

## **Anticipated acquisition by Whittan Intermediate Limited of Apex Linvar Limited**

**ME/6570/15**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 8 January 2016. Full text of the decision published on 8 February 2016.

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

### **SUMMARY**

1. Whittan Intermediate Limited (**Whittan**) has agreed to acquire Apex Linvar Limited (**Apex**) (the **Merger**). Whittan and Apex are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the share of supply test is met and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of steel static storage systems in the UK, in particular, in respect of:
  - (a) the supply of pallet racking; and
  - (b) the supply of shelving.
4. On a cautious basis, the CMA assessed the impact of the Merger on the narrowest plausible basis in: (i) the supply of pallet racking in the UK including direct imports; and (ii) the supply of shelving in the UK including direct imports. However, it was not necessary for the CMA to conclude on the precise definition of the relevant frame of reference in this case.

5. The CMA examined whether the Merger would result in an increase in prices, reduction in quality, or range of services with respect to the Parties' offerings as a result of unilateral horizontal effects.
6. The evidence gathered by the CMA indicated that the Parties are close competitors in the supply of pallet racking in the UK. However, the merged entity will face considerable competitive constraints, post-Merger, from several competing suppliers. In particular, the CMA found that:
  - (a) customers generally viewed several established continental-European suppliers as strong competitors in the supply of pallet racking in the UK. The CMA found that a number of continental-European suppliers, with a significant presence in other countries in the European Economic Area (**EEA**) have the products and technical knowledge required by UK customers and already sell into the UK through UK sales teams and warehousing facilities. The CMA also found that a number of these continental-European suppliers were not subject to capacity constraints and faced very limited barriers to further expanding sales to customers in the UK;
  - (b) barriers to switching were generally low since customers frequently select suppliers on a project-by-project basis, seeking bids from multiple suppliers with the focus being on price, given the degree of commoditisation;
  - (c) tender data provided by the Parties demonstrated that [REDACTED]; and
  - (d) finally, third party responses confirmed that customers typically already used a wide variety of suppliers and generally did not have concerns about the impact of the Merger on competition.
7. The CMA believes that the constraints set out above, taken together, are sufficient to ensure that the Merger does not give rise to horizontal unilateral effects in the supply of pallet racking.
8. On the basis of the evidence available to it, the CMA concluded that there is no realistic prospect that the Merger would result in a substantial lessening of competition (**SLC**) in the supply of pallet racking in the UK.
9. With respect to the supply of shelving in the UK, the CMA found that Apex only has a limited range of shelving and is not a major supplier of shelving in the UK. Apex's share of supply is less than [0–5]% and that there are a number of closer competitors to Whittan than Apex in the supply of shelving who will continue to constrain the Parties post-Merger. On the basis of the

evidence available to it, the CMA therefore concluded that there is also no realistic prospect of an SLC in the supply of shelving in the UK.

10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

11. Whittan is a UK-based (pan-European) manufacturer of storage equipment (ie pallet racking, shelving and lockers) and is majority-owned<sup>i</sup> by the Bregal Fund III LP, a private equity fund, which is in turn controlled by Cofra Holding AG. Its products are manufactured in four factories in the UK and Spain, and supplied across Europe by Whittan's own sales and distribution operations/staff. Whittan trades under a number of brands, including: Link51, Permar, Polypal and Moresecure. Whittan also operates a small online sales business, Shop4Shelves. In the financial year to the end of March 2014, Whittan had turnover of around £[REDACTED] worldwide and around £[REDACTED] in the UK.
12. Apex is a UK manufacturer of pallet racking systems and a limited range of shelving. Apex is wholly owned by Chamonix, a private equity company. It is located in Milton Keynes and, in addition to direct sales, it also operates an online, direct order catalogue business known as 'Storage Direct'. Apex generated turnover of around £21 million in the UK in the 2014 financial year.

### **Transaction**

13. The proposed transaction involves the full acquisition of Apex by Whittan for £[REDACTED].
14. The Parties' stated rationale is that the Merger will enable them to realise substantial synergies, in particular, by [REDACTED] and thereby strengthening the Parties' ability to compete against other larger competitors based in continental Europe.

### **Jurisdiction**

15. As a result of the Merger, the enterprises of Whittan and Apex will cease to be distinct.
16. The Parties overlap in the supply of steel static storage systems, and in particular the manufacture and supply of pallet racking; and the manufacture and supply of shelving. In the UK, in these two segments the Parties

submitted that they have a combined share of supply of [40–50]% (increment [10–20]%) for pallet racking and a combined share of [30–40]% (increment [0–5]%) for shelving.<sup>1</sup> The CMA therefore believes that the share of supply test in section 23 of the Act is met.

17. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 11 November 2015 and the statutory 40 working day deadline for a decision is therefore 8 January 2016.

## Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>2</sup>
20. As the CMA has not received evidence supporting a different counterfactual, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

## Background

21. The Parties supply steel static storage systems, which may include components such as pallet racking, shelving, and mezzanine levels,<sup>3,4</sup> and are used to store items in, for example, warehouses and distribution centres.

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<sup>1</sup> The CMA's own estimates of the shares of supply for pallet racking suggests that the Parties combined share of supply are an under estimate. However, the difference does not impact on the outcome of the jurisdictional test. See Tables 1 and 2 below.

<sup>2</sup> *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, from paragraph 4.3.5. The *Merger Assessment Guidelines* have been adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, Annex D).

<sup>3</sup> Mezzanine levels are raised platforms which are independent of a building's structure. Neither party manufactures mezzanine levels, although they (occasionally) supply mezzanine levels in combination with other components.

<sup>4</sup> In some cases a range of accessories such as data cables and sprinklers are also required, eg where components are being purchased for a new warehouse. However, neither Party manufactures these components.

These components may be supplied individually or in combination as a steel static storage system.

22. The Parties' primary overlap is in the manufacture and supply of pallet racking and shelving, although Apex has a more limited range of (long-span) shelving and therefore buys-in additional shelving components, as required. Delivery and installation of components is outsourced to third party providers.<sup>5</sup>
23. The Parties also supply design and consultancy services. These are typically required for larger and more complex orders where a bespoke solution is required. Whittan has estimated that more than [X]% of its customers (by sales value) require design and consultancy services. Apex has estimated that approximately [X] (by sales value) require such services.
24. The Parties' customers include end-users such as retailers, manufacturing and service companies, logistics companies, and automotive companies. The Parties also supply distributors (who resell the product) and integrators (who provide a range of supply chain solutions). Therefore, the Parties both supply their components through three sales channels: (i) direct sales to end-users; (ii) sales to distributors; and (iii) sales to integrators. Distributors and integrators may compete to supply the same customers as the Parties.
25. The Parties have stated (and this is supported by two competitor responses)<sup>6</sup> that the individual components of a steel static storage system are highly commoditised, and that as a result, the focus of competition is on price. The Parties have submitted that projects are typically awarded via competitive tendering or procurement processes in which prices are sought from multiple suppliers. Tendering processes are more likely to be used for large projects, framework agreements or where a customer is procuring across multiple sites. Whittan has estimated that [X]% of its total revenue is obtained through competitive tendering or procurement. Apex has estimated its equivalent figure to be [X]%.<sup>7</sup>
26. The Parties estimated that in 2014 UK sales of steel static storage system components were £[X], with UK sales of pallet racking of £[X] and UK sales of shelving of £[X].<sup>8</sup> The Parties have submitted that the market is expected to expand as the economy and e-commerce continue to grow. In particular, the growth of e-commerce requires that warehouses are more flexible and are

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<sup>5</sup> The Parties also operate two online retailers: Shop4Shelves (Whittan) and Storage Direct (Apex). As well as the Parties' products, these retailers also sell a range of storage products (eg storage containers and trolleys).

<sup>6</sup> [X]

<sup>7</sup> However, this would not include follow on sales in respect of existing systems.

<sup>8</sup> For the EEA the respective figures were £[X], £[X] and £[X].

designed to store bulk products, products which must be quick to access for small orders and items for individual orders.

## **Frame of reference**

27. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>9</sup>

## **Product scope**

28. As set out above, the Parties overlap in the manufacture and supply of steel static storage systems, including, in particular:
- (a) the manufacture and supply of pallet racking; and
  - (b) the manufacture and supply of shelving.
29. Whittan submitted that the relevant frame of reference is the manufacture and supply of steel static storage systems in the EEA, which comprises the supply of pallet racking, shelving, lockers and mezzanine levels. In support of this, Whittan stated that:
- (a) the leading manufacturers and distributors all supply a range of components of steel static storage systems; and
  - (b) tenders increasingly require a range of components to be supplied, for example, orders for a range of parts for a new warehouse. This trend is partly driven by the growth of online retailing, which has created a requirement for multi-purpose warehouses able to store products for both large, bulk orders and smaller, individual orders.
30. Two previous European Commission merger cases have considered the supply of steel static storage systems. In *Constructor/Dexion*,<sup>10</sup> it was noted that while the manufacturers and distributors are the same for both pallet racking and shelving, their end-use is different. Therefore, the European

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<sup>9</sup> *Merger Assessment Guidelines*, paragraph 5.2.2.

<sup>10</sup> Case No IV/M. 1318 *Constructor/Dexion* – 1998.

Commission concluded that the supply of pallet racking and the supply of shelving constituted two separate product markets. In the more recent *Voestalpine/Nedcon* case,<sup>11</sup> the European Commission left open whether a distinction should be made between pallet racking and shelving. However, the CMA notes that the decision in the latter, more recent case was taken 11 years ago, so these decisions may not reflect the current conditions of competition in the market.

31. The CMA's approach to market definition is to start with the narrowest plausible candidate frame of reference and then consider whether this can be widened on the basis of demand-side and supply-side factors. As its starting point, the CMA has therefore considered whether pallet racking and shelving should be considered under separate frames of reference, and then considered whether the product scope should be widened to include other components which together make up a steel static storage system.<sup>12</sup>
32. From a demand-side perspective, pallet racking and shelving differ in the products they are designed to store and have different purposes. Pallet racks are designed specifically to store pallets, while shelving is typically used for smaller goods. These components are made to proprietary designs and are required to meet common standards, which is particularly true for pallet racking where the design must be compatible with standardised pallets. These components also vary in their load bearing capacity. Therefore, although customers may require both pallet racking and shelving, their end uses differ thereby supporting a separate frame of reference from a demand-side perspective.
33. From a supply-side perspective, although the majority of suppliers, especially large ones, manufacture multiple components, there is a degree of specialisation and not all suppliers offer the same range of products. This is the case for Apex which, the CMA notes, manufactures a limited range of shelving (long-span shelving based on the use of lightweight pallet rack components)<sup>13</sup> and primarily specialises in the manufacture and supply of pallet racking.

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<sup>11</sup> Case No COMP/M.3483 *Voestalpine AG/Nedcon Groep N.V* – 2004.

<sup>12</sup> The CMA has not specifically considered whether the relevant product frame of reference includes the supply of mezzanine, as Apex does not have a consistent record of supplying mezzanine, neither Party manufactures their own mezzanine and the Parties generally supply mezzanine in combination with other components and not as a standalone component. Given these factors, mezzanine as a stand-alone product is not considered further.

<sup>13</sup> Apex can (and does) buy-in additional shelving components when necessary. For example, in 2014 Apex's revenue from shelving was £[redacted] of which [redacted]% (£[redacted]) related to products bought in by Apex. The CMA notes that this is a minority of Apex's revenue and, as discussed below, the majority of Apex's (and Whittan's) revenues derive from orders for specific components. Therefore, the CMA does not consider that Apex's decision to buy-in components in a minority of cases is evidence that the product frame of reference should be widened. However,

34. The Parties' internal documents suggest that several suppliers focus on specific components. For example, a report by [REDACTED] for Whittan<sup>14</sup> states that [REDACTED] focus is on 'high quality static shelving' and suggests that [REDACTED] focuses on lockers.
35. The CMA also considered evidence from the Parties and third parties on the extent to which customers: (i) require combinations of components as part of a steel static storage system; and (ii) prefer to (and do) source all of their components from a single supplier.
36. First, the Parties' internal documents provide mixed evidence on the extent to which customers order individual components or combinations of components. On the one hand, a report produced by [REDACTED] as part of the [REDACTED] sales process states that [REDACTED].<sup>15</sup> The report also states that [REDACTED]<sup>16</sup> and that [REDACTED].<sup>17</sup>
37. On the other hand, several documents suggest that being able to supply a range of components is less important. For example, another [REDACTED] report states that [REDACTED].<sup>18</sup>
38. Second, the Parties' sales revenue and tender data indicate that the [REDACTED] the Parties' orders are for [REDACTED]. In particular, only [10–20]% of Whittan's 2014 revenue and [20–30]% of Apex's 2014 revenue derived from orders for combinations of components.<sup>19,20</sup>
39. Likewise, the Parties' tender data<sup>21</sup> showed that [80–90]% of the projects by number and [70–80]% of the projects by value in which Whittan participated were projects for individual components, eg pallet racking only or shelving only. Meanwhile, [90–100]% of Apex's projects by number and [70–80]% of projects by value were for individual components. Furthermore, all of the

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the CMA has considered Apex's more limited range of components, where relevant, in its competitive assessment below.

<sup>14</sup> September 2015.

<sup>15</sup> Annex 9.10 – Project Willen – High level commercial report, 2 July 2015, p22.

<sup>16</sup> Idem, p22.

<sup>17</sup> Idem, p27.

<sup>18</sup> Annex 8(e).2 – Project Willen Information Memorandum, 1 July 2015, p23. See also p31 of the same document: [REDACTED].

<sup>19</sup> The Parties provided the CMA with a breakdown of their 2014 revenue distinguishing between orders for pallet racking only, shelving only and combinations of components. Apex was not able to provide a breakdown based on sales revenue but has provided a breakdown based on the value of orders received in 2014.

<sup>20</sup> Whittan's data included some sales of lockers and stand-alone mezzanine. Excluding this revenue Whittan's sales of pallet racking only accounted for [REDACTED]% of revenue, sales of shelving only accounted for [REDACTED]% of revenue and sales of combinations of components also accounted for [REDACTED]% of revenue.

<sup>21</sup> The Parties also provided the CMA with information about all of the tenders they participated in between October 2014 and September 2015 and all other projects with a value of at least £500,000 which they sought to win (regardless of whether these projects used a tendering process) between January 2014 and July 2015. For context, between January 2014 and July 2015 Apex formal tenders accounted for [REDACTED]% of the Apex's total sales. The equivalent figure for Whittan was [REDACTED]%. The Parties provided these figures for January 2014 to July 2015 only, rather than the January 2014 to September 2015 period covered by the tender data.



combinations of components for which Apex competed were combinations of mezzanine levels and shelving and did not include pallet racking, [✂].

40. Third, the majority of customers indicated to the CMA that they are generally willing to source different components for the same project from different suppliers.
41. Finally, the CMA's evidence, discussed below, indicates that suppliers who specialise in specific components and/or have a limited range of components (in particular Apex) are to some extent credible alternatives in the supply of specific components to suppliers with a wider range. This suggests that there are important differences in competitive interactions across different components which supports a narrow product frame of reference.

#### *Conclusion on product frame of reference*

42. On the basis of the evidence above, and on a cautious basis, the CMA considers that the appropriate product frames of reference for assessing the Merger are:
  - (a) the supply of pallet racking; and
  - (b) the supply of shelving.

#### **Geographic scope**

43. Whittan submitted that the relevant geographic scope is broader than the UK and is EEA-wide. To support its view Whittan particularly noted that:
  - both Whittan and Apex compete with a number of manufacturers and distributors who operate across Europe;<sup>22</sup>
  - these European suppliers meet demand from UK customers either from their European plants or via warehouse and distribution systems in the UK. Therefore, imported products account for a significant proportion of UK consumption of steel static storage system components;
  - Whittan supplies European customers from its UK plants;<sup>23</sup>

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<sup>22</sup> See *Merger Notice* paragraph 12.2.12, *RFI Q16 – Examples of competition with European suppliers – Apex* and *RFI Q16 – Examples of competition with European suppliers – Whittan*.

<sup>23</sup> The Parties provided examples of Whittan supplying customers in a range of countries including France, Belgium, the Netherlands, Germany, Spain and Sweden.

- transport costs are low and neither transport costs nor lead times vary significantly based on customer requirements or supplier location, and neither is a significant factor in competition;<sup>24</sup> and
  - European standards (which are superior to existing UK standards) are becoming increasingly important and the [REDACTED]. However, [REDACTED] where this had been the case and no third parties mentioned this as a consideration in their responses.
44. Whittan further submitted that there is no evidence that conditions of competition vary materially across the EEA.<sup>25</sup> However, the CMA did not have sufficient evidence regarding the competitive conditions in other EEA countries to place weight on this submission. Furthermore, as discussed below (paragraph 50), the EEA share of supply estimates provided by the Parties suggest that competitive conditions and interactions do vary across the EEA.
45. Finally, Whittan also noted that the European Commission previously considered the relevant geographic scope in the supply of steel static storage systems. In *Constructor/Dexion*, the European Commission noted that suppliers needed to have a national presence (either a subsidiary or a distributor). However, the European Commission highlighted that the need for a local presence did not create a significant barrier to entry because suppliers were more likely to directly participate in negotiations for large contracts, transport costs were relatively low and there was no evidence of substantial price differences across countries. The European Commission indicated that these factors suggested that competition might take place at a wider than national level. However, in both this case and the *Voestalpine/Nedcon* case the geographic market definition was left open.<sup>26</sup>
46. While it is clear that European suppliers do supply UK customers and that some suppliers operate across multiple countries, this in itself does not necessarily mean that the relevant geographic scope is wider than the UK.
47. The CMA notes that all of the suppliers identified by the Parties either manufacture in the UK, have a UK sales team and/or supply UK-based distributors. This suggests that, while components may be manufactured

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<sup>24</sup> For example, Whittan submitted that the additional cost of shipping from the UK to Europe is approximately [0–5]% of sales value and that Whittan’s average base shipping cost is approximately [0–5]% of sales value. Whittan estimated that delivery of a full trailer would cost £[REDACTED] to south-East England, £[REDACTED] for Newcastle, £[REDACTED] to Paris and £[REDACTED] to Venlo.<sup>24</sup> The Parties have also stated that lead times are not materially affected by transport times. In particular, transportation to/from Europe takes one day and orders are often placed several months in advance.

<sup>25</sup> To support this Whittan provided a comparison of gross margins in the UK and on other European projects.

<sup>26</sup> Paragraph 12 of both the *Constructor/Dexion* and *Voestalpine/Nedcon* decisions.

outside of the UK, a UK presence is important if suppliers are to compete to supply UK-based customers. In addition, there are a number of suppliers, including Apex, who only sell to UK customers.<sup>27</sup>

48. Some large customers operate multiple sites, across multiple countries. The Parties' internal documents provided mixed evidence on the extent to which customers seek to use a single supplier across all of the countries in which they operate. For example, a [REDACTED] report states that customers are [REDACTED].<sup>28</sup> However, a [REDACTED] report states that [REDACTED].<sup>29</sup>
49. During the CMA's market testing customers who operate across multiple countries generally indicated to the CMA that they do not contract with a single supplier across multiple countries.<sup>30</sup> Furthermore, the CMA understands that, whilst some customers use framework agreements covering multiple sites, the majority of customers select suppliers on a project-by-project basis.<sup>31</sup> This was supported by responses to the CMA's market testing.
50. The Parties provided the CMA with share of supply estimates for the EEA. The CMA notes these shares of supply differ substantially on a national basis. For example, Whittan's EEA share of supply for pallet racking is [5–10]%, while in the UK the equivalent figure is [30–40]%, Apex's EEA share is [0–5]%, while in the UK its share is approximately [10–20]%. Avery/Stow's EEA share of supply for pallet racking is [10–20]% whilst in the UK the equivalent figure is [5–10]%. The CMA considers that such significant variations in shares of supply across geographic areas is evidence that competitive interactions between suppliers vary substantially across these areas, see Figure 1 below.<sup>32</sup> In particular, most EU-based suppliers have one or more 'home markets' where their share of supply is materially higher.
51. Finally, the CMA sought evidence from third parties on the importance of a UK manufacturing and sales presence for suppliers. Only three of 19 customers indicated that they did not consider it important that suppliers have a UK sales

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<sup>27</sup> The CMA understands that this is also true of [REDACTED].

<sup>28</sup> Annex 10.1 – Project Eagle Information Pack, November 2014, p10.

<sup>29</sup> Annex 10.2 Project Eagle Vendor Commercial Due Diligence – Final Report, 14 October 2014, p37.

<sup>30</sup> [REDACTED]

<sup>31</sup> Whittan's tender data includes [REDACTED] tenders issued by [REDACTED] between January 2014 and September 2015, which is an example of customers selecting suppliers on a project-by-project basis.

<sup>32</sup> Whittan – EEA share of [5–10]%, UK share [30–40]%. Averys/Stow – EEA share [10–20]%, UK share [5–10]%.

or a UK manufacturing presence,<sup>33,34</sup> whilst one customer stated that a UK sales presence was not 'always a prerequisite'.<sup>35</sup>

52. This is consistent with responses from competitors; seven of the ten competitors who responded to the CMA indicated that a UK sales presence is important when competing for UK customers,<sup>36</sup> and is consistent with statements in the Parties' internal documents.

#### *Conclusion on geographic frame of reference*

53. The evidence received by the CMA indicates that a UK sales presence is important if suppliers are to compete to supply UK customers. This is supported by the Parties' internal documents, by third party responses and by the fact that the European suppliers that currently supply UK customers have their own UK sales team and/or a UK distribution network. Additionally, the CMA notes that customers (including those purchasing across different countries) generally select suppliers on a project-by-project basis and the Parties' EEA shares of supply estimates suggest that competitive interactions between suppliers vary substantially across countries.
54. On the basis of this evidence, and on a cautious basis, the CMA has assessed the merger using a UK geographic frame of reference, including direct imports<sup>37</sup> from suppliers based in continental Europe.

#### *Conclusion on frame of reference*

55. For the reasons set out above, the CMA has, on a cautious basis, considered the impact of the Merger under the following frames of reference:
- (a) the supply of shelving in the UK including direct imports; and
  - (b) the supply of pallet racking in the UK including direct imports.
56. It was not necessary for the CMA to conclude on the exact frame of reference in this case because it did not find a realistic prospect of an SLC under the narrowest plausible frame of reference.

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<sup>33</sup> [REDACTED] also indicated that supplier location was not important [REDACTED]. [REDACTED] also indicated that a UK presence is not important, however most (if not all) of their work [REDACTED].

<sup>34</sup> In contrast, 11 customers indicated that they preferred their supplier to have a UK manufacturing presence, five of these customers stated that this was to reduce lead times. 13 customers (the same 11 and two additional customers) stated that it was important for their supplier to have a UK sales presence. These customers emphasised that a UK sales presence made communication with suppliers easier and ensured that requirements were met.

<sup>35</sup> [REDACTED]

<sup>36</sup> [REDACTED]

<sup>37</sup> Direct imports are sales direct to the customer from the non-UK manufacturer.

## Competitive assessment

### *Horizontal unilateral effects*

57. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or degrade quality on its own and without needing to coordinate with its rivals.<sup>38</sup> The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition in relation to unilateral horizontal effects in the supply of pallet racking in the UK, and in the supply of shelving in the UK.

### *The supply of pallet racking in the UK*

#### *Competitors and shares of supply*

58. The Parties identified a number of suppliers that they considered compete to supply pallet racking in the UK, and provided estimates<sup>39</sup> of UK shares of supply. The CMA also collected information from suppliers on their UK sales of pallet racking and has used these to construct share of supply estimates using these figures. These estimates are summarised in Table 1 below.<sup>40</sup>

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<sup>38</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>39</sup> The Parties have submitted that these estimates are likely to underestimate the shares of supply of European suppliers, since these shares of supply are based on the published account of UK subsidiaries while European suppliers may also sell direct to end-users or to integrators/distributors who then sell to UK customers. The CMA sought further information from European suppliers on their UK sales. This information did not support the Parties' submission that their estimates were likely to be underestimates.

<sup>40</sup> A number of the Parties' internal documents also provide share of supply estimates. For example, Annex 9.9 – Project Willen Information Memorandum, 1 July 2015, 23, and Annex 10.1 – Project Eagle Information Pack, November 2014, 19. These shares of supply are broadly consistent with those presented.

**Table 1: UK 2014 shares of supply estimates for pallet racking**

<i>Supplier</i>	<i>Parties' estimates</i>	<i>CMA estimates, using market size from submissions (including others)</i>
Whittan	[30–40]	[30–40]
Apex	[10–20]	[10–20]
Combination	[40–50]	[50–60]
Constructor	[5–10]	[5–10]
Averys	[5–10]	[0–5]
Schaefer	[5–10]	[0–5]
BITO	[5–10]	[0–5]
AR Storage	[5–10]	[5–10]
Mecalux	[5–10]	[5–10]
Jungheinrich	[0–5]	[0–5]
Ramada/Storax*	N/A	[0–5]
Others	[10–20]	[10–20]
Estimated market size (£m)	[£x]	[£x]

Source: The Parties and CMA estimates

\*The Parties did not estimate Ramada/Storax's market share separately and this was included in 'Others'. In the revised estimates the Others figure has been adjusted.

59. Based on the CMA's estimates, the merged entity would be the largest supplier of pallet racking in the UK with a combined share of supply of [50–60]%, and an increment of [10–20]%. In comparison, the next largest supplier, Constructor/Dexion, has an estimated share of supply of [5–10]%.
60. Table 1 indicates that, other than the Parties, the supply of pallet racking in the UK is relatively fragmented, with eight firms having an estimated share of supply<sup>41</sup> between [0–5]% and [5–10]% each. These suppliers do not have a UK manufacturing presence, although each has its own UK sales team and UK distribution network.
61. In addition to the competitors named in Table 1, the CMA is aware (from the Parties' submissions, third party responses and research) of a number of other manufacturers of pallet racking, both UK and European, that supply UK customers. These include Bradfield Storage Handling, Metalsistem, Nedcon/Voestalpine, Provost, Rapid Racking, Sperrin, and Stakapal. The estimated shares of supply for these suppliers are included in 'Others' in Table 1.
62. The Parties also provided EEA shares of supply for pallet racking. These shares of supply indicate that, [£x], in particular, are well-established and have a significant presence in other EEA countries.<sup>42</sup> The CMA has considered the competitive constraints imposed by these suppliers (and others) in the competitive assessment below.

<sup>41</sup> Based on CMA estimates.

<sup>42</sup> [£x]

## Closeness of competition between the Parties

### Internal documents and Parties' submissions

63. The Parties supplied a number of internal documents which provide some evidence of: (i) the closeness of competition between the Parties; and (ii) the closeness of competition between the Parties and other suppliers. The CMA notes that this evidence generally relates to competition between Apex, Whittan and other suppliers in general rather than in relation to specific components (eg pallet racking).
64. The Parties' internal documents consistently identify Apex and Whittan as competitors, and generally indicate that Apex and Whittan are close competitors in the UK.<sup>43</sup> For example, a [REDACTED] report includes an analysis of Apex's [REDACTED].<sup>44</sup> [REDACTED]<sup>45</sup> The Parties' internal documents also suggest that Apex has recently [REDACTED].<sup>46</sup> As a result, it is stated that [REDACTED].<sup>47</sup>
65. However, the Parties have submitted that Apex's ability to compete with Whittan is hampered by the [REDACTED]. This is consistent with the rationale for the sale of Apex as stated in a number of internal documents.<sup>48</sup>
66. The Parties also submitted that they are differentiated and that there are important differences in the customers they serve and the types of projects that they cater for. The Parties submitted that Apex's pallet racking structures are particularly well suited to lightweight applications (such as garments), whilst Whittan's pallet racking designs [REDACTED]. This submission was supported by:
- (a) a competitor's response which noted that Apex's limited range is best suited to light loads;<sup>49</sup>
  - (b) statements in internal documents that Apex has had particular success winning large retail contracts;<sup>50</sup> and

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<sup>43</sup> See, for example, Annex 8(e).2 - Project Willen Information Memorandum, 1 July 2015, p27.

<sup>44</sup> See Annex 9.10 – Project Willen – High level commercial report, 2 July 2015, p21.

<sup>45</sup> See also, Annex 10.2 – Project Eagle Vendor Commercial Due Diligence – Final Report, 14 October 2014, (pp27, 36 & 68), Annex 9.6 – Whittan analysis of the potential acquisition of Apex, 15 February 2011, (pp1–2) and Annex 10.4 – Report on the UK Storage Market for Whittan Storage Systems, September 2015, p9.

<sup>46</sup> Annex 9.9 – Project Willen Information Memorandum, 1 July 2015, and Annex 9.10 – Project Willen – High level commercial report, 2 July 2015.

<sup>47</sup> Annex 9.10 – Project Willen – High level commercial report, 2 July 2015.

<sup>48</sup> [REDACTED] information memorandum on Apex states that [REDACTED]. Annex 8(e)2. Project Willen Information Memorandum, 1 July 2015, p7. See also Annex 10.4 – Report on the UK Storage Market for Whittan Storage System, September 2015, p9, where one of Apex's weaknesses is noted as [REDACTED].

<sup>49</sup> [REDACTED]

<sup>50</sup> See Annex 9.10 – Project Willen – High level commercial report, 2 July 2015, pp6 & 17 ([REDACTED] and Annex 8(e)2. – Project Willen Information Memorandum, 1 July 2015, p20 ([REDACTED]).

(c) the Parties' analysis of their tender data (discussed below) which shows that, whilst Whittan supplies a range of customers, Apex has a particular focus on clothing/textiles ([60–70]% of Apex's tender revenue) and logistics customers ([30–40]% of Apex's tender revenue).

67. In addition, the Parties' submitted that Apex specialises in larger and more complex projects. To support this, they provided an analysis of all of the Parties' projects involving pallet racking between January 2012 and July 2015. This analysis shows that [40–50]% of Apex's revenue derives from projects over £500,000 whilst only [10–20]% of Whittan's revenue does. An internal Whittan note also states that 'Apex [REDACTED]'.<sup>51</sup>

68. However, the CMA does not consider that such product or project differentiation between the Parties is a key factor in shaping competition between them (and other suppliers). In particular, the CMA notes that:

(a) the Parties and third parties have submitted that pallet racking is standardised and is a commoditised product with little differentiation between alternative suppliers;<sup>52</sup> and

(b) Whittan is the larger supplier, which may allow it to focus on a wider range of projects. Therefore, it is plausible that Apex focuses on a subset of projects for which Whittan also competes.

### *Third party responses*

69. The CMA received questionnaire responses or comments from customers and competitors.<sup>53</sup> Overall, third parties viewed the Parties as close competitors in the supply of pallet racking.<sup>54</sup> However, some customers and competitors described the Parties as only moderate or weak competitors, citing that Whittan's [REDACTED] and that European suppliers are closer competitors to the Parties.<sup>55</sup>

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<sup>51</sup> Annex 9.7 – Whittan observations on the potential acquisition of Apex dated 9 July 2015.

<sup>52</sup> For example, *Willen CMA Merger Notice DRAFT [30.10.15]*, paragraphs 14.1, 14.4, 15.2 & 26.7, and see paragraph 102.

<sup>53</sup> The competitors included a mix of manufacturers (both UK and European) and distributors.

<sup>54</sup> Ten (of the 16) customers who responded on this point stated that the Parties were strong competitors in the supply of pallet racking. Likewise seven (of the eight) competitors who responded on this point stated that the Parties were strong competitors in the supply of pallet racking. These third parties noted that the Parties offered similar product ranges, were significant suppliers in the UK and had provided competitive bids when competing against each other to supply those customers. One competitor noted that Apex [REDACTED].

<sup>55</sup> A further three customers and one competitor described the Parties as moderate competitors. The final three customers described the Parties as weak competitors.



### *Tender data analysis*

70. The Parties provided the CMA with information about all of the tenders they participated in between October 2014 and September 2015 and all other projects (including those that were not formally tendered) with a value of at least £500,000 which the Parties sought to win between January 2014 and July 2015.<sup>56</sup>
71. For context, between January 2014 and July 2015 formal tenders accounted for [30–40]% of Apex’s total sales and [60–70]% of Whittan’s total sales. Therefore, the data only covers a subset of each Party’s customers and a subset of cases in which the Parties may have competed with each other. Accordingly, whilst this data is informative, the CMA has accounted for the data’s limitations in its assessment.
72. The data provided indicates that each Party won less than [30–40]% of the tenders (by both number and value) in which they participated.<sup>57</sup>
73. The CMA asked the Parties to identify all cases where bids were submitted for the same project. The Parties identified cases where it is likely they submitted bids for the same project based on the date of the bid, the components involved, the customer and the value of the bid. The Parties identified [X] tenders<sup>58</sup> which involved the supply of pallet racking (either individually or alongside other components) in which both Parties participated.
74. These [X] tenders accounted for [10–20]% of the value of all of Whittan’s pallet racking tenders and [40–50]% of the value of all of Apex’s pallet racking tenders during the period. This suggests that competition between the Parties is asymmetric with Apex more likely to face competition from Whittan in a tender than vice-versa.
75. Of the [X] pallet racking tenders in which both participated:
  - (a) the value of tenders won by Whittan was [10–20]% of the value of the tenders in which both Parties participated;<sup>59</sup>

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<sup>56</sup> This data included [X] Whittan projects either for pallet racking only or for combinations of components that included pallet racking. For Apex, this data included [X] projects for pallet racking only, as Apex did not compete for any projects that involved pallet racking in a combination of components.

<sup>57</sup> Whittan won [20–30]% by number and [20–30]% by value; Apex won [30–40]% by number and [30–40]% by value.

<sup>58</sup> The Parties identified [X] matching tenders in total. The CMA removed one tender from the list as a matching tender because the Parties listed different products for the project – Apex listed its product as shelving, while Whittan listed its product as pallet racking.

<sup>59</sup> These tenders account for [10–20]% of the value of all of the pallet racking tenders that Whittan won in this period.

- (b) the value of tenders won by Apex was [30–40]% of the value of the tenders in which both Parties participated;<sup>60</sup>
- (c) overall, the value of tenders in which one of the Parties won accounted for [50–60]% of the value of the Parties' tenders where both participated;<sup>61</sup> and
- (d) in contrast, the value of tenders in which both Parties lost accounted for [30–40]% of the value of the tenders in which they both participated.

76. In summary, the tender data suggests that when the Parties compete against each other they are effective competitors - one of the Parties won [50–60]% of these tenders (by value). However, the data also suggests that the frequency of competition between the Parties is relatively limited. Specifically, Apex faced competition from Whittan in only [40–50]% of its tenders (by value) whilst Whittan faced competition from Apex in only [10–20]% of tenders (by value) indicating that significant competition is exerted by other suppliers in the UK.

*Summary of closeness of competition between the Parties*

77. Based on the evidence set out above, the CMA believes that the Parties are close, but not particularly close, competitors. The tender data suggests that the Parties compete against each other only on a relatively small number of tenders and that there is also significant competition exerted by other suppliers in the market, which the CMA has assessed in more detail below.
78. The relatively high share of supply is not, in itself, determinative of the assessment of how closely the Parties compete, in the specific circumstances of this case, in particular in light of the high degree of commoditisation of the Parties' competing products, as well as the tender data and third party views which confirm that the Parties are not particularly close competitors.

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<sup>60</sup> These tenders account for [40–50]% of the value of all of the pallet racking tenders Apex won in this period.

<sup>61</sup> The remaining tenders are open and yet to be awarded.

## Competitive constraints from other pallet racking suppliers

### Internal documents

79. Several of the Parties' internal documents,<sup>62</sup> including annual reports and business plans, refer to the pallet racking market as being [REDACTED] and [REDACTED].<sup>63</sup> However, a report prepared by [REDACTED] for Bregal when it acquired Whittan in 2015, states that [REDACTED].<sup>64</sup> This report also states that [REDACTED].<sup>65</sup>
80. The Parties' internal documents indicate that competitors fall into two groups: (i) competitors with sufficient capacity to fulfil large and complex orders; and (ii) competitors with less capacity focusing on lower value, less complex orders. Each of these types of competitors compete with the Parties, at least to some extent.
81. The Parties' internal documents suggest competition from [REDACTED].<sup>66</sup>
82. Therefore, the Parties' internal documents indicate that the Parties' main competitors are European suppliers who are either competing directly or through distributors in the UK.
83. The CMA notes that the European suppliers identified by the Parties, as set out in the share of supply data at Table 3, are generally well-established and significant suppliers across the EEA and most already have an established UK presence through a UK sales team and a UK distribution network.<sup>67</sup> The Parties submitted the following diagram, which shows the 2014 sales value of a number of suppliers across the EEA:

#### Figure 1: [REDACTED]

Source: The Parties.

84. Figure 1 shows that [REDACTED] all have larger sales than Whittan across the EEA, and Apex is only present in the UK. These suppliers are well established and have the expertise and products required to compete to supply UK customers, since requirements (in terms of technical expertise) are the same regardless of location. The Parties submitted that a UK-based manufacturing presence

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<sup>62</sup> As noted above some internal documents assess competition between Apex, Whittan and other suppliers in general and do not specify whether this is in regard to specific components (eg pallet racking). The CMA has accounted for this limitation when assessing this evidence.

<sup>63</sup> For example, see 8(d).1 Apex 2014 Annual report, p5, Whittan 8(e)1. – Whittan FY16 Budget and Three Year Plan, October 2015, p3, and Annex 8(e).2 – Project Willen Information Memorandum, 1 July 2015, p23.

<sup>64</sup> Annex 10.2 – Project Eagle Vendor Commercial Due Diligence – Final Report, 14 October 2014, p36.

<sup>65</sup> Annex 10.2 – Project Eagle Vendor Commercial Due Diligence – Final Report, 14 October 2014, p36.

<sup>66</sup> A [REDACTED] report states that [REDACTED]. Annex 9.10 – Project Willen – High level commercial report, 2 July 2015, p27. The same report also states (p22) that [REDACTED]. See also, Annex 10.2 – Project Eagle Vendor Commercial Due Diligence, 14 October 2014, p36.

<sup>67</sup> The CMA understands that [REDACTED] do not have a UK sales team.

does not confer a material competitive advantage. In the Parties' experience, in order to be competitive, it is sufficient for a supplier to have a sales presence of some kind at a local level.

85. The Parties' internal documents generally mention [REDACTED] by name, and in one of the Parties' internal documents these suppliers are rated as two of the closest competitors to Apex, although not as close as Whittan.<sup>68</sup> Moreover, the Parties' internal documents indicate that [REDACTED] are the market leaders in the UK for the most complex and largest projects.<sup>69</sup>
86. The Parties' internal documents make a number of comments which suggest that the Parties' UK manufacturing presence may provide an advantage over these European suppliers. For example, [REDACTED] report states that [REDACTED].<sup>70</sup>

### *Third party responses*

87. Overall, third parties identified a range of other (mainly European) suppliers that they felt the Parties competed with. These European suppliers were also viewed as strong competitors to the Parties by third parties.
88. A competitor<sup>71</sup> also stated that, generally, smaller UK based suppliers and distributors would compete for small orders, whilst larger pan-European suppliers would only directly compete for larger orders while their distributors would compete for smaller orders.
89. Specifically, 15 customers<sup>72</sup> had used multiple pallet racking suppliers in the last year. Further, all but one (of the 11) customers who responded to this question identified multiple competitors to the Parties in the supply of pallet racking to UK customers.<sup>73</sup>
90. Customers (13 customers responded to this question) identified a range of European suppliers including: SSI Schaeffer, Constructor/Dexion, Bito, Averys/Stow, AR Systems, Storax/Ramada and Provost. In particular, nine customers identified Constructor/Dexion,<sup>74</sup> seven customers identified Averys/Stow<sup>75</sup> and SSI Schaeffer.<sup>76</sup> These suppliers were also typically identified as strong competitors to one or both Parties.

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<sup>68</sup> Annex 9.10 – Project Willen – High level commercial report, 2 July 2015, p21.

<sup>69</sup> Annex 8(e).2 - Project Willen Information Memorandum, 1 July 2015, p27.

<sup>70</sup> Annex 10.2 – Project Eagle Vendor Commercial Due Diligence – Final Report, 14 October 2014, p45.

<sup>71</sup> [REDACTED]

<sup>72</sup> [REDACTED]. [REDACTED] had also used multiple suppliers but not for pallet racking.

<sup>73</sup> [REDACTED]

<sup>74</sup> [REDACTED]

<sup>75</sup> [REDACTED]

<sup>76</sup> [REDACTED]

91. The CMA specifically sought evidence on the effects of a supplier's manufacturing location on the ability of suppliers to compete to supply UK customers.
92. Three competitors (out of nine)<sup>77</sup> responded that a UK manufacturing presence is not important in competing for customers. Five competitors<sup>78</sup> told the CMA that a UK manufacturing presence can provide advantages in terms of delivery times and transportation costs, although this was most often relevant in a limited number of cases when customers needed spares or repairs at short notice or for the small number of other time sensitive projects.
93. This was reflected in the responses of European competitors.<sup>79</sup> Two (of four) European suppliers felt that manufacturing in Europe was a constraint on their ability to compete, although only in a small number of cases with particular time pressures.<sup>80</sup> These competitors, however, also stated that their lack of UK manufacturing facilities and their use of a UK sales team and/or use of UK distributors did not affect their ability to compete to supply UK customers.
94. When assessing the strength of competition from alternative suppliers, customers did not cite the supplier's manufacturing location as a factor in their assessment. The CMA notes that while customers indicated that a UK sales presence is important, a number of European suppliers already have such a presence.

#### *Tender data analysis*

95. As discussed above the Parties provided the CMA with tender data and identified [REDACTED] tenders which involved the supply of pallet racking (either individually or alongside other components) in which both of the Parties participated.
96. The tender data suggests that when the Parties did not compete against each other they faced effective competition from other pallet racking suppliers. Specifically, both Parties won less than [REDACTED] of the tenders (by both number and value) in which they participated and in which the other Party did not participate.
97. The Parties also provided information on who they believed they competed with in each of these tenders. In all but one of these tenders the Parties

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<sup>77</sup> [REDACTED]

<sup>78</sup> [REDACTED] responded that the only time it matters is when customers need spares/repairs and they find out that they are on a longer lead time and more expensive if not UK supplied. [REDACTED] mentioned that non-UK manufacturers are at a significant disadvantage especially on a large volume projects.

<sup>79</sup> [REDACTED]

<sup>80</sup> [REDACTED]

believe that they competed with at [REDACTED] European suppliers.<sup>81</sup> The Parties submitted that further analysis shows that a number of European suppliers (notably [REDACTED]) have competed with the Parties as often as the Parties competed with each other.

98. However, the Parties submitted that they do not keep records of who they compete against or believe they compete against during the normal course of business. Therefore, the CMA considers that limited weight can be placed on this analysis.

*Summary of competitive constraints from other pallet racking suppliers*

99. In summary, the CMA considers that internal documents, third party responses and the Parties' tender data indicate that suppliers based in continental Europe are significant competitors to the Parties. A number of these suppliers have a significant presence in continental Europe, demonstrating technological and product expertise, and sell into the UK via their own UK sales team and/or by using a distributor. Although some of these suppliers' operations in the UK are not significantly smaller than those of Apex, they do represent a relatively modest share of supply when compared with the Parties' combined share of [50–60]%. The CMA therefore also considered the extent to which it would be easy for customers to switch between suppliers and for existing suppliers based in continental-Europe already serving the UK to expand their sales in the UK further to meet potential additional demand.

*Other factors*

100. The CMA received evidence on: (i) the ease with which customers can switch between suppliers; and (ii) the barriers to expansion faced by European suppliers currently operating in the UK.
101. The Parties submitted that projects are typically awarded using competitive tender or procurement processes, with customers seeking quotes from multiple suppliers. This is supported by customer responses to the CMA's market testing. 13 customers (of the 17 who answered the question) said that they used formal tendering or procurement processes, especially for larger orders,<sup>82</sup> approaching at least two, and up to eight, suppliers.<sup>83</sup> The tender

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<sup>81</sup> [REDACTED]

<sup>82</sup> [REDACTED]

<sup>83</sup> [REDACTED] reported using six and [REDACTED] five.

data provided by the Parties also illustrated that a number of major customers regularly requested quotations for different projects.<sup>84</sup>

102. The Parties also stated that pallet racking and the other components are highly commoditised. This view being supported by the responses of two competitors.<sup>85</sup> As a result, the Parties submitted that competition is focused on price and that suppliers are relatively undifferentiated. One customer<sup>86</sup> (unprompted) noted that competition between suppliers was intense because the focus was on price.
103. The willingness of customers to switch between suppliers was also illustrated by third party responses. 15 customers<sup>87</sup> reported using multiple suppliers in the last year and 12 of these customers<sup>88</sup> explicitly stated that the reason for doing so was that different suppliers provided the most competitive proposal for different projects. This indicates that barriers to switching between suppliers are low and that customers are generally able and willing to switch between alternative suppliers.
104. The CMA sought evidence on whether European suppliers faced any constraints to expansion in the UK. The CMA's evidence indicates that they do not. As noted above European suppliers who are already active in the UK have a significant presence and sales revenues in other EEA countries. Therefore, the CMA considers that these suppliers do not face barriers to expansion in the UK arising from technical expertise.
105. While two (of four) European suppliers<sup>89</sup> felt that manufacturing overseas was a constraint on their ability to compete, this was only in a small number of cases with particular time pressures.<sup>90</sup> As noted above, the CMA's evidence indicates that transport costs are low (approximately [0–5]% of sales value) and lead times are relatively long. Therefore, the CMA does not consider that manufacturing outside of the UK, in the rest of the EEA, is a barrier to expansion for European suppliers who are already active in the UK.
106. Furthermore, none of these European suppliers indicated that using a UK sales team and UK distributors affected their ability to expand in the UK.<sup>91</sup>

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<sup>84</sup> For example, Whittan's tender data includes [REDACTED] tenders issued by [REDACTED] between January 2014 and September 2015.

<sup>85</sup> [REDACTED]

<sup>86</sup> [REDACTED]

<sup>87</sup> [REDACTED]

<sup>88</sup> [REDACTED]

<sup>89</sup> [REDACTED]

<sup>90</sup> [REDACTED]

<sup>91</sup> The CMA received specific responses to a follow-up question from [REDACTED].

Additionally, the CMA considers that any requirement to expand UK sales teams is a low barrier to expansion for European suppliers.

107. These suppliers also indicated that they did not face any capacity constraints which would affect their ability to expand production to meet an increase in UK demand. Indeed, one competitor stated that it was currently increasing its production capacity and looking to increase their sales in the UK.<sup>92</sup>
108. The Parties submitted that large European suppliers supply to UK distributors/resellers. These distributors/resellers typically source from multiple manufacturers based on price, and to meet specific project needs. Many distributors/resellers are highly sophisticated, and capable of winning and fulfilling large projects (even those over £1 million) in their own right. The Parties' submitted that, individually, independent UK distributors/resellers compete effectively with Whittan and Apex for large and small pallet racking projects, and that collectively, Whittan estimates, independent UK distributors/resellers account for approximately [20–30] to [30–40]% of pallet racking supply in the UK.

#### *Third party views on the competitive effects of the Merger*

109. Six customers expressed concerns that the Merger would lead to a reduction in competition and an increase in prices.<sup>93</sup> Two of these six customers and two suppliers expressed concerns that the Merger would decrease the number of UK suppliers and increase the reliance on imports.<sup>94</sup>
110. However, ten customers stated that they did not believe that the Merger would have an adverse effect on competition.<sup>95</sup> Indeed, one customer stated that they felt that the Merger would improve the Parties' ability to compete.<sup>96</sup> Two customers also specifically commented that they were not concerned because other suppliers provided a sufficient competitive constraint.<sup>97</sup>
111. Finally, only four of the 12 customers who had either used both Parties for different projects or sought tenders from both Parties for the same project expressed concerns about the Merger.<sup>98</sup>

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<sup>92</sup> [REDACTED]

<sup>93</sup> [REDACTED]

<sup>94</sup> [REDACTED]

<sup>95</sup> [REDACTED]

<sup>96</sup> [REDACTED]

<sup>97</sup> [REDACTED]

<sup>98</sup> These were [REDACTED]. [REDACTED] did not express any concerns.



*Conclusion on unilateral effects in the supply of pallet racking in the UK*

112. As set out above, the Parties' internal documents and third party responses indicate that the Parties are close, but not particularly close, competitors in the supply of pallet racking. The Parties' relatively high combined share of supply is not, in the specific circumstances of this case, in and of itself, determinative of a finding of competition concerns, in particular in light of the high degree of commoditisation of the Parties' competing products, as well as the tender data.
113. However, the CMA considers that following the Merger there will continue to be a number of effective competitors, mainly large suppliers based in continental Europe but with a UK presence, who will continue to constrain the Parties such that an SLC is not a realistic prospect. In particular, the CMA notes that:
- (a) customers award projects on a case-by-case basis having sought quotations from multiple suppliers and the focus of competition is price. As a result, barriers to switching are low;
  - (b) customers generally view European suppliers who are already active in the UK (and especially Constructor/Dexion and SSI Schaefer) as strong competitors in the supply of pallet racking;
  - (c) furthermore, suppliers based in continental Europe, already active in the UK, are well established in other EEA countries. These suppliers do not face significant barriers to expansion in the UK as their presence across the EEA indicates that they can meet the technical requirements of UK customers, they are not capacity constrained and are able to expand through established UK sales teams and distribution networks;
  - (d) this is consistent with the tender data provided by the Parties, which shows that the Parties competed against each other in less than [40–50]% of Apex's tenders (by value) and only [10–20]% of Whittan's tenders. Furthermore, the Parties often faced effective competition from other suppliers and both Parties won less than [30–40]% of the tenders in which they participated; and
  - (e) finally, third party responses showed that customers are typically aware of and have used a variety of suppliers and generally did not express concerns regarding the Merger.
114. The CMA, therefore, believes that, for the reasons set out above, the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of pallet racking in the UK.

## ***The supply of shelving in the UK***

### *Competitors and shares of supply*

115. The Parties identified a number of suppliers that they believe compete to supply shelving in the UK. The Parties also provided estimates of UK shelving shares of supply which are summarised in Table 2 below.

**Table 2: UK shares of supply of shelving**

<i>Supplier</i>	<i>UK manufacturer?</i>	<i>Share of supply</i>
Whittan	Yes	[30–40]
Apex	Yes	[0–5]
Combined		[30–40]
SSI Schaefer	No	[10–20]
Rackline	Yes	[10–20]
Constructor/Dexion	No	[5–10]
Rapid Racking	Yes	[5–10]
Big Dug	No	[5–10]
Others		[10–20]
Estimated market size (£m)		[£<]

Source: Whittan best estimates based on published accounts and industry knowledge.

116. As shown above, Whittan is the largest supplier of shelving in the UK, while Apex is a relatively small supplier. As a result, although the merged entity will have a combined share of supply of [30–40]%, in comparison to [10–20]% for the next largest supplier (SSI Schaefer), the increase in Whittan’s share is very low at [0–5]%.
117. As shown, there are five suppliers with market shares ranging between [5–10]% and [10–20]% who are significantly larger suppliers of shelving in the UK than Apex. Furthermore, in addition to the suppliers named in Table 2, the CMA is aware (from the Parties’ submissions, third party responses and research) of a number of additional suppliers of shelving, both UK and European, who also supply UK customers. These include: Averys/Stow, Bradfields Storage Handling, BITO, Lion Steel, Mecalux, Meta, Metalsistem, Nedcom/Voestalpine, Provost, Stakapal and Storax/Ramada. The shares of supply of these suppliers are covered by ‘Other’ in Table 2.
118. The CMA, therefore, believes that the above evidence indicates that the supply of shelving in the UK is fragmented and that Apex is a smaller supplier of shelving in the UK relative to a number of its competitors.
119. The CMA also considered a range of other evidence regarding the closeness of competition between the Parties in the supply of shelving in the UK and

other competitive constraints faced by the Parties. This evidence is considered in more detail below.

### *Competitive assessment*

120. The CMA considered the closeness of competition between the Parties and competition from other shelving suppliers. In doing so the CMA notes that the evidence regarding the abilities of customers to switch and barriers to expansion for suppliers considered at paragraphs 100 to 107 applies equally to both pallet racking and shelving. Therefore, the CMA believes that barriers to switching are low and that barriers to expansion are low for European shelving suppliers who are already present in the UK.

### *Closeness of competition between the Parties*

121. Whittan manufactures a range of shelving components. In comparison, Apex only manufactures a limited range of shelving components (long span shelving based on the use of lightweight pallet rack components).<sup>99</sup>
122. The Parties have submitted that Apex's ability to compete for customers who require shelving is limited by its narrow product range. This is supported by the Parties' internal documents. In particular, [REDACTED] information memorandum on Apex states that [REDACTED].<sup>100</sup> [REDACTED] report makes a similar point stating that [REDACTED]<sup>101,102</sup>
123. The tender data received from the Parties indicates that they compete infrequently with each other for projects involving shelving.
124. Apex participated in [REDACTED] tenders for only shelving and lost [REDACTED]. Meanwhile Whittan participated in [REDACTED] tenders for only shelving, winning [REDACTED]. The value of the tenders won by Whittan accounted for [60–70]% of the value of all shelving tenders Whittan participated in.
125. Apex also competed for [REDACTED] tenders involving shelving and mezzanine levels, and won [REDACTED] of these projects. Whittan competed in [REDACTED] tenders for shelving and mezzanine levels and lost [REDACTED].

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<sup>99</sup> Apex must buy-in components when a customer requires shelving components which it does not manufacture. In 2014, [10–20]% of Apex's revenue from shelving components related to components bought in by Apex.

<sup>100</sup> Annex 8(e)2. Project Willen Information Memorandum, 1 July 2015, p33.

<sup>101</sup> Annex 9.10 – Project Willen – High level commercial report, 2 July 2015, p22.

<sup>102</sup> See also Annex 10.4 – Report on the UK Storage Market for Whittan Storage Systems where one of Apex's weaknesses is noted as [REDACTED], September 2015.

126. The Parties were only able to identify [REDACTED] instances between October 2014 and September 2015<sup>103</sup> in which they competed against each other for projects involving shelving. Apex lost [REDACTED] of these projects and Whittan won [REDACTED] of these tenders.
127. The CMA also sought views from third parties on the closeness of competition between the Parties in the supply of shelving and the strength of competition from other suppliers.
128. Seven (of the 15) customers who answered this question identified the Parties as strong competitors in the supply of shelving.<sup>104</sup> However, four customers<sup>105</sup> described the Parties as weak competitors and notably one of these customers stated that 'Apex have no shelving products of note'.<sup>106</sup>
129. This was also reflected in competitor responses. Four of nine competitors stated that the Parties were weak competitors in the supply of shelving,<sup>107</sup> while four competitors identified the Parties as strong competitors in the supply of shelving.<sup>108</sup> Two competitors noted that Apex's limited shelving product range affected its ability to compete.<sup>109</sup>

#### *Competition from other shelving suppliers*

130. The Parties' internal documents identify a number of other suppliers of shelving, many of whom have a wider product range than Apex. These include European suppliers such as [REDACTED] and [REDACTED] and UK suppliers such as [REDACTED].
131. The CMA considers that the tender data illustrates that Whittan's main competitive constraint in the supply of shelving comes from other shelving suppliers rather than from Apex. Specifically, Apex lost [REDACTED] of the shelving only tenders it participated in and Whittan won [REDACTED] of these tenders. Meanwhile Whittan lost over [50–60]% by number and [30–40]% by value of the shelving only tenders it participated in (none of which were won by Apex).
132. Finally, as with pallet racking, third parties identified a range of alternative suppliers that compete with the Parties in the supply of shelving. Specifically, BITO, AR Systems, Constructor/Dexion, Storax/Ramada and Stow were all

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<sup>103</sup> One of these [REDACTED] tenders does not have an issue date recorded by Apex.

<sup>104</sup> [REDACTED]. [REDACTED] also identified the Parties as strong competitors but [REDACTED].

<sup>105</sup> [REDACTED]

<sup>106</sup> [REDACTED]

<sup>107</sup> [REDACTED]

<sup>108</sup> [REDACTED]

<sup>109</sup> [REDACTED]

identified as strong competitors whilst SSI Schaefer and Mecalux were also identified as competitors.

### *Conclusion on unilateral effects in the supply of shelving in the UK*

133. As set out above, the CMA believes that Apex's limited shelving range restricts its ability to compete with Whittan to supply shelving customers in the UK. There are a number of European and UK suppliers who are a closer competitor than Apex to Whittan in the UK, and will continue to constrain the Parties post-Merger. This view is based on the Parties' shares of supply, the Parties' internal documents, the tender data provided to the CMA ([REDACTED]) and the third party responses received by the CMA.
134. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of shelving in the UK.

### ***Barriers to entry and expansion***

135. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>110</sup>
136. The Parties submitted that barriers to entry and/or expansion into pallet racking, shelving and steel static storage systems are low. To support this the Parties estimated that, for an existing supplier, the costs of establishing a new production line are approximately £[REDACTED] to £[REDACTED].
137. The Parties also estimated the barriers to entry which would be faced by a supplier beginning to supply a component it had not previously manufactured (eg a new pallet racking manufacturer or a pallet racking manufacturer who begins to manufacture shelving). The estimated additional design costs are considered to be [REDACTED] at around £[REDACTED]. Further, the Parties have noted that an existing supplier of one component would likely be able to use in-house capabilities.
138. The CMA has considered the barriers to expansion for suppliers currently active in the UK in its competitive assessment above. The CMA has not had

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<sup>110</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

to conclude on barriers to entry as the Merger does not give rise to competition concerns, as set out above.

### ***Third party views***

139. The CMA received responses or comments from 21 customers and ten competitors. These have been taken into account, where appropriate, in the competitive assessment above.

### **Decision**

140. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

141. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrea Coscelli**  
**Executive Director, Markets and Mergers**  
**Competition and Markets Authority**  
**8 January 2016**

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<sup>i</sup> Whittan clarified that is majority-owned, rather than wholly-owned, by the Bregal Fund III LP.