either the second or third steps of whether there would have been an alternative purchaser for Weidenhammer UK or what would have happened to Weidenhammer UK's sales if it were to have exited the UK.

5.48 On the basis of the evidence received and the reasons given above, we find it unlikely that Weidenhammer UK would have exited the supply of composite cans in the UK, for reasons financial or otherwise, in the absence of the merger.

In the absence of the merger with Sonoco, would Weidenhammer as a whole have been sold to a third party?

5.49 In the section below we have considered an alternative counterfactual scenario to assess whether, without the merger, there would have been an alternative purchaser for the global Weidenhammer business (Weidenhammer as a whole).

Vendor and parties' views

5.50 Mr Weidenhammer told us that when considering potential bidders for Weidenhammer he considered only Sonoco and he was only interested in selling the business in its entirety.

5.51 Although Mr Weidenhammer had received approaches from other parties interested in the purchase of Weidenhammer, these parties were mostly brokers or representatives of private equity houses. Mr Weidenhammer was not interested in these types of bids. He felt responsible towards the business his family had established and towards its 1,100 employees and would only sell to a party that he believed understood the industry.

5.52 Moreover, Sonoco's position as a close competitor of Weidenhammer meant Mr Weidenhammer would not need to provide extensive confidential information in the course of a sale process and the transaction process was likely to require only limited due diligence.

5.53 Mr Weidenhammer told us that Sonoco was in a strong enough position to buy the entire business. He told us that, if the sale had not taken place, he would have begun restructuring his business to respond to the loss of the [✂] contract (see also paragraph 5.36.)

5.54 Mr Weidenhammer's position is supported by Sonoco's statement that Sonoco was the only true logical buyer. The loss of the [✂] contract to Sonoco was the main driver of the sale of Weidenhammer. If the sale to Sonoco had not taken place, Weidenhammer would have required significant restructuring due to the loss of the [✂] contract. Therefore the sale to Sonoco would have ensured that the facilities supplying this output would remain open and significant restructuring costs, including redundancy payments, avoided.

5.55 Sonoco's position as the only buyer considered by Mr Weidenhammer was supported by [✂]. According to [✂], Deloitte was approached by Mr Weidenhammer asking it to take care of the sale to Sonoco. No alternative bidders were looked for or considered, as would usually have been the case in the sale of a company.

Our assessment

5.56 Taking into account the views of Mr Weidenhammer and the supporting views of Sonoco and other Weidenhammer staff, our conclusion is that, although other bidders may have been interested in buying Weidenhammer, Mr Weidenhammer would only realistically have sold his business to Sonoco.

5.57 We conclude, therefore, that the most likely situation that would have prevailed in the absence of the merger is that Mr Weidenhammer would not have sold its business to an alternative buyer.

Would Sonoco UK have reconfigured its UK business in the absence of the merger, and, if so, what impact would this have had on the total production capacity of composite cans in the UK?

Sonoco's views

5.58 Sonoco told us that, in the absence of the merger, Sonoco UK would not have been financially viable without some form of rationalisation. Sonoco UK's financial accounts showed that its profitability had been poor and was expected to worsen in the coming years.[56]

5.59 Sonoco UK has two composite can manufacturing sites in the UK, in Manchester and in Chesterfield. Prior to the merger, Sonoco had approved the transfer of [✂] production lines, dedicated to [✂], to [✂] in 2015. Lines dedicated to [✂] accounted for [✂] of the composite cans produced in [✂] in 2014, so the move of the lines would increase the site's losses.

5.60 Sonoco told us that if the merger had not occurred, it would have [✂], where equipment was needed. Sonoco also told us that winning the [✂] contracts in [✂] and [✂] ensured that it had a European foothold and so would have few reasons to support an unprofitable UK business absent the merger. These sites would provide a contingent source of supply for composite cans available in mainland Europe, if required by UK customers. These sites would also have space to fit any leftover equipment from the [✂].

Our assessment

5.61 Our conclusion is that the transfer of the [✂] lines from [✂] to [✂] would have made the [✂] facility sufficiently profitable that it would have been able at least to maintain its current composite can production capabilities in the UK. However, this transfer would have affected the viability of the [✂] facility. Accordingly, we have assessed whether [✂] would have exited the supply of composite cans in the UK in the absence of the merger.

5.62 We considered the financial performance of the [✂] facility and how this would be affected by three events not connected with the merger: the transfer of the [✂] lines, the loss of the [✂] contract and the loss of the [✂] production.

5.63 Revenue from Sonoco's [✂] facility declined from £[✂] in 2012 to £[✂] in 2014. However, profitability improved as efficiency measures offset the effect of this reduction in sales. The loss-making EBIT position fell from £[✂] in 2012 to £[✂] in 2014 whilst EBITDA grew from £[✂] to £[✂]. These financial results are, however, prior to the transfer of the lines.

5.64 Despite the upturn in profitability since 2012, the transfer of the [✂] lines would have decreased [✂] revenue by approximately £[✂]. From the open book pricing documents provided to us, [✂] composite cans generate an average weighted contribution margin of [✂]%. Our analysis indicates that, at

[56] Sonoco initial submission, paragraphs 9.2 & 9.3.

this margin, the relocation of this production to Chesterfield would have had a negative impact of £[✄] on EBITDA in [✄].

5.65 In addition, the revenue generated by [✄] would have fallen due to the loss of the [✄] contract to Weidenhammer. The [✄] facility earned £[✄] of revenue from [✄] in 2014. Our analysis indicates that the weighted average profit margin on the [✄] products was [✄]% and therefore the contribution to EBITDA was £[✄].

5.66 Looking one year further out, into 2016, [✄] would also have lost the contract to manufacture [✄][57] [✄].In 2014, these cans generated revenue of £[✄]. Our analysis indicates that the weighted average profit margin on these products was [✄]% and therefore the contribution to EBITDA was £[✄].

5.67 The relocation of the [✄] lines (see paragraph 5.59) and the loss of these two contracts mean that by 2016 [✄] revenue would have fallen by approximately [✄]%, leaving revenue of just over £[✄] a year. Given that fixed costs, excluding depreciation but including head office allocations, currently amount to £[✄], the average contribution margin of the remaining products would need to have doubled from [✄]% to [✄]% to have returned to achieve a positive EBITDA. If margins were to have remained constant at [✄]%, we estimate that the [✄] facility would have generated an EBITDA loss of £[✄] by 2016.

5.68 Therefore our analysis supports Sonoco's assertion that [✄] would face significant financial difficulties in the absence of the merger and would require support from Sonoco to remain open.

5.69 We also accept Sonoco's argument that its establishment of its production sites in [✄] and [✄] reduced its need to support the unprofitable UK production facility. Given the poor financial situation of the [✄] facility and the reduced requirement for an additional contingent facility[58] within Europe, we conclude that [✄] was likely to close.

5.70 However, the impact on the UK's capacity is less clear. The [✄] facility currently contains the production lines for the [✄] composite cans, which is Sonoco's largest UK composite cans customer after [✄]. Therefore if Sonoco decided to close [✄], it would have been likely to transfer these high capacity lines that supply [✄] into the [✄] plant.

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57 [✄]

58 Customers sometimes required a contingent or 'back-up' facility to ensure continuity of supply in case of production problems.

5.71 Sonoco told us that because Goldenfry had switched to Weidenhammer as its supplier of composite cans, the [✂]. However, even if this did not provide sufficient space to accommodate these [✂] lines, Chesterfield possessed [✂].

5.72 Additionally, Sonoco told us that a [✂] facility would be able to produce composite cans to cover the needs of the UK food market in terms of the diameters and formats offered. Therefore even if [✂], the excess capacity in [✂] and its full range of composite cans means that the overall impact on output of composite cans for food use in the UK is not expected to be significant.

Conclusion on the counterfactual

5.73 Our conclusion is that, in the absence of the merger, Weidenhammer UK would have continued to supply composite cans in the UK. Sonoco UK was likely to continue operating both the Manchester and Chesterfield facilities, at least in the short term. In the foreseeable future, it appears likely that, with further decline in the demand for composite cans and without further restructuring, [✂] would have remained loss-making (on both an EBIT accounting basis and an EBITDA cash basis) and would have closed. However, we believe that the impact on the overall capacity in the supply of composite cans in the UK would not be significant.

6. Market definition

6.1 The Guidelines[59] state that the purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement.

6.2 The boundaries of the market do not determine the outcome of our analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, we may take into account constraints outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[60]

6.3 In the remainder of this section we consider the relevant markets in which we should assess the effects of the merger. We first consider the appropriate

[59] The Guidelines, paragraph 5.2.1.
[60] Ibid, paragraph 5.2.2.

product market and the geographic market. We then present our conclusions on market definition.

Product market

6.4 The parties overlap in the supply of composite cans. We considered whether the relevant product market was wider than composite cans so as to include alternative packaging formats. We also considered whether it was appropriate to segment product markets by: food and non-food composite cans; can characteristics; and customer characteristics.

Alternative packaging formats

6.5 The parties told us that the relevant product market should include all forms of consumer packaging except glass, and therefore should include flexible, paper and board, rigid plastics, and metal packaging.[61] The parties provided examples of customers switching from composite cans to alternative packaging formats and tenders the parties had lost against alternative packaging formats.

6.6 Customers had mixed views on how they would be likely to respond to increases in the price of composite cans.[62] Suppliers of alternative packaging formats told us that they were not in competition, or were in limited competition, with composite cans.

6.7 We reviewed the historic prices charged by Sonoco and Weidenhammer and identified examples where prices had increased. We then asked customers how they had responded to those historic price increases. Only four customers provided responses and none of these had switched volumes in response to the price increase. However, the small sample size and alternative explanations for this lack of switching, including changes in the prices of alternative packaging formats, meant we placed limited weight on this evidence.[63]

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[61] See Appendix B for more details on different packaging types.
[62] For more details of customer views, see paragraphs 7.160 to 7.164 and Appendix E.
[63] See 7.167 for a more detailed discussion of this analysis.

6.8 We noted that previous published packaging merger decisions typically defined the product market as specific to a particular format, although we noted that none of the decisions reviewed involved composite cans.[64]

6.9 In light of the above, we conclude that the relevant market is not wider than composite cans. However, we have taken external constraints (including alternative packaging formats) into account in our competitive assessment (see Section 7).

Segmentation by food and non-food use

6.10 The parties told us that, on the supply side, producers of composite cans for non-food could quickly and easily adapt their production processes to compete to supply composite cans for food applications.[65]

6.11 The suppliers of composite cans for non-food use said that they were not in competition with Sonoco and Weidenhammer. We asked whether these firms would enter the supply of composite cans for food use if the price increased by 5 to 10%. One supplier of non-food composite cans ([✂]) told us that it had considered commencing the supply of composite cans for food products but had chosen to focus on the supply of composite cans for non-food products because the factory set-up for food was significantly different from non-food. [✂] stated, however, that if there were to be price increases in the food sector this might affect its view of likely expansion outside non-food. Another supplier of composite cans for non-food (MPS) told us that if Sonoco were to move market prices significantly then it would take an interest in entering the supply of composite cans for food for high volume orders.

6.12 Customers of composite cans for food use said that composite cans for non-food use often lacked the barrier properties associated with composite cans for food use.

6.13 Given the lack of consistent evidence on customer switching between composite cans for food use and those for non-food use and the insufficient

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[64] Amcor/Alcan (Case No COMP/M.5599/2009), Ardagh/Impress (Case No COMP/M.6025/2010), Blackstone/Mivisa (Case No COMP/M.6128/2011), Crown Cork & Seal/Carnaudmetalbox (Case No IV/M.603/1999), Crown Holdings/Mivisa (Case No COMP/M.7104/2014), Owens-Illinois/BSN Glasspack (Case No COMP/M.3397/2004), Owens-Illinois/BTR Packaging (Case No IV/M.1109/1998), Ardagh International Holdings Ltd/Redfearn Glass Ltd CC/2005,Graphic Packaging International Ltd/Benson Box Holdings Limited (ME/6430/14/2014), Graphic Packaging International Ltd/Contego Packaging Holdings Ltd (ME/5821/12/2012), D S Smith/Linpac CC/2004, Greif Inc and Blagden Packaging GroupCC/2007, United States v. Bemis Company, Inc., Rio Tinto PLC, and Alcan Corporation/2010, United States v. Bemis Company Inc., and Rio Tinto plc, and Alcan Corporation/2010, United States v. Amcor Ltd., Rio Tinto Plc, and Alcan Corporation/2010. Amcor/Tio Tinto Competitive Impact Statement/2010.
[65] Sonoco initial submission, paragraph 5.3.

evidence that, in response to a 5 to 10% price increase, current suppliers of composite cans for non-food use would switch capacity and begin supplying composite cans for food use, we conclude that there are separate markets for composite cans for food use and composite cans for non-food use. However, we consider potential constraints from suppliers of composite cans for non-food use in our assessment of competitive effects.

Segmentation by can characteristics

6.14 The parties supply bespoke composite cans to individual customers and these cans are typically not substitutes on the demand side for those supplied to other customers. However, the evidence suggested that the competitive conditions were broadly similar across composite cans for food use, and were broadly similar across composite cans for non-food use. We therefore conclude that the relevant markets should not be further segmented according to the characteristics of the composite cans. However, we consider the different options potentially available to customers of cans with different characteristics in our competitive assessment.

Segmentation by customer characteristics

6.15 Sonoco believed that the market for composite cans was composed of two sub-markets: one for large customers and one for smaller customers. We recognised that customers may have different options depending on the products and volumes they purchased. However, there was insufficient evidence of a clear segmentation based on customer characteristics and therefore we conclude that the relevant markets should not be segmented by customer characteristics. That said, we consider the different options potentially available to smaller and larger customers in our competitive assessment.

Geographic market

6.16 The parties said that customers could economically import packaging from an overseas supplier and gave examples of Sonoco and Weidenhammer importing composite cans into the UK. Other suppliers of composite cans and alternative packaging formats had mixed views on the role of imports. The majority of customers of composite cans for food use said that they would be unlikely to consider imports, while non-food customers said that they could import. We understood that this difference was due to composite cans for non-food use typically having a higher unit price, so transport costs were a lower percentage of the overall price.

6.17 We noted that in previous packaging merger decisions the geographic market definitions varied considerably and were influenced by the importance of transport costs.

6.18 Given the varying evidence we conclude that the relevant geographic market is the UK, but we take account of imports and likelihood of entry by overseas suppliers, where relevant, in the assessment of the competitive effects of the merger.

Conclusions on market definition

6.19 Having reviewed the evidence, we conclude that there are two appropriate relevant markets:

- the supply of composite cans for food use in the UK; and
- the supply of composite cans for non-food use in the UK.

6.20 We recognise that the merged parties will face constraints from outside these relevant markets, including constraints from alternative packaging formats and imports and that these constraints will vary by customer. We take these constraints into account in our assessment of the competitive effects of the merger in Section 7.

7. Assessment of the competitive effects of the merger – composite cans for food use

7.1 We now assess the effects of the merger on competition in the supply of composite cans for food use in the UK. The effect on competition will depend on:

(a) the extent of competition between the parties prior to the merger;

(b) the competitive constraint imposed by existing competitors;

(c) the competitive constraint imposed by imports;

(d) the competitive constraint imposed by alternative packaging formats;

(e) the competitive constraint imposed by entry or expansion; and

(f) the countervailing buyer power of customers.

7.2 As described in Section 5, we are assessing the merger against a counterfactual which assumes that, in the absence of the merger, Weidenhammer UK (as part of a wider Weidenhammer Group) would have continued to supply composite cans in the UK. We also assume that the [✂], but that the impact on the overall capacity in the supply of composite cans in the UK would not have been significant (see paragraph 5.73).

7.3 In this section we only consider the evidence on composite cans for food use. Any reference to composite cans in this section refers to composite cans for food use. The evidence on the effect of the merger on composite cans for non-food use is provided and assessed in Section 8.

7.4 We first summarise the evidence from the parties, customers and competitors on their expectations for the competitive effects of the merger (see Appendix E for more details of third party views).

Parties' views on the merger

7.5 The parties told us that the merged entity would find it unprofitable to raise prices as it would still face significant constraints including the threat of customers switching to other packaging suppliers, the threat of customers switching to cheaper packaging, and the threat of customers moving production off-shore.[66]

Third party views on the merger[67]

7.6 We received evidence from: 30 UK food customers,[68] including three food co-packers (both together representing over 90% of the revenues of the merged entity in composite cans for food use); four suppliers of composite cans; and six suppliers of alternative packaging formats.

Customers' views

7.7 There were mixed views received from customers about the effects of the merger on competition, ranging from concern that the merger would lead to price rises, through no concern, to a belief that the merger would provide benefits, including helping the security of supply.

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66 Sonoco initial submission, paragraphs 1.4–1.12. The parties also told us that they believed that rationalisation in the UK composite can business would occur regardless of the counterfactual to the merger, but that the merger would allow rationalisation to occur in an efficient and orderly manner.
67 11 UK customers responded to more detailed questionnaires.
68 We also received evidence from JTI which, although not a food use customer, purchased similar cans with membranes. We considered its evidence to have some relevance to the competitive assessment of composite cans for food use.

7.8 Most of the smaller[69] customers and a co-packer from whom we received evidence were not concerned by the merger, and did not believe it would affect them.

7.9 Two larger customers [✂] had concerns about the reduction in competitors in the industry, but believed that their long-term contracts and relationships with their suppliers would protect them (one of these customers also believed that Weidenhammer could not supply the volumes it required, and so it would not be affected by the merger).

7.10 Two other larger customers were concerned that they would have reduced leverage in negotiations. However, one of these customers said [✂]. Another customer said that the risks of the merger were not clearly defined [✂].

7.11 Six customers [✂] told us that they were concerned about the merger, because they feared the lack of competition for supply of composite cans in the specifications they required following the merger would lead to price rises, and make negotiation more difficult.

7.12 In addition, one smaller customer told us that, although it was always preferable to have a competitive supply situation, given the long and satisfactory relationship it had with one of the parties it did not foresee any significant problems resulting from the merger. Another smaller customer told us that it had two concerns about the merger: price increases and raising the minimum number of cans in an order.

7.13 The concerns expressed by customers are assessed in more detail in the rest of this section.

Competitors' and alternative suppliers' views

7.14 Other suppliers of composite cans[70] told us that they regarded the merger as an opportunity for them to increase their sales or to enter the supply of composite cans for food use in the UK, and had already noticed an increase in enquiries from potential customers (particularly for high volume production work), following the merger.[71]

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[69] Refer to Appendix E for definition of smaller and larger customers for the purposes of sending out questionnaires.
[70] For food use and for non-food use.
[71] CBT hearing summary.

7.15 MPS told us that competition would be reduced, but that this might be the catalyst for other suppliers to switch focus or for companies focused on other packaging formats to consider investing in composite can making capability.

7.16 CBT told us that the merger would only affect the larger customers in the market who would normally go to the two largest suppliers.

7.17 Can Packaging told us that the merger would help it enter the UK market which would be good for consumers. It said that its Greencan product protected the packaged goods with the same

efficacy as composite cans already available in the UK whilst offering greater environmental benefits.

Extent of competition between Sonoco and Weidenhammer pre-merger

7.18 We considered the extent of pre-merger competition between Sonoco and Weidenhammer, focusing on three aspects:

(a) revenues and market shares in composite cans for food use;

(b) production capabilities; and

(c) evidence on competition between the parties.

Revenues and market shares

7.19 Pre-merger, the parties competed in the supply of composite cans for food use. Our estimates of revenues and market shares in the UK market are shown below in Tables 7.1 and 7.2.

Table 7.1: Sales of composite cans for food use in the UK

Year	*Sonoco*	*Weidenhammer*	*CBT*	*Visican*	*Total*
2010	[✂]	[✂]	[✂]	[✂]	[✂]
2011	[✂]	[✂]	[✂]	[✂]	[✂]
2012	[✂]	[✂]	[✂]	[✂]	[✂]
2013	[✂]	[✂]	[✂]	[✂]	[✂]
2014	[✂]	[✂]	[✂]	[✂]	[✂]

Source: CMA analysis of parties’ responses.

Table 7.2: Market shares for composite cans for food use in the UK

%

Year	*Sonoco*	*Weidenhammer*	*CBT*	*Visican*	*Post-merger share*
2010	[70–80]	[10–20]	[✂]	[✂]	[90–100]
2011	[70–80]	[20–30]	[✂]	[✂]	[90–100]
2012	[70–80]	[10–20]	[✂]	[✂]	[90–100]
2013	[70–80]	[20–30]	[✂]	[✂]	[90–100]
2014	[70–80]	[20–30]	[✂]	[0–10]	[90–100]

Source: CMA calculations.

7.20 These estimates show that Sonoco and Weidenhammer were the two largest suppliers of composite cans for food use in the UK and post-merger had a high market share.

Production capabilities

7.21 The production capabilities of the parties' UK plants are described in detail in Section 2 and Appendix B.

7.22 The Weidenhammer Bradford plant and the Sonoco Manchester plant focus on producing large volume runs of a limited number of diameters, whereas the Sonoco Chesterfield plant also has a 'job shop' capability enabling it to easily produce a wider range of diameters than the parties' other UK plants. The Weidenhammer Bradford plant also has the capability to produce plastics (including lids for the composite cans).

7.23 Sonoco UK has over twice the aggregate capacity of Weidenhammer UK.[72]

7.24 Sonoco told us that the parties did not overlap for all types of composite can:

(a) Overlaps by can diameter and closure accounted for [✂]% of Sonoco's can volumes and [✂]% of Weidenhammer's can volumes.[73]

(b) Overlaps by can diameter account for [✂]% of Sonoco's can volumes and [✂]% of Weidenhammer's can volumes.

Evidence on competition between the parties

7.25 The evidence of pre-merger competition between the two parties for the supply of composite cans for food use is assessed below. This is provided by

[72] Sonoco initial submission, p20.
[73] A volume analysis by customer of the overlapping lines is provided in paragraph 26 of Appendix B.

the parties' views and third party views and our analysis of tender data and margins.

Parties' views

7.26 Sonoco provided us with an internal document that discussed its competitors in 2013. This document referred to Sonoco's attempts to win [✂] Weidenhammer customers: [✂]. Sonoco estimated that it could win £[✂] of revenue if it priced competitively.

7.27 The parties told us that although Sonoco and Weidenhammer have a combined market share of the UK market for composite cans for food use of [✂]%, they only had a direct overlap in respect of [✂] diameters of cans, collectively representing [✂]% of the combined entity's output. The parties also told us that Weidenhammer focused on large volume contracts for diameters of the main UK products, whereas Sonoco had more flexible production lines and could provide a much wider range of diameters and volumes. The parties suggested that therefore although their combined share of the market might appear high, in practice they only competed directly in a proportion of that market for the reasons given above.

7.28 The parties provided analysis comparing the margins Sonoco makes on products where there are differing levels of competition from other composite can suppliers: products that overlap with Weidenhammer; products that overlap also with CBT and Visican; and between the UK and the USA (where Sonoco faces little competition in the supply of composite cans). The parties suggested that the results of this analysis showed no clear relationship between margins and overlapping production capabilities, and that this indicated that there was no evidence to suggest that the absence of an alternative supplier of composite cans enabled Sonoco to earn higher margins.[74] The parties suggested that this showed that there were competitive constraints on the merged parties, and that before the merger Sonoco was not only competitively constrained by Weidenhammer.

Third parties' views

7.29 Four [✂] customers told us that they had previously used competition between Sonoco and Weidenhammer to obtain a better offer, and we were told by several customers that the merger would greatly reduce the competition in the supply of composite cans. [✂][75]

[74] See Appendix C for more information on the parties' margin analysis.
[75] [✂]

7.30 Three [✄] customers told us that they needed a membrane seal to package their products effectively and believed that the parties were the only two companies that could supply the membrane seal they required.

7.31 One customer [✄] told us that the parties were the only suppliers to meet its quality standards.

7.32 Mondelez told us that it required a European supplier for composite cans. [✄]

7.33 Four customers [✄] (including three larger customers) told us that they had not heard of some or all of the alternative suppliers of composite cans (CBT, Visican and Can Packaging) and that they regarded the parties as the main or only suppliers in the market.

Our analysis

7.34 The views of third parties suggested that Sonoco and Weidenhammer competed closely in composite cans for food use before the merger.

7.35 We also considered competition between the parties outside the direct overlapping diameters of cans produced by the parties. While we accepted that the parties only have direct overlap in three diameters of cans, we consider that it would be easier for them to adapt their production lines to produce different diameters than for the smaller composite can manufacturers to install new production lines, particularly for larger volumes.[76] We note that Weidenhammer has shown in recent tenders that it is prepared to build a new production line to meet its customers' requirements. It is therefore our view that the parties acted as competitive constraints on each other for large volume contracts for non-directly overlapping diameters, as well as for the directly overlapping diameters.

7.36 In addition to considering the responses from parties and third parties, we also analysed tender data and margin data provided to us.

- *Tender analysis*

7.37 We obtained two sets of tender data (from larger customers and from Sonoco) and carried out separate analyses on each (see Appendix D for details).

[76] The evidence provided to us suggested that new production lines cost between £[✄] and £[✄], whereas a diameter change on an existing line involves spend of between £[✄] and £[✄].

- *Analysis of tender data from larger customers*

7.38 We received tender data for 2010 to 2014 from four of the 11 larger customers who responded to our more detailed questionnaires. These four customers provided information on 11 tenders. We removed one tender from the analysis as it related to a period when Robinson was a competitor to Sonoco and Weidenhammer and so was not reflective of pre-merger competitive conditions.

7.39 The tender data we analysed covered only ten tenders, accounting for around 13% of Sonoco and Weidenhammer's combined sales from 2010 to 2014. We therefore treated the results of this analysis with some caution. One possible explanation for this low percentage is that some customers do not organise formal tender processes, but instead negotiate with the parties and did not feel that these negotiations were relevant to our questionnaire.

7.40 The results showed that in eight of these tenders Sonoco and Weidenhammer were the only two firms involved in the tender. [✂][77]

- *Analysis of tender data from parties*

7.41 Sonoco[78] provided us with tender data for its Chesterfield and Manchester plants, containing information on the companies from which it had faced competition in customer inquiries over the last five years.[79] These tenders covered less than [✂]% of Sonoco and Weidenhammer's combined sales. We investigated the representativeness of these tenders, comparing the annual contract values in the tender data with Sonoco's annual sales data: the tender data for Chesterfield had fewer large value tenders, compared to Chesterfield's actual sales, and the Manchester tender data had fewer small value tenders, compared to Manchester's actual sales.[80] Our analysis of this data showed that Weidenhammer competed with Sonoco for [✂]% of these tenders.

7.42 We noted that there was a large difference between the results for the larger customer tenders and the Sonoco tender data. There are at least three reasons that may partly explain this large difference. First, in 35% of the food tenders, Sonoco was unclear whether it was competing against Weidenhammer or not, so the actual percentage could be higher than [✂]%. Second, if we look at the value of food tenders, rather than the number of

[77] More details on this tender data are provided in Appendix D.
[78] Weidenhammer did not provide us with any tender data. Information provided by Sonoco was not comprehensive.
[79] More details on this tender data are provided in Appendix D.
[80] See Appendix D for more detail.

tenders, then Weidenhammer was present in [✂]%, rather [✂]%, of food tenders. Third, some of the Sonoco food tender data covered Premier Foods and Premier Foods told us that Weidenhammer was not an option for it. In its response to our questionnaire Premier Foods told us it had not organised a tender in the last five years. The two analyses were therefore not necessarily inconsistent.

7.43 Our view is that the two analyses portrayed different aspects of competition in the supply of composite cans. The customer data indicates that for the larger contracts placed by the four customers that provided tender data, Sonoco and Weidenhammer were close competitors pre-merger. The Sonoco data indicates that Sonoco and Weidenhammer were close competitors for some, but by no means all, of a wider range of customers.

- *Analysis of margins*[81]

7.44 We reviewed the parties' margin analysis (see paragraph 7.28) and carried out our own analysis on the Sonoco and Weidenhammer data. Sonoco's initial submission contained three scatterplots comparing margins where Sonoco appears to have differing levels of competitive constraints on the provision of composite cans: between products where there is overlap with Weidenhammer; between products where there is overlap also with CBT and Visican; and between the UK and the USA, where Sonoco faces little competition in the supply of composite cans.

7.45 The parties' scatterplots showed no observable relationship between overlaps of Sonoco and Weidenhammer for specific can types and the margins obtained by either Sonoco or Weidenhammer. The parties said that this indicated that their pricing was constrained by alternative packaging formats. However, in order to test whether there is any relationship, a better approach is to control for other factors.

7.46 There might have been alternative explanations for the patterns observed that would be consistent with there being a stronger constraint on Sonoco by Weidenhammer (and vice versa) than the constraint from other sources (such as alternative packaging formats). [✂]

7.47 As explained in detail in Appendix C, we tested some alternative explanations and obtained mixed results where some but not all were consistent with Sonoco's argument that its pricing was constrained by alternative packaging products. We expect that these mixed results arise because our analysis was

[81] See Appendix C for more details.

not able to control for all factors that affect pricing and the level of competition. Most importantly, as with Sonoco's own analysis, our models were unable to test whether Sonoco may still be constrained by Weidenhammer's ability to install new production capacity.

7.48 On the basis of the margin data we have been given and our econometric analysis, we cannot reject the hypothesis suggested by the parties that Sonoco's pricing has not been constrained by Weidenhammer. However, we consider that, although this analysis carries some weight in our assessment, it is not in itself conclusive.[82]

7.49 We note that the parties suggested that the margin analysis also had relevance to consideration of the other constraints the parties might face, such as the constraints from alternative packaging formats. We therefore discuss the implications of the margin analysis later in this section, where relevant.

Our assessment

7.50 The evidence we have received from customers and our own analysis suggests that the starting point for the assessment of the impact of the merger on competition should be that the parties were close competitors for many customers and were also close potential competitors where there was no existing direct overlap of diameter.

7.51 However, we recognise that there are other potential competitive constraints on the parties, namely existing competitors, imports, alternative packaging formats, entry or expansion, and countervailing buyer power. We have therefore considered the potential range of options available to different customers and the competitive constraints these would impose on the merged entity.

7.52 Recognising that the competitive constraints on the merged parties may vary by customer, we consider each factor in turn before considering the overall strength of the competitive constraint post-merger and therefore reaching an overall conclusion.

[82] Further details on how the CMA approaches technical economic analysis is provided in our best practice guidelines.

***Competitive constraint imposed by existing competitors*[83]**

7.53 As described in paragraphs 2.43 to 2.48, currently the only suppliers of composite cans for food use in the UK, other than the merged parties, are CBT and Visican.[84] These companies are substantially smaller than the merged parties' UK operations, accounting for approximately [0–10]% and [0–10]% respectively of the UK market for composite cans for food use.

7.54 We considered the competitive constraint that CBT and Visican could impose on the merged entity, having regard to the differing requirements of customers.

Parties' views

7.55 The parties told us that smaller customers for certain diameters could switch to CBT and Visican, who would have the capacity to supply these smaller customers.[85]

7.56 Sonoco provided us with a summary of overlaps by diameter for Sonoco compared with Weidenhammer, CBT and Visican. The results showed that there are three types of cans that both Sonoco and Weidenhammer produce ([✂] diameter sizes) whilst CBT had four overlaps ([✂]) and Visican had two overlaps ([✂]) with Sonoco.

7.57 Sonoco provided [✂].

Customers' views

7.58 The majority of smaller customers we spoke to said that they were unaware of alternative suppliers to the merged parties.

7.59 One smaller customer [✂] said that it would consider changing supplier if the price rose as much as 10%. Another smaller customer [✂] told us that a 5% price rise would not trigger a switch if it was due to a wider trend in prices but it might if it was due to Sonoco's desire to increase profits.

7.60 Another smaller [✂] told us that it would be unlikely to switch to another supplier if prices were raised by 5%, due to the party's superior service (shorter lead times) and currently cheaper price, but it would look at other suppliers.

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[83] That is, suppliers of composite cans for food use.
[84] Can Packaging does not currently export composite cans for food use in the UK. It does, however, sell to customers who then sell its products to UK retailers, such as Waitrose, Asda and Sainsbury's.
[85] Sonoco initial submission, p41.

7.61 A small customer [✂] had sought quotes from both Sonoco and Visican, but had used Sonoco because it was cheaper and because it knew the sales manager.

7.62 [✂][86]

7.63 Seven larger customers said that CBT and Visican were not viable alternatives. Of these, five customers said that they had never purchased cans from CBT or Visican and one customer said it was not aware of alternative suppliers to Sonoco and Weidenhammer.

7.64 Evidence provided to us by three larger customers [✂] suggested that they believed that CBT and Visican were unable to supply composite cans in the volumes or specifications (in particular the membrane seal) required, and therefore were not viable alternatives to Sonoco and Weidenhammer if there was a change in relative prices for those customers. Mondelez told us that it needed a European supplier as it was purchasing composite cans for plants in other countries in the EU, and it regarded CBT and Visican as local suppliers that could not meet its requirements.

7.65 Three customers [✂] said specifically that only Sonoco and Weidenhammer could make the type of can they required.

7.66 During the process of our inquiry, we noted that several customers had started to investigate alternative suppliers more closely. Following the news of the merger, one larger customer (Nestlé) had begun investigating alternative suppliers/structures and innovative supply chains to ensure that any supply risk would be mitigated. Another customer (Goldenfry) told us that it was now in active discussions with Can Packaging from which it had not previously purchased. It had also, following the merger, appointed an independent procurement specialist to identify and investigate alternative suppliers to establish a viable contingency supply route. This is consistent with the evidence received from other suppliers of composite cans (see paragraph 7.70).

Competitors' views

7.67 Visican told us that it did not consider itself to be a competitor of Sonoco or Weidenhammer, [✂]. Visican also told us that it did not possess the

[86] [✂]

technology to produce a foil lining airtight seal for cans, and was not interested in supplying these types of cans.[87] [✂]

7.68 CBT told us that it did compete with Sonoco and Weidenhammer but that their ranges varied so it did not clash often. CBT had the ability to produce a sunken foil diaphragm (recessed membrane) suitable for cocoa powder products and peelable ring pull ends. CBT believed it did not matter which membrane customers used, although a recessed membrane was cheaper than a peelable aluminium seal. CBT stated that this was not difficult for it to produce, as it only required the use of a standard metal end seaming machine.[88]

7.69 CBT told us that it considered itself to be in competition with Sonoco on smaller volumes, and had previously turned away customers as it had not been able to produce the required volume of cans.[89] [✂]

7.70 CBT told us that it had noticed an increase in enquiries since the Sonoco/Weidenhammer merger was announced, particularly for high volume production work. It told us that a price increase of 5% by the merged parties could stimulate some of their customers to move to CBT, eg [✂].

Our assessment

7.71 We found some evidence of switching between the merged parties and other suppliers of composite cans for food products. For example, [✂] told us it had switched from Visican to Sonoco, and Goldenfry told us it had sourced composite cans from CBT in the past.[90]

7.72 The evidence described above suggests that Sonoco and Weidenhammer do compete to some extent with Visican and CBT, but this competition is limited to smaller customers of composite cans. Although Visican is not currently able to offer the airtight seals, evidence received from these customers suggested that this was not always required. In addition, the majority of smaller customers told us they were not concerned by the merger.[91]

[87] Visican hearing, paragraph 3..
[88] CBT hearing summary, paragraph 3.
[89] CBT hearing summary, paragraphs 4 & 6.
[90] We note, however, that although Sonoco has attempted to win CBT and Visican customers, the potential volume gain for Sonoco from Weidenhammer is much larger than from CBT and Visican, given the relative market shares.
[91] More detail on the response from small customers is given in Appendix E.

7.73 We conclude that, for smaller customers, there is likely to be a competitive constraint on the merged parties from existing suppliers of composite cans for food use in the UK.

7.74 As regards supply of large volumes, we have not seen any evidence that there are alternative UK composite can suppliers currently supplying large volume orders of composite cans for food use, although we note that some larger customers are now talking to other suppliers.

7.75 However, we note that one competitor considers that it has the capability to supply some higher volume contracts for particular specifications (and has recently quoted for contracts), and may be willing to invest in the required machinery for other specifications if sponsored by a customer (see 7.196 to 7.208 for discussion of sponsored expansion/entry). We also note that although some larger customers believed that only Sonoco and Weidenhammer were capable of producing the membrane seal they required, this conflicted with the evidence from CBT that it was able to produce similar seals.[92]

7.76 Overall, on the evidence provided to us we conclude that it is likely that existing competitors are currently not able to provide an effective constraint on the merged parties for the supply of larger volumes of composite cans for food use.

7.77 We now turn to consider other options available to customers that may act as competitive constraints on the merged parties.

Competitive constraint imposed by imports

7.78 Suppliers of imports can be considered in the context of an immediate constraint on the merged parties, and in the context of imports made in order to inform the development of a strategy to enter the UK market for the supply of composite cans for food use.[93] We first consider whether imports can be considered an immediate competitive constraint on the merged parties.

Parties' views

7.79 The parties told us that Sonoco UK imported around [✂]% of its composite cans from its plant in Lievin, France. Weidenhammer also imported composite cans to the value of around £[✂] from its continental European plants to UK

[92] In addition, see discussion of potential capability of non-food use composite can manufacturers to produce membrane seals in paragraph 7.191 on likelihood of entry.
[93] We consider imports made in order to inform the development of an entry strategy in paragraph 7.212 below.

customers, because its UK production facilities could not produce these can diameters. The parties also told us of one company in continental Europe that may be capable of importing to the UK.

7.80 In addition, the parties provided us with estimates of the transport cost differential between exports and domestic sales for their plants, and also the cost to import composite cans from their continental European plants compared with supply to UK customers from their UK plants.

7.81 The parties suggested that the transport data they gave us indicated that imports would be a viable alternative to customers in the event of only a small price increase (see paragraphs 7.91 to 7.93 for our assessment of this data).

Customers' views

7.82 We received views from customers about competition between Sonoco and Weidenhammer and other suppliers of packaging from outside the UK.

7.83 Three customers [✂] said that they would consider importing cans, but the decision was dependent on price comparison and haulage costs. However, one of these customers said that it had always favoured UK-based suppliers with shorter supply chains. Seven customers [✂] told us that imports were not a viable alternative, due to the relatively high cost of transporting large, unstackable empty containers.

7.84 [✂][94]

7.85 Premier Foods told us that in theory it could import from anywhere, but it would depend on the price, service, flexibility of supply and quality. It also told us that it had made a strategic decision to support UK suppliers.[95]

7.86 The only potential source of imports of composite cans for food use suggested to us by customers was Can Packaging in France.[96] However, several customers told us they had never heard of Can Packaging, and one customer said Can Packaging could not supply all of its demand.

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[94] [✂]
[95] Premier Foods hearing summary, paragraph 4.
[96] One customer told us it was in discussions with Can Packaging.

Competitors' views

7.87 CBT told us that it was in competition with imported packaging, but that was primarily Weidenhammer from northern Europe. Visican said that it was not in competition with imports.

7.88 Can Packaging told us that it had not exported any cans to the UK in the last five years. However, it was considering supplying the UK market from continental Europe. Can Packaging told us that until the end of 2014, it was just keeping up with demand and had very little spare capacity to expand. However, having invested significantly in its existing plants in France (doubling their sizes) it had spare capacity to enter into new markets, the UK included.[97] Can Packaging told us that it was currently negotiating a very big contract with a food client in the UK through an agency.[98]

7.89 In addition, we were told by two customers of larger volumes that they were in discussions with Can Packaging. We were also provided with evidence that Can Packaging had competed with the parties in a recent tender, although it had not been successful in winning the business.

7.90 MPS told us that it was aware of agents that source composite cans for customers from Asia (for example). They were relatively new to the market, and MPS was unsure of their price points, volumes, or whether they could source composite cans for direct food contact.[99]

Our assessment

7.91 The current level of imports of unfilled composite cans[100] appears limited. As third parties had told us that transport costs were a major factor in the feasibility of imports, we looked in more detail at transport costs for domestic and export sales provided by the parties.

[97] Can Packaging hearing summary, paragraph 4.
[98] Can Packaging hearing summary, paragraph 6.
[99] MPS hearing summary, paragraph 8.
[100] The parties told us that a significant volume of filled composite cans entered the UK from abroad (including Pringles cans manufactured and packaged in composite cans in continental Europe and products for UK Aldi and Lidl stores packed in Germany). We were also told that Can Packaging is in discussion with a UK supermarket to provide composite cans for products.

Table 7.3: Parties' analysis of transport costs

		Transport cost as a percentage of sales price			
Company	*Plant*	*Overall mean*	*Mean for domestic sales*	*Mean for export sales*	*Transport cost differential*
Sonoco	Manchester	[✂]	[✂]	[✂]	[✂]
Sonoco	Chesterfield	[✂]	[✂]	[✂]	[✂]
Weidenhammer	Bradford	[✂]	[✂]	[✂]	[✂]

Source: Sonoco initial submission, page 17.

7.92 The parties also told us that if they were to import composite cans to the UK from a plant in continental Europe, the additional freight costs would amount to between [✂]% and [✂]% of the sales price, depending on the specification of the can.

7.93 Although the parties suggested that import transport costs were not prohibitive, we note that the difference in average transport costs as a percentage of sales value of exported cans compared with UK produced cans is between [✂] percentage points. This suggests that a material price increase in the UK would be required before transporting cans into the UK would be economically viable. Moreover, we note that this data is for exports from the UK and we were told by Weidenhammer that importing into the UK is more expensive than exporting from the UK, since the UK is a net importer of goods.[101] If this is the case, the transport cost differential between domestic and import supplies may be even higher than suggested in the table above. However, we also note that the transport cost differential will vary according to the geographical location of the customer, particularly given that the parties' three UK plants are all in the north of England whereas some customers of imported products may be in the south. Further we note that additional transport costs would be less relevant for an overseas composite can manufacturer supplying imports to the UK as part of a longer-term entry strategy (where establishing profitable operations longer term would be expected to replace unprofitable imports).

Conclusion

7.94 There is some evidence that imports of composite cans into the UK are feasible, but the evidence from third parties and the transport cost data we have received suggests that a material price increase in the UK would be needed for imports to be a credible alternative supply of composite cans for food use. Sonoco and Weidenhammer both import composite cans into the

[101] [✂] Our understanding of this point is that the UK imports more than it exports, and so boats or lorries arrive with freight to the UK and return empty. It is therefore cheaper to export from the UK, since there is spare capacity.

UK, but we have received limited evidence of other suppliers doing so. We note the (as yet unrealised) proposals of Can Packaging to import into the UK, but we do not consider this to be strong evidence of an immediate competitive constraint on the merged parties posed by imports.

7.95 We therefore find that it is likely that imports currently provide a limited element of competitive constraint on the merged parties. Indications are that imports might be expected to have a greater role in the future due to plans being considered for imports which are not dependent on a price increase in the UK. We consider the potential for overseas suppliers to establish production facilities in the UK later in this section when assessing the likelihood of entry of new suppliers to the UK market, particularly through sponsored entry (see paragraphs 7.192 to 7.205).

Competitive constraint imposed by alternative packaging formats

7.96 In the following paragraphs we explore the extent of the threat of alternative packaging formats to the type of packaging supplied by the parties, and the competitive constraint this would impose on the merged entity. In this regard, we note that the parties told us that the threat of alternative packaging formats was a stronger source of competition than other composite can suppliers.

7.97 We look first at the trends in packaging formats. Then we look at the impact of these trends on the demand for composite cans, the factors influencing the decision by customers whether to switch packaging formats away from composite cans, the switching costs incurred by customers when moving to alternative packaging formats, and the strength of the competitive constraint on the merged entity provided by the option to switch to alternative packaging formats.

Trends in packaging formats

7.98 The trend in consumer packaging is away from composite cans towards alternative packaging formats, such as rigid plastics and flexibles (see paragraph 2.8).

7.99 The use of some other packaging formats is increasing, as they meet changing consumer preferences, and also provide technical and cost benefits to the product being packaged (see paragraph 2.22).

7.100 We now look at factors behind this trend, including changing consumer preferences, the technical and cost benefits of alternative packaging formats, the increasing variety of packaging formats available, the increasing segmentation of products using packaging, and lastly changing demographics.

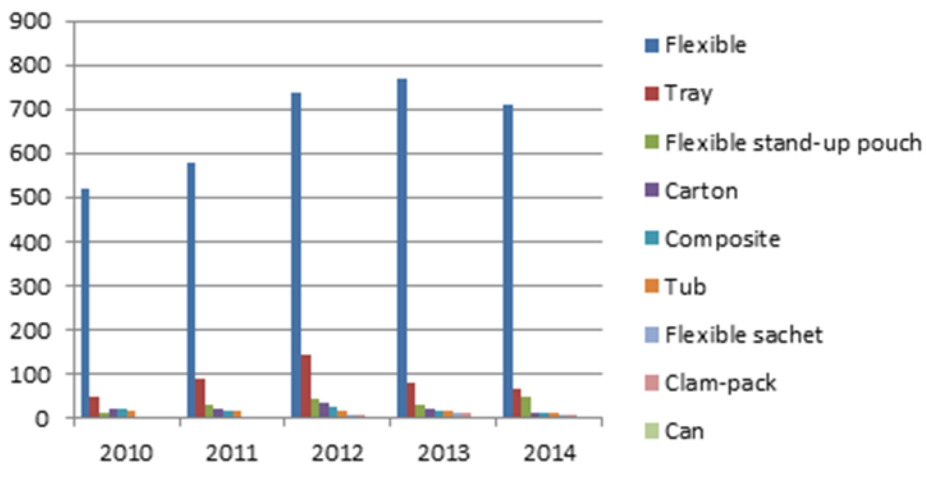
Changing consumer preferences

7.101 The parties told us that changes to consumer preferences were leading to a general trend away from composite cans and into alternative forms of packaging. New products were unlikely to be packaged in composite cans and when customers switched to alternative packaging formats, they were unlikely to switch back. There was an emphasis on freshness, the increased preference for products aimed at convenience (such as the coffee pod) and single serve products. They told us that the rising generation of 'millennials' (defined as 18 to 32 year olds, who were the 'fastest-growing spending' group globally) were accustomed to the new packaging formats as they were more 'relevant' to how they consumed products.

7.102 This was confirmed by third parties. [✂] told us that the biggest growth in UK packaging over the last two years had been in flexible laminate pouches, as that was what the market wanted.

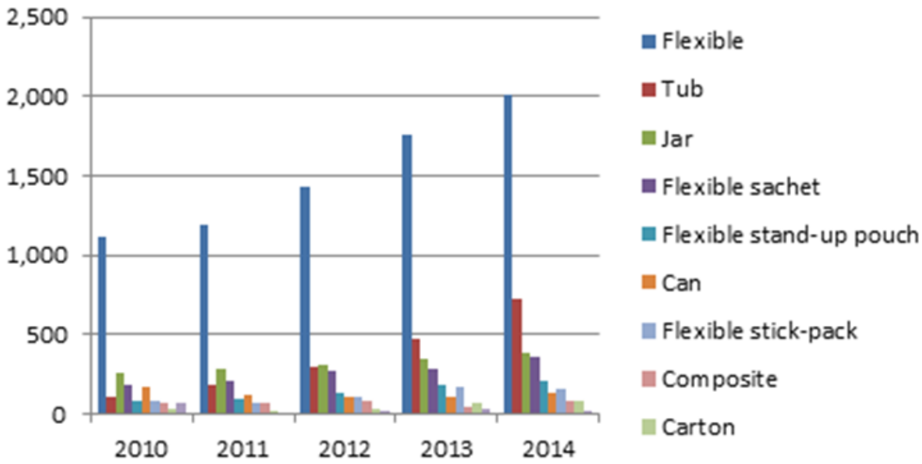
7.103 The parties provided us with their analysis of independent industry data from Mintel on new product launches in the UK, showing the popularity of other packaging types compared to composite cans for three different types of food product (see Figures 7.1 to 7.2 below).

Figure 7.1: Packaging type for new product launches of snacks in the UK



Source: Parties' analysis of Mintel data.

Figure 7.2: Packaging type for new product launches of coffee in the UK



Source: Parties' analysis of Mintel data.

7.104 This analysis provides some evidence of the increasing popularity of flexible packaging in particular for new products, compared with composite cans.

Technical/cost benefits of alternative packaging formats

7.105 The parties told us that alternative packaging formats could offer similar characteristics and functionality to those of composite cans. The special requirements of consumer products, such as tamper-proof protection, oxygen-proof sealing,'re-closeability' or inner-liner specifications could be met by most forms and materials of consumer packaging.[102]

7.106 In addition, alternative packaging formats could offer additional benefits that composite cans could not provide:

- Alternative shapes: single-wrap cans could be formed into different cross-section shapes (eg square, triangular). By contrast, composite cans were always produced in the UK with a circular cross-section. The parties told us that cans could be formed into ovals, but this was not practical for high volume lines.

- Stackability: single-wrap cans could be produced with tapering sides, allowing them to be stacked, which made them easier to store and transport.

[102] Sonoco initial submission, paragraphs 5.6 & 5.7.

- Transparency: flexible or plastic packaging could be made from transparent material, allowing the product to be seen by the consumer before purchase.

- Windows to view product: single-wrap cans could have apertures cut into the cans maintaining a rigid package, but allowing the consumer to view the product. Flexible packaging can also have windows.

- 'In-line conversion': spiral-wound composite cans need to be produced by a specialist supplier and delivered ready formed to the customer. By contrast, many of the alternative packaging formats can be formed by the customer in their production lines from flat 'blanks' or rolls of material, thus reducing the transport and storage costs of the packaging.

- Cost of the material: for example, the parties told us that flexibles were substantially cheaper than composite cans.[103]

- Speed of packing lines: [✂] told us that the output of a packing line for plastic containers was three to four times that for composite cans.

7.107 One customer ([✂]) told us that it reviewed alternative packaging formats every two years and noted that this process could include a consideration of whether to move its product out of composite cans.[104] Another customer told us that it considered other forms of packaging on an annual basis,[105] and a third told us that consumer research was regularly carried out by its marketing department.

Increasing variety of packaging formats available

7.108 The parties told us that the speed of switching to other formats was increasing, compared with 15 years ago, due to the increased number of packaging formats available. The parties told us that large customers were experimenting more with packaging formats.

7.109 CBT told us that, from its experience, marketing decisions from customers could quickly change the type of packaging used for a product. It told us that there were many competitive products to spiral-wound composite cans, such as plastic containers, flow wrap, flexible packaging and cartons.

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[103] See Table 7.4.
[104] [✂]
[105] United Biscuits hearing summary, paragraph 5.

Increasing segmentation of products using packaging

7.110 The parties also told us that customers were keen to create umbrella brands that sold similar products in different packaging, and that customers often segmented the market by making the same product available in a variety of packaging formats. They provided several examples of this.

7.111 Premier Foods told us that most of its brands were available in other forms of packaging, driven by customer preference. This gave Premier Foods multiple locations on shopping aisles, helping brand awareness and sales.[106]

7.112 Mondelez told us that it used alternate packaging for drinking chocolate such as rigid plastic containers in the UK and flexible pouches in Germany. For coffee brands it used both composite cans and metal cans.[107]

7.113 UB told us that everything it packed into composite cans was also available in a flexible format. However, it considered that there was very little crossover between those buying in the cans and those buying flexibles, because the products were used in different ways.[108]

7.114 We note that we have not seen evidence that individual end consumers switch between packaging formats for the same product even when a product is available in several different packaging formats. However, having multiple packaging formats for a product may make it easier for the customer to switch away from composite cans to one of those alternative formats (see paragraph 7.132).

Changing demographics

7.115 The parties told us that a significant proportion of the composite cans supplied by the parties were for products (such as Coffee-mate and gravy) that were aimed at an ageing demographic, and demand for the products was gradually declining naturally.

7.116 The parties told us that the 'premium', more traditional, image of the composite can did not appeal to younger consumers, who favoured the alternative packaging formats, such as flexibles. In addition, as older consumers became more familiar with the new formats, the decline in demand for composite cans would accelerate, particularly if alternative packaging formats required less dexterity to use.

[106] Premier Foods hearing summary, paragraph 4.
[107] Mondelez hearing summary, paragraph 1.
[108] United Biscuits hearing summary, paragraph 4.

7.117 [✂]

Impact of packaging trends on the demand for composite cans

Parties' views

7.118 The parties provided us with evidence of composite can customers moving some or all of their product previously in composite cans to alternative packaging formats.

7.119 The parties gave examples of customers switching their products out of composite cans into other packaging formats:

- Coffee producers had shifted from composite cans to flexible packaging.[109]
- Drinking chocolate had moved from composite cans to different packaging, including rigid plastic. [✂] shifting was a loss of [✂] cans a year and £[✂] a year of revenue.[110]
- [✂] had moved from composite cans to single-wrap paperboard cans for seasonal confectionery[111] and [✂] had switched from a spiral-wound can to a self-manufactured single-wrap can.
- [✂] had threatened to move to another packaging substrate if Sonoco did not offer a discount, and Sonoco responded to the threat with a £[✂] discount to keep the business.[112]
- [✂] had shifted back to metal packaging from composite cans when metal prices fell.[113]

7.120 Composite cans do not appear to be chosen for new products. The parties told us that there was intense competition for the packaging of new products, where the customer would typically not have already invested in packing machinery. The parties told us about the [✂] vendor workshops, where [✂] invited packaging suppliers to attend one-to-one meetings with its marketing team.[114] The parties told us that, although they took part in many tenders for new products, they did not tend to win.

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[109] Sonoco initial submission, paragraph 5.12.
[110] Ibid.
[111] Ibid.
[112] Sonoco initial submission, [✂].
[113] Sonoco initial submission, [✂].
[114] Sonoco initial submission, paragraph 5.12.

7.121 The parties told us that they predicted a decline in their UK composite can sales of 5% a year, as a result of these shifts in the packaging industry.

7.122 Sonoco told us that because of the changing dynamics of consumer preferences and the movement to alternative packaging formats, the Sonoco Group has invested in plastics and alternative packaging formats, and that it had been open and vocal about the fact that this was from where its focus for further growth as a packaging company was going to come.

Customers' views

7.123 One smaller customer [✂] told us that the majority of its rivals used flexible packaging, but it preferred to stand out from its competitors and believed that composite cans suggested that its brand was a premium one. However, if the price of composite cans was raised significantly, it would have to move into flexibles.

7.124 Another smaller customer [✂] told us that it was currently considering switching packaging format to plastic pouches, due to the reduced cost, ease of storage and market considerations such as their environmental appeal.

7.125 [✂] told us that it has moved products from composite cans to other formats. [✂]

7.126 Tata told us that it considered the composite can to be more expensive than other forms of packaging. It considered it unlikely that UK customers would actively want to move into a more expensive pack format, especially as the supply of packaging was cost-competitive with supermarkets being demanding of their suppliers and looking for reduced costs.[115]

7.127 Mondelez told us that it had considered moving other products into composite cans from tins, but this had been rejected by marketing as tins were considered to have a more 'premium look'.[116]

Competitors' views

7.128 CBT stated that although some products moved out of composite cans and others in, popularity for the packaging format generally did not seem to change.[117] Sales for CBT and Visican in the supply of composite cans for food use were not falling.

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[115] Tata hearing summary, paragraph 11.
[116] Mondelez hearing summary, paragraph 7.
[117] CBT hearing summary, paragraph 9.

Our assessment

7.129 Our analysis indicates that following a sharp rise in 2011, total revenue from the sale of composite cans for food use in the UK rose at a CAGR of 2.1% amounting to £[30–40] million in 2014. The most recent financial data for 2014 indicated that total revenue from the sale of composite cans for food use in the UK actually fell by 4.5% year-on-year.

7.130 We noted comments from Sonoco that it expected demand for composite cans to decline at a rate of 5% per year in the future. This view was consistent with the 2014 data available, and in this context we noted that we had seen limited evidence of new products launched in composite cans supplied from the UK in the recent past.[118]

7.131 On balance, we therefore conclude that the market for composite cans for food use is likely to decline.

The decision to switch packaging formats

7.132 The evidence from third parties to whom we spoke suggested there were many factors that would affect the ability of customers to switch to alternative packaging formats, but the factors relevant to specific customers and products would vary. Factors mentioned to us included the following:

- **Co-packers**. Some customers used co-packers to pack their products. If the co-packers had different types of packing machinery this could facilitate switching between different packaging types as the customer would not have to invest in new machinery.

- **Composite can characteristics**. Customers might be purchasing composite cans because of their ability to protect the product and flexible packaging might not be a viable alternative. Other packaging formats might not be practical substitutes for the largest composite cans.

- **Consumer sentiment**. Some customers might not wish to switch from composite cans because they feared consumers would not like the alternative packaging format.

- **Environmental aspects**. Customers' decisions on packaging might be influenced by environmental factors. For example, glass might be seen as more environmentally friendly if it had a higher recycling rate.

[118] See Figures 7.1 and 7.2 for analysis of Mintel data on new product launch data.

- **Marketing decisions**. The marketing departments of composite can customers might have views on the best packaging format for a product. They might also decide to re-launch products and decide that a new packaging format should be part of the re-launch.

- **Multiple packaging formats**. Some composite can customers sold their product in multiple packaging formats to target different consumer segments. This might facilitate switching as the customer already had the machinery to package into the alternative packaging formats.

- **New vs repeat purchases**. Customers that were launching a new product and looking for packaging would potentially have a wider range of potential suppliers and were less likely to be constrained by previous investment decisions.

- **Own-label production**. Customers that produced own-label products for supermarkets might have less say in the packaging decision as the supermarket might stipulate that the product had to be packaged in the same format as the branded market leader.

- **Prices of alternative packaging products**. Alternative packaging formats might be cheaper than composite cans, so customers seeking to reduce costs might decide to switch to cheaper alternatives.[119]

- **Quality/service levels**. If there were defects in the packaging then this could result in consumer complaints and there was often extensive testing before any switch of packaging format.

- **Volumes**. Customers purchasing larger volumes might find it more difficult to find suppliers that could supply the necessary volumes, including the need to deal with the seasonality associated with some products.

7.133 The factors above, and others, may play a part in the decision to switch between composite cans and an alternative packaging format and individual factors are likely to vary in importance across customers, and may require customers to undertake a detailed cost-benefit analysis before deciding to switch.

7.134 To assess competitive effects from the merger, one of the factors we consider is whether customers would switch to alternative packaging formats in the event of a price increase imposed by the merged entity. We therefore now

[119] See Table 7.4 for more details on alternative packaging costs.

look at the costs that would be incurred by customers if they switched to alternative packaging formats.

Switching costs to move to alternative packaging formats

7.135 There are different types of switching costs for customers to move to alternative packaging formats, although evidence we have gathered shows that some of these costs can at least partly be mitigated.

Switching costs

- *Machinery costs*

7.136 The parties told us that the cost of packing machinery for customers switching between packaging formats was generally low as long as the switch was from rigid to rigid (such as a switch from composite can to rigid plastic or metal packaging). The customer's production lines could, in most cases, easily and at low cost be adjusted to a new rigid packaging format, and new machinery or extensive staff training was not necessary.

7.137 The parties told us that a switch from rigid to flexible would be more expensive than a rigid-to-rigid switch, but since flexible bags were already cheaper than rigid cans, a switch to flexible packaging could justify an investment by a customer in a new packaging line.[120]

7.138 Third parties provided us with various estimates of switching costs, ranging from £50,000 to hundreds of thousands of pounds (for a customer spending £[100,000–500,000] to £2–4 million[121] (for a customer spending £[1–5 million], depending on the volume of production required among other factors.

- *Market and product testing costs*

7.139 Third parties told us that as well as the equipment costs, there would be other costs incurred including market testing the new packaging format and testing the shelf life of the product in the new packaging.[122] As well as incurring financial costs, there could be a substantial lead time before the new packaging could be introduced to the market. For example, one customer ([✄]) estimated that a changeover could take one to two years.

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[120] Sonoco initial submission, p13.
[121] €5 million converted into GBP using the 2014 average exchange rate of €1.24/£, obtained from OANDA.
[122] At its hearing, Mondelez stated an additional factor affecting its decision to switch to Can Packaging would be the shelf life of its product in the Can Packaging model. This is research that has not been undertaken by Mondelez.

- *Marketing costs*

7.140 A customer told us that if the packaging format of an existing product was changed, a marketing initiative might be needed to make consumers comfortable with the new look of the product.

- *Potential loss of end consumer demand*

7.141 For some customers and for certain products, a switch in the packaging format might lead to a decrease in the end consumer demand that would make it unprofitable for customers to switch. This loss could be the greatest switching cost faced by some customers.

7.142 A number of customers told us that consumers liked their products in composite cans, and that switching to an alternative packaging format would lead to a reduction in sales.[123] For example, UB did consider other forms of packaging on an annual basis. It had looked at a range of alternative packaging materials, shapes, sizes, including stackable, and the feedback was still that the composite can was the consumer preference.

Factors that could reduce the cost of switching

7.143 The parties told us that there were several ways in which a customer who was considering switching packaging formats could reduce the cost and risk of the switching decision.

- *Customer already using alternatives*

7.144 The parties told us that if a customer was already using the alternative packaging format for a different product, that customer would have expertise in the format and might already have a suitable packing line with sufficient capacity, thus reducing the capital investment required.

7.145 Seven customers (all larger customers) told us that they currently packed products into packaging formats other than composite cans.

- *Use of co-packers*

7.146 The parties told us that co-packers facilitated switching between different packaging formats, as many co-packers already filled into different formats. Using a co-packer[124] to package trial products in a new packaging format

[123] Two of these customers had provided market research in support.
[124] Sonoco initial submission, paragraph 5.11.

would reduce both the costs and risks to the customer of testing the new format in the market. Also, if a customer already used the co-packer for the existing format, switching formats might not require the purchase of a new line.

7.147 A number of customers are already engaged in limited use of co-packers.

7.148 [✂][125]

7.149 [✂]

7.150 For its coffee brands, such as Kenco, Mondelez currently used both composite cans and metal cans for its packaging. It was currently using a co-packer for its Green and Black's product, which represented around [✂]% of UK volume.

7.151 [✂]

- *Self-supply of in-line alternative packaging*

7.152 In May 2015, JTI[126] announced plans to install a production line to self-supply single-wrap composite cans in one of its tobacco filling plants. JTI told us that its decision was unrelated to the merger and was rather based on improving efficiency. JTI expected its self-supplied cans to cost less than the spiral-wound composite cans it was purchasing from Weidenhammer (in part due to lower transport costs) and noted that self-supply would also provide more flexibility to produce different shaped cans and enable the use of different design features. We regard JTI's plans as both likely and timely and therefore they have been included as part of our assessment, although we recognise that JTI is not a UK-based customer.

7.153 Further we were told that following the news of the merger, Nestlé had begun investigating alternative suppliers/structures and innovative supply chains to ensure that any supply risk would be mitigated. [✂][127] [✂].

- *Suppliers of alternative packaging formats helping with switching cost*

7.154 The parties told us that it was common industry practice for consumer packaging suppliers to incentivise customers to switch packaging formats by

[125] [✂]

[126] Although this customer purchases composite cans for non-food use, the specifications of the cans are similar to those used for direct food use. We therefore consider this example to be relevant to consideration of the likelihood of self-supply by customers as an alternative to composite cans for food use.

[127] [✂]

bearing some or all of any switching costs through low cost equipment leases and cash incentives.[128]

7.155 The parties gave us an example of this happening when in [✂] informed Sonoco that [✂], a rigid plastic supplier, would pay for the adaptation of [✂] filling lines if it switched from composite cans to rigid plastic packaging.[129]

- *Reduced cost of alternative packaging formats*

7.156 Alternative packaging formats can be substantially cheaper for customers to use than composite cans. [✂], and storage and distribution costs of flat blanks or stackable containers were substantially less. Table 7.4 below sets out data indicating that the unit cost of flexible plastic packaging was estimated to be 40% cheaper than paper and board packaging (of which composite cans are a constituent) and that the unit price of rigid plastics was estimated to be 20% lower than paper and board packaging. In addition, the packing lines for other packaging formats could be substantially faster than for composite cans.[130] In deciding whether to switch away from composite cans, customers would need to weigh up the potential cost savings they could make from switching to certain types of alternative packaging formats against the costs of switching outlined above.

Table 7.4: UK packaging costs 2014

	Flexibles	*Rigid plastics*	*Paper and board*	*Metal*
Volume (million units)	21556	723	4641	257
Value (million GBP)[131]	2719.5	121.9	973.4	67.1
Unit cost	0.13	0.17	0.21	0.26
Differential to paper and board	-40%	-20%	0%	24%

Source: Data provided by Sonoco.

Conclusion on switching costs

7.157 The evidence discussed above suggests that the decision to switch to alternative packaging formats is complex and is customer- and product-specific.

7.158 We consider that the net cost of switching to alternative packaging formats may vary considerably depending on the circumstances of the product and

[128] Sonoco initial submission, p13.
[129] Sonoco initial submission, paragraph 5.11.
[130] One co-packer ([✂]) told us that the running speed of the line packing plastic jars was three to four times that of an equivalent composite can line.
[131] These figures were converted into GBP using the average 2014 rate of $1.6484/£, obtained from OANDA.

customer. Alternative packaging formats therefore operate as more of a competitive constraint for some customers than others.

7.159 To assess the extent of the competitive constraint on the merged parties, it is therefore necessary to assess the credibility for each customer of the threat of switching.

Strength of competitive constraint from option to switch to alternative packaging formats

Third party views

7.160 Three larger customers told us that they would be unlikely to switch to alternative packaging formats, and two larger customers told us that they would not switch. Smaller customers had mixed views. The reasons given for not switching included that consumers preferred composite cans, the cost of buying new packaging machinery and that packaging for own brands had to follow that of the brand leader.

7.161 Three larger customers [✂] said that they would consider switching to alternative packaging formats.

7.162 Premier Foods told us that with a [✂]% price rise in composite cans, it would consider switching to [✂] due to cost benefit and a point of difference on the shelf.

7.163 [✂] told us that if the price of composite cans were to increase by 5%, it would consider switching to alternative packaging formats, [✂].

7.164 [✂] said that if the price of composite cans were to increase by 5% then it would consider switching to paper and board packaging, flexible packaging or pre-made bags.

7.165 Five larger customers told us that they used other packaging formats as well as composite cans for the same product.

7.166 The demand for composite cans is likely to decline over time, due to the shift to alternative packaging formats. However, for the reasons described above, the speed of shifting is likely to vary by customer and by specific product, depending on evolving end-consumer preferences. In the light of the variation, it is relevant to consider the scope for the merged parties to set higher prices to customers less likely to switch to alternative packaging formats. We consider first whether the threat to switch is credible for each customer, and then consider the extent to which the parties could charge higher prices to any customer who cannot credibly threaten to switch.

Switching in response to historic price rises

7.167 To examine further how customers would be likely to respond to any future changes in prices, we reviewed how customers responded to small but significant historic price increases of composite cans by Sonoco or Weidenhammer. The results did not show examples of customers switching from composite cans to alternative packaging formats in response to price increases. However, when interpreting this result we noted the following:

- First, the sample only included customers who continued to purchase at least some volumes of the particular composite can. If customers were to have switched away all their volumes of a particular composite can in response to a price increase then Sonoco or Weidenhammer would not have sold them this type of composite can and we would not identify any price increase. This effect means that our switching analysis potentially understates the degree of switching away in response to price increases.

- Second, some customers said they paid higher prices because they purchased smaller volumes. For example, a shorter or warmer winter may reduce consumer demand for hot chocolate and composite cans for packaging hot chocolate. In these cases the inferences we can draw from these price increases will be affected by the customer's outside option at the time. It may be the case that, because they would have been purchasing smaller volumes, the prices of alternative packaging formats would also have increased.

- Third, over the period of our analysis the prices of alternative packaging formats may also have increased. If this was the case, any increase in the price of composite cans may not be a relative price increase, so could be less informative about customers' willingness to switch in response to price increases. Sonoco told us that during the period of our analysis the prices of metals and plastics had increased.

7.168 Because of these issues, plus the small sample of only four responses, we have placed limited weight on this evidence.

Potential for merged parties to set higher prices to customers less likely to switch to alternative packaging formats

7.169 Prices, and terms and conditions, are negotiated on a bilateral basis: there is no uniform list price. Following the merger, if the parties were able to predict with a degree of accuracy which customers are less able to switch to alternative packaging formats, those customers might receive worse prices (and non-price elements) than those customers who find it easier to switch. If this were the case, those customers who are less able to switch to alternative packaging formats would not necessarily be protected by those who are more able to switch.

7.170 We therefore looked at the ability of the merged parties to set higher prices to customers who are less able to switch to alternative packaging formats.

- *Parties' views*

7.171 The parties provided mixed evidence on whether they were able to identify those customers which were seriously considering switching to alternative packaging formats and the products involved. The parties told us that, aside from [✂],[132] every food product for which they provide packaging was susceptible to switching to another format, because of the changing consumer preferences and packaging industry trends. They stressed that during price negotiations they treated all customers as though they were about to switch. However, the parties also acknowledged that, from their knowledge of the market, they might get a sense as to which customers were serious about switching and might react to that in pricing negotiations.

7.172 The parties told us that some recent decisions by customers to switch to alternative packaging formats had been unexpected:

- An iconic brand moving to a new packaging format ([✂]).
- Switching for cost savings, sometimes despite the apparently greater appeal of previous packaging for consumers (eg [✂]).
- A brand leader changing to a new form of packaging to be more distinctive ([✂]).[133]

7.173 [✂]

7.174 The parties told us that the margin analysis (described in detail in 7.44 to 7.49 and Appendix C) was consistent with alternative packaging forming a competitive constraint on prices, rather than just other composite can suppliers.

- *Our assessment*

7.175 Our view is that the familiarity the parties have with the packaging industry, including their customers' actual and potential use of alternative packaging

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[132] For which the composite can packaging was a key attribute of the brand.
[133] [✂]

formats, would enable them to form an informed view of the strength of each customer's position and negotiate accordingly.

7.176 We recognise, however, that the negotiation will be based on incomplete information about the customers' likelihood of switching, the credibility of alternative packaging formats, other potential 'outside options' (such as sponsored entry) and the price increase that would lead to a switch.[134]

7.177 [✄]

7.178 Furthermore, there is evidence to suggest that consumers' preferences are changing, which could make it more difficult for the parties to identify which customers are less able to switch to alternative packaging formats.

Conclusion on alternative packaging formats as a competitive constraint

7.179 For the reasons set out above, we conclude that it is likely that the credible threat to switch to alternative packaging formats is a competitive constraint on the merged entity for some, but not all, customers, and that the industry trends suggest that over time customers may be increasingly able to switch to alternative packaging formats. The ability of the merged entity to charge higher prices to customers less likely to switch to alternative formats may have some impact, and therefore alternative packaging formats is a stronger constraint for some customers than others.

7.180 We now explore whether there are other competitive constraints, in addition to alternative packaging formats, that the merged entity might face in the foreseeable future, particularly for those customers where alternative packaging formats may be a weaker constraint.

Competitive constraint imposed by entry and expansion

7.181 We now discuss the competitive constraints that may exist following the merger imposed by entry and expansion. This includes potential responses by rivals, potential rivals and customers to attempts by the merged entity to raise prices, including:

- other UK composite can suppliers investing in new capacity or converting existing composite can capacity to food use from non-food use;

[134] In this context, we note that the parties submit that the margin analysis they provided to us indicates that alternative packaging is an effective constraint on Sonoco's prices. However, as discussed in paragraph 7.51, although this analysis carries some weight in our assessment, it is not in itself conclusive.

- entry of overseas composite can suppliers;
- customers investing in capacity to make their own composite cans so that they would no longer need to buy from the merged entity (self-supply); and
- customers sponsoring a new entrant with guarantees of business.

7.182 We describe the approach taken by the CMA in assessing the likelihood of entry and expansion, consider the barriers to entry and expansion in the composite can industry, and lastly assess the likelihood of entry and expansion and whether this would provide a competitive constraint on the merged parties.

Our approach to assessment of entry or expansion

7.183 The Guidelines[135] state that:

> In assessing whether entry or expansion might prevent an SLC, the Authorities will consider whether such entry or expansion would be:
>
> (a) timely;
>
> (b) likely; and
>
> (c) sufficient.
>
> Potential (or actual) competitors may encounter barriers which would adversely affect the timeliness, likelihood and sufficiency of their ability to enter (or expand in) the market. Barriers to entry are thus specific features of the market that give incumbent firms advantages over potential competitors. Where entry barriers are low, the merged firm is more likely to be constrained by entry; conversely, this is less likely where barriers are high. The strength of any given set of barriers to entry or expansion will to some extent depend on conditions in the market, such as a growing level of demand.[136]

[135] The Guidelines, paragraphs 5.8.3–5.8.4
[136] The Guidelines, paragraphs 5.8.3 & 5.8.4.

Barriers to entry and expansion

7.184 Having examined the assets and other factors that are required to produce composite cans and the investments involved (see Appendix F), we consider that the most significant barrier to entry and expansion is the upfront cost of entry or expansion in the light of the potential returns available to a new entrant. The need for specialist technical skills for the supply of spiral-wound composite cans appears to be a barrier to entry faced by companies that currently supply alternative forms of packaging, but not for expansion by existing spiral-wound composite can suppliers.

7.185 CBT told us that the need for product knowledge was a barrier to entry into the supply of composite cans. CBT stated that the production of composite cans is difficult, requiring ‘know how’ and experience to achieve the high quality standards expected by customers. This was something that a new entrant would struggle to achieve.[137]

7.186 It does not appear that regulation is likely to be a barrier to entry or expansion in the supply of composite cans for food use. Our view is based on the evidence received regarding the cost and time required to meet the requirements of hygiene accreditation and other regulations for quality and employee safety (see Appendix F for details).

Costs and time required for entry and expansion

7.187 Production lines for composite cans consist of machinery covering several stages of production including: material feeders, winders, cutters, labellers, finishers/seamers, cappers and palletisers. Production lines appear to cost between £[✂] and a maximum of around £[✂], with facilities costs likely to increase the total investment required to up to £[✂]. Expansion by an existing composite can supplier could be expected to take between six and 12 months. Several parties told us that whilst entry was likely to take longer it would be possible to enter the supply of composite cans in the UK in 12 to 18 months. Our analysis (see Appendix F) suggests it could take between six months and six to seven years to achieve a ‘cash on cash’ payback of a new production line costing £[✂] to £[✂].[138] We note the upper end of this timescale is in line with views (see paragraph 7.203) on the length of contract a supplier would seek for sponsored entry.

[137] CBT hearing summary, paragraph 10.

[138] Analysis based on a contribution margin of [✂]% and using 2014 sales generated by Sonoco and Weidenhammer’s overlap diameters.

7.188 The decision to invest in new production capacity is likely to be influenced by factors including the return a supplier expects to achieve, the size of its existing composite can business and whether costs could be recovered if a supplier were to exit from the market. [✂].[139] These factors had not, however, deterred [✂] and [✂], both of which had recently added new production lines for composite cans for food use.

Likelihood of entry and expansion

7.189 We considered four potential sources of entry or expansion in the supply of composite cans for food use to assess how likely they are to occur.

- *Entry and expansion by UK composite can suppliers*

7.190 No new suppliers have entered the supply of composite cans for food use in the UK in the last seven years and ten third parties told us they did not expect any new suppliers in the future. Visican told us that it was not interested in expanding further into the supply of specialist, volume driven composite cans for food use (eg gravy granules, drinking chocolate) and [✂].

7.191 We note, however, that two UK suppliers of composite cans for non-food use (MPS and [✂]) indicated that they would consider the viability of supplying composite cans for food use if there were to be price increases in the food sector. MPS had previously supplied composite cans for food use to [✂], and told us that the additional capability it would require in aluminium liners and seals could easily be introduced.

- *Entry by non-UK composite can suppliers*

7.192 Evidence provided to us suggested that non-UK composite can suppliers might provide a future competitive constraint by setting up UK facilities.

7.193 [✂]

7.194 Evidence on the likelihood of non-UK composite can suppliers is considered further below under sponsored entry and expansion.

- *Sponsored entry and expansion*

7.195 In the text below we consider customers sponsoring entry and expansion of capacity in the supply of composite cans for food use.

[139] [✂]

- *Willingness of customers and suppliers to be involved in sponsored entry and expansion*

7.196 Four customers told us that they had either sponsored expansion in the past or would consider sponsoring a new entrant (as 'anchor' customers) and three suppliers told us that they would consider undertaking sponsored production:

(a) Customers:

(i) [✂] This recent expansion by Weidenhammer indicated that the sponsorship of a large customer had been a decisive factor in new capacity entering the market.

(ii) Nestlé said it would consider sponsoring a new entrant where the business case made sense and with the right partner.

(iii) Premier Foods told us it did not formally sponsor new entrants but had done and would continue to support any new suppliers (both like-for-like switches and substrate changes) by either giving sole/joint supply status or committing to a certain contract duration in which the supplier could recover any investment costs.

(iv) Knighton/Phoenix said it had not been presented with an opportunity to sponsor entry [✂].

(b) Suppliers:

(i) Can Packaging told us it had a business concept to have a 'mobile' packaging model that allowed it to build new plants fairly quickly and at reasonable cost close to its clients' locations. To build one of the mobile plants, it would need a client with a contract for at least five or six years, and volumes of 25 million to 30 million cans a year. Once it had a client, it would plan to build two production lines with one line dedicated to the client's needs and the other line free to service other potential customers. Each line could make between 45 and 50 million cans a year. It would be willing to build a new plant for a lower initial volume if there was a prospect of volume growth. It was about to build a new plant in Germany and this had reinforced its desire to build plants in new markets. Can Packaging also told us that it considered the merger to have provided it with an opportunity to enter the UK market.

(ii) CBT stated that it would consider expanding capacity in the UK for a customer contract of at least [✂] and would require investment from the customer of €[✂]. If CBT were to be approached by a company such as [✂] to supply composite cans, it would consider doing so if it was a sponsored expansion.

(iii) MPS stated that it would consider expanding capacity if a large customer were to sponsor expansion by committing to purchase substantial volumes of composite cans. MPS indicated that it would require a contract of several million pounds over several years to justify the investment.[140]

7.197 One supplier of alternative packaging formats (Huhtamaki) also told us it would consider entering the supply of composite cans in the UK for a customer contract of [✂] (for further information on the constraint from alternative packaging formats see paragraphs 7.96 to 7.178 above).

7.198 Four customers and one supplier told us that they would not be interested in being involved in sponsored entry or expansion.

7.199 Mondelez, [✂], [✂] and [✂] told us they had no plans to sponsor entry or expansion.

7.200 Visican told us it would not be interested in sponsored expansion.

- *Timeliness of sponsored entry and expansion*

7.201 We note that the Guidelines indicate that entry or expansion within less than two years is considered timely.[141] Our conversations with Can Packaging suggested that entry could be expected within this time frame (and potentially earlier).[142] This was consistent with views of other suppliers who told us they would consider sponsored entry or expansion. [✂] and MPS said that introducing new tube-making lines would require a lead time of around six months.

- *Costs of sponsored entry and expansion*

7.202 One supplier told us that it would seek investment of £650,000[143] from a sponsoring customer to expand capacity for a contract of at least £[✂]. Assuming a contract of five to six years, this represents 8.5% to 10% of the value of the contract, a level we did not consider to be prohibitive.

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[140] MPS hearing summary, paragraph 10.
[141] The Guidelines, paragraph 5.8.11.
[142] Can Packaging estimated that it typically took 12 to 15 months to build a plant. It would be possible to bring new capacity into use more quickly if a customer had an existing building available for use.
[143] €800,000 converted into GBP using the 2014 average exchange rate of €1.24/£, obtained from OANDA.

7.203 Customers were, however, more likely to sponsor entry by entering into long-term contracts than by making a capital contribution to suppliers:

(a) Mr Weidenhammer told us that he could justify opening a new plant if he had one secure contract of five to seven years' duration with annual turnover of £5 million.

(b) One customer had sponsored expansion by committing to volumes to support and underwrite the investment in the equipment required by the supplier, and would consider doing so in the future.

(c) Another customer told us it was prepared to sponsor new entrants by either giving sole/joint supply status to suppliers or by committing to a certain contract duration in which the supplier could recover any investment costs.

7.204 We also noted that the cost differential of imports discussed earlier would be less material in two cases. First, if imports were part of an entry strategy, transport costs would be more easily absorbed by an overseas supplier with spare capacity – as is the case for Can Packaging. Second, if imports were undertaken as part of a sponsored entry strategy.

- *Our assessment*

7.205 We examined carefully the existing volume and value of composite can purchases of the customers that had told us they would consider sponsoring entry. We compared this with the indicated requirements and willingness of suppliers for undertaking sponsored supply. Based on this assessment and taking into account the information available on the cost of sponsored entry and the time required to enter the market it appeared that Can Packaging and MPS could be viable alternatives for customers willing to sponsor entry. Of the suppliers discussed above we consider that Can Packaging is the most credible candidate for sponsored entry and estimate the output volumes targeted by Can Packaging would represent between 20 and 70% of the estimated output of Sonoco and Weidenhammer post-merger.[144]

- *Indirect benefits from sponsored entry*

7.206 We noted that as well as sponsored entry providing a direct alternative to the merged parties for some customers, other customers might also benefit

[144] The lower estimate assumes one line with output of [✂] million cans in overlap diameters post-merger; the higher estimate assumes two lines, each with output of [✂] million cans.

indirectly from sponsored entry. Customers with insufficient volume to sponsor entry alone could be expected to benefit from the additional production capacity a supplier planned to install once a contract with an anchor client had been secured.[145] This would then provide them with an alternative supply of composite cans in the UK that may be able to provide significantly larger volumes than existing UK composite can suppliers are currently able to supply (‘under the wing’ of the anchor client).

- *Self-supply by customers*

7.207 We also considered the potential constraint from self-supply by customers of composite cans for food use. One larger customer (Goldenfry) told us that it would consider self-supply of composite cans for food use, which indicated that self-supply might be expected to provide some constraint post-merger.

7.208 The recent decision by one customer to commence self-supply of in-line single-wrap composite cans is considered above under alternative packaging formats (paragraph 7.152).[146]

Conclusion on competitive constraints imposed by entry or expansion

7.209 Based on the evidence above, we conclude that for some customers, it is likely that sponsored entry or expansion would be a credible alternative to the merged parties, thus imposing a competitive threat, and could be considered timely, likely and sufficient. It is also our view that other customers, while not being able to sponsor entry directly, could benefit indirectly from a new sponsored plant established in the UK and would be likely to provide an additional source of supply of composite cans beyond that required by the sponsoring customer.

7.210 For a few customers with sufficient volumes, self-supply[147] may also be a credible option, although we note that few customers expressed an interest in this option, or required sufficient volumes of cans to make this option viable.

7.211 In addition, if MPS and/or [✂] were to move into the supply of composite cans for food use from their existing non-food use operations this would contribute

[145] Can Packaging told us that if it set up in the UK it would install one line to service the sponsoring customer and another to provide additional capacity to service the UK market.
[146] We also noted that another customer was researching the possibility of self-supply of alternative packaging formats post-merger.
[147] Self-supply here relates to composite cans, not in-line composite cans, which are considered under ‘alternative packaging formats’ (see paragraph 2.12).

to a constraint on the merged parties should they attempt to increase prices significantly.

7.212 We note that imports may also become a credible option in the longer term (notwithstanding the transport cost disadvantages discussed earlier) if an overseas supplier is exporting in order to inform the development of an entry strategy. However, we do not consider this to be as likely a competitive constraint as sponsored entry, sponsored expansion or self-supply.

The countervailing buyer power of customers (including long-term contracts and sponsored entry)

7.213 Prices for composite cans are bilaterally negotiated (that is, there is no standard list price for composite cans). Any buyer power will therefore be determined by the 'outside options' available to the buyer. In economic terms, the outside option is the next best alternative or business proposition of buyers in case their negotiations with a given supplier break down. The analysis above suggests that the credibility of the threat to switch to alternative packaging formats, and therefore this particular 'outside option', varies by customer, but there has been at least one case where that threat has been successfully deployed by an existing customer. Customers may, however, have another 'outside option' as they may be able to sponsor entry or start producing in-house (self-supply) (see paragraphs 7.195 to 7.208).

7.214 We now consider the buyer power that customers have from these outside options and the extent to which the mutual dependency of the parties and their customers may strengthen any existing buyer power. We note, however, that buyer power is only relevant if the customer has a credible alternative to the merged parties.

Buyer power from threat to switch to alternative packaging formats

7.215 The threat from customers moving to alternative packaging formats has been considered in previous sections (see 7.96 to 7.209). As discussed earlier, the credibility of the threat will vary by customer and specific product, and the consequent buying power of the customer will depend on whether the parties have accurate information on the likelihood of switching.

7.216 Previous behaviour by customers switching unexpectedly to alternative packaging formats for other products may assist them in negotiating with the parties, in that switching may be perceived to be more likely.[148]

Buyer power from threat to sponsor entry or to self-supply

7.217 A customer requiring high volumes of composite cans has additional ‘outside options’, including sponsoring entry by other composite can suppliers or packaging companies. The evidence on the likelihood of sponsored entry or expansion is set out above (see paragraphs 7.196 to 7.202). On the basis of our assessment our view is that for some customers the likelihood of sponsored entry or expansion is likely to provide a credible alternative. It appears that in certain cases customers could use the threat of sponsored entry to negotiate as good a deal with the merged entity as pre-merger. As such, the threat of sponsored entry could be a credible alternative to the threat to switch between Sonoco and Weidenhammer. For these customers it therefore appears that sponsored entry would provide buyer power to counter the effect of the merger on them.

7.218 In addition to sponsored entry as a source of potential buyer power we identified that in some cases the option to self-supply could also contribute to buyer power.[149] We noted the recent move by one customer to using in-line conversion of cardboard packaging (in place of composite cans) and that another customer is planning to self-manufacture in-line composite cans. Self-supply could potentially contribute to buyer power in two ways. First as part of a dual-sourcing strategy with the parties for any customers with self-supply of composite cans already in place. Second, non-self-supply customers making a credible threat to follow other customers into self-supply. This suggested that self-supply could be expected to provide an alternative to switching between Sonoco and Weidenhammer for some larger customers and might therefore be an additional source of buyer power for a limited number of customers.

Other factors influencing buyer power

7.219 In addition to the main factors for buyer power described above, there are also other factors that may increase the buying power of a customer to some extent (where the customer has a credible alternative to the merged entity):

[148] However, we note that previous switching may not have been due to price rises in composite cans. The parties may therefore be aware that the customer is not price-elastic.

[149] Self-supply in this context relates to both composite cans and in-line composite cans.

- **Mutual dependency**. In a situation of overcapacity, a declining market and few new sources of demand if customers are lost, large volume customers are critical to the financial viability of the parties' composite can plants. [✄] The parties told us that the risk of losing critical large contracts would constrain any attempt to raise prices.

- **Sophisticated buyers**. The parties told us that the procurement departments of customers were becoming increasingly sophisticated, with detailed knowledge of costs and alternative options. This was supported by evidence from a customer [✄].

- **Influence beyond own volumes**. For a brand leader, the volumes at risk to the parties if the customer were to switch to alternative packaging formats include 'me-toos' and own label products that would follow the switch of packaging format. Thus the risk to the parties of losing a branded customer through attempting to impose a price rise might go beyond the specific volumes being negotiated.

7.220 These factors, where there is a credible threat of switching to an outside option (most likely alternative packaging formats or sponsored entry), provide larger customers with an element of countervailing buying power to constrain any attempt by the merged entity to exercise market power.

7.221 The parties have also argued that two other factors may influence the buyer power of a customer:

- **Links to other customers**. The parties told us that they had to be cautious about providing different terms to different customers, as there were frequent acquisitions within the food industry and the different terms might become known, with the demand for the lowest terms to be honoured.

- **Global buyer power**. The parties suggested that global customers could exert additional buyer power because of interaction with the parties in other geographic areas, thus providing a risk of retaliation or loss of volume elsewhere in the world if a price increase was imposed in the UK.[150]

7.222 However, we have received no convincing evidence in support of these arguments.

[150] [✄] told us it tendered at a European level, and [✄] told us it required a European supplier for composite cans.

Supply agreements

Long-term contracts

7.223 We note that some customers are insulated against any price rises that might result from the merger by long-term contracts with the merged parties. While the customer could be facing any lessening of competition due to the merger when the contract is due for renewal, the options facing the customer may well be different by then because of the changing market conditions. In our view, these customers are unlikely to be affected in the foreseeable future.

Links with larger customers

7.224 We note that some customers have links with larger customers, and are therefore able to obtain more favourable terms from the parties than their volumes or situation might suggest. For instance, [✂] is a joint venture formed by [✂], and Sonoco told us it was covered by the same terms and prices agreed by the parties with [✂].

Conclusion on countervailing buyer power

7.225 For the reasons given above, it is our view that some larger customers have some element of countervailing buyer power that is likely to act as a competitive constraint on the merged entity, for customers with credible alternative options, such as alternative packaging formats or sponsored entry.

Conclusion on the competitive assessment – composite cans for food use

7.226 As discussed earlier, our starting point is that the parties were close competitors in the UK market for composite cans for food use before the merger. However, evidence from parties and third parties suggested that there were additional constraints on the parties before the merger. This evidence is consistent with our margin analysis and some of the tender analysis. We therefore assessed what these constraints were, and whether, taken together, they provide an effective competitive constraint.

7.227 In summary, notwithstanding the market position of the merged entity, the available evidence indicates that there exists a range of alternative options available to customers. These include constraints from other composite can suppliers (for smaller customers), from the credible threat of switching to alternative packaging formats, from the possibility of some entry into the UK market (particularly through some form of sponsored entry), and the possibility of self-supply. Whilst the evidence suggests that the viability and suitability of the different options will vary by customer, it seems likely that, taken together, these constraints provide customers with credible options to switch away from the merged entity. In the light of these factors, along with any mutual dependence between suppliers and larger customers and the protection offered by long-term contracts, we conclude that the merger has not resulted, and may not be expected to result, in an SLC in the supply of composite cans for food use.

Efficiencies

7.228 Efficiencies arising from a merger may enhance rivalry, potentially implying that the merger does not give rise to an SLC.[151] We therefore considered whether the merger was likely to lead to efficiencies.

7.229 Sonoco said that potential efficiencies[152] and customer benefits included:

(a) reducing fixed costs through optimising labour, using autonomous teams and improving skills;

(b) investment in plants; and

(c) innovation and increased product range, [✄].

7.230 Sonoco said that there was excess capacity for the production of composite cans in the UK and that the solution for the UK would be to reduce capacity and the number of sites serving the UK. Sonoco said that it would be able to reduce fixed costs by removing a site and would achieve some efficiency gains from reduced costs of energy and indirect labour.

7.231 Weidenhammer said that there could be synergies from raw material sourcing and higher utilisation rates, with a proportion of these savings going to customers.

7.232 We note that some of the efficiencies, such as the ability to purchase inputs at lower prices, related to variable costs and therefore would be more likely to result in benefits to the customers. However, other efficiencies described by Sonoco, relating to fixed costs, would have been realised in the absence of the merger. Therefore these benefits to customers do not arise as a result of the merger. We conclude that any efficiencies related to the merger would be

[151] The Guidelines, paragraph 5.7.2.
[152] Note that the counterfactual assumes [✄] closes. Therefore any efficiencies due to rationalisation of [✄] cannot be attributed to the merger, but would have also occurred in the counterfactual.

unlikely to offset any reduction in competition in the supply of composite cans for food use resulting from the merger.[153]

8. Competitive assessment – composite cans for non-food use

8.1 We now assess the effects of the merger on competition in the supply of composite cans for non-food use in the UK. The effect on competition will depend on:

(a) the extent of competition between the parties prior to the merger;

(b) the competitive constraints imposed by existing competitors;

(c) the competitive constraints imposed by imports;

(d) the competitive constraints imposed by alternative packaging formats;

(e) the competitive constraints imposed by new entry or expansion; and

(f) the countervailing buyer power of customers.

8.2 We recognise that the parties' arguments and evidence, which we considered in Section 7 above, also had relevance to our assessment for non-food composite cans for non-food use. We do not repeat in this section the arguments and evidence the parties provided, but we took these into account when forming our views on the effect of the merger on competition in the supply of composite cans for non-food use in the UK.

Extent of competition between the parties prior to the merger

8.3 We considered the extent of pre-merger competition between Sonoco and Weidenhammer, focusing on three aspects:

(a) revenues and market shares in composite cans for non-food use;

(b) production capabilities; and

(c) evidence on competition between the parties.

[153] We recognise that some of these efficiencies may relate to the production of composite cans for non-food use. Our conclusions would not change even if we were to assume that all the efficiencies came in the production of composite cans for food use.

Revenues and market shares

8.4 Our estimates of the revenues and market shares for sales of composite cans for non-food use to UK customers are given in Tables 8.1 and 8.2 below.

Table 8.1: Sales of composite cans for non-food use in the UK

£

Year	*Sonoco*	*Weidenhammer*	*CBT*	*[✂]*	*MPS*	*Visican*
2010	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
2011	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
2012	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
2013	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]
2014	[✂]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: CMA analysis of parties' and third parties' responses.

Table 8.2: Market share estimates for composite cans for non-food use in the UK

%

Year	*Sonoco*	*Weidenhammer*	*CBT*	*[✂]*	*MPS*	*Visican*	*Post-merger share*
2010	[0–10]	[10–20]	[✂]	[✂]	[✂]	[✂]	[10–20]
2011	[0–10]	[0–10]	[✂]	[✂]	[✂]	[✂]	[0–10]
2012	[0–10]	[0–10]	[✂]	[✂]	[✂]	[✂]	[0–10]
2013	[0–10]	[0–10]	[✂]	[✂]	[✂]	[✂]	[0–10]
2014	[0–10]	[0–10]	[✂]	[✂]	[✂]	[✂]	[✂]

Source: CMA analysis of parties' and third parties' responses.

8.5 These market share figures suggest that Sonoco and Weidenhammer are small players in this sector. CBT, [✂], MPS and Visican are all larger.

8.6 We estimate that, post-merger, the parties would have a small combined share of less than [0–10]%.

Production capabilities

8.7 The production capabilities of the parties for composite cans is described earlier (see paragraphs 7.21 to 7.24). Sonoco's Chesterfield plant was responsible for the bulk of Sonoco's non-food production. In 2014, only [✂] was supplied from Sonoco's Manchester plant. Weidenhammer produced its non-food cans from its plant in Bradford, using lines which also produced food cans.

Evidence on competition between the parties

8.8 There was limited evidence of competition between the parties in the provision of composite cans for non-food use. Weidenhammer supplied only [✂] non-food customers in the UK in 2014 and exported the majority of its composite cans for non-food use. None of the UK customers of composite cans for non-food use from whom we received responses expressed concerns regarding the effects of the merger.

Competitive constraint imposed by existing competitors

8.9 Customers had mixed awareness of competitors of Sonoco and Weidenhammer. One was aware of CBT, while another was aware of CBT and Visican. Others had not heard of CBT or Visican. Suppliers of composite cans for non-food use said that that they were in competition with other suppliers of composite cans for non-food use. For example, MPS said that it saw McLaren Packaging, MSO, Smurfit Containers and Visican as competitors.

8.10 The tender data that the parties submitted showed that in non-food tenders [✂] competed in only [✂]% of the [✂] tenders where Sonoco’s Chesterfield plant was involved. This compared to [✂]. For the [✂] non-food tenders involving Sonoco’s Manchester plant, [✂] was not involved in any. This compared to [✂]. We recognised, however, that the value of tenders represented by the sample of non-food tenders was relatively small compared to sales and therefore did not place undue weight on this analysis.

Competitive constraint imposed by imports

8.11 One customer said it would consider importing from anywhere. WBC said it could import rigid paper tubes from its factory in China. The suppliers of composite cans for non-food use had mixed views on the competition from imports. For example, MPS said that composite tubes were expensive to transport, but it regularly competed with folding box board cartons that were supplied from outside the UK, Duran Dogan of Turkey being a prime example. In contrast, Visican said that it was not in competition with imports.

Competitive constraint imposed by alternative packaging formats

8.12 Customers had mixed views on the substitutability of alternative packaging formats with composite cans for non-food use. For example, WBC said that it could use a wide range of alternatives, including rigid paper tubes, while Expac said that it operated as a third party manufacturer and so could not choose which packaging material to use.

8.13 Suppliers of composite cans for non-food use said that they competed against alternative packaging formats. MPS said that it sold composite cans for non-food products and regularly competed against rigid boxes, metal containers (these are the same as cans but made from steel), wooden boxes or even combinations of these. Visican produced composite cans for non-food products and said that it was always in competition with other types of packaging, including cardboard boxes, flow wrap and flexible packaging. When customers chose Visican it was usually because composite cans fitted with how they wished to portray their product.

8.14 Suppliers of alternative packaging formats said that they were in limited, or not in, competition with composite cans for non-food use. For example, Crown Packaging said that it was in limited competition with Sonoco and Weidenhammer because it faced some competition from composite cans for non-food in spirits, wines and gift tubes. Leeways supplied rigid plastic containers and said it did not compete against Sonoco or Weidenhammer.

Competitive constraint imposed by entry or expansion

8.15 None of the suppliers of composite cans for non-food use had expanded capacity in the last two years. [✂] We did not identify any potential new entrants into the supply of composite cans for non-food use.

Countervailing buyer power of customers

8.16 None of the UK customers purchasing composite cans for non-food use we received responses from expressed the view that they had countervailing buyer power.

Conclusion on the competitive assessment – composite cans for non-food use

8.17 The pre-merger market shares in Table 8.2 show that the increment in market share in the market for the supply of composite cans for non-food use in the UK due to the merger is small ([0–10]% in 2014). In addition to this, the parties will continue to face competition from four suppliers of composite cans for non-food use, all of which have larger market shares than the merged entity. In the light of this evidence, and the fact that none of the UK non-food customers expressed concerns regarding the merger, we conclude that the merger has not resulted, and may not be expected to result, in an SLC in the supply of composite cans for non-food use in the UK.

9. Conclusion on the SLC test

9.1 For the reasons set out in Sections 7 and 8 above, we conclude that the merger has not resulted, and may not be expected to result, in an SLC in the markets for the supply of composite cans for food use and for non-food use in the UK.