

Completed acquisition by European Metal Recycling Limited of CuFe Investments Limited

Decision on relevant merger situation and substantial lessening of competition

Contents

	Page
SUMMARY	1
ASSESSMENT	4
Parties.....	4
Transaction	4
Procedure	5
Jurisdiction	5
Counterfactual.....	5
Background.....	6
Frame of reference	8
Competitive assessment.....	14
Third party views.....	32
Decision	33

ME/6712-17

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 24 January 2018. Full text of the decision published on 5 February 2018.

Please note that [✂] 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. On 25 August 2017, European Metal Recycling Limited (**EMR**) acquired CuFe Investments Limited (**CuFe**), holding company of Metal & Waste Recycling

Limited (**MWR**) (the **Merger**). EMR and MWR 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' enterprises have ceased to be distinct and that the turnover test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the recycling of ferrous¹ and non-ferrous² scrap metal in the UK at all levels of the supply chain, including collecting, processing and selling scrap metal. Both Parties purchase unprocessed "waste" scrap metal (**waste scrap metal**), which arises from a variety of sources, and sell processed scrap metal (**processed scrap metal**) to their customers (including via export).
4. The CMA's investigation indicated that, while metal recyclers can generally recycle both ferrous and non-ferrous waste scrap metal, there is limited demand-side substitutability between ferrous and non-ferrous processed scrap metal by end-users. Some waste scrap metal needs to be shredded, and can therefore only be recycled in sites with a shredder. The CMA also found that, while waste scrap metal is typically purchased over relatively short distances, processed scrap metal can be supplied nationally or exported.
5. In line with previous decisional practice, the CMA has assessed the impact of the Merger in the following frames of reference:
 - (a) the purchase of ferrous and non-ferrous scrap metal in (i) the London area; (ii) the West Midlands; (iii) the North East and (iv) South Wales;
 - (b) the shredding of waste scrap metal in the area 115km³ around MWR's shredding site in Hitchin (the **Hitchin area**);
 - (c) the supply of ferrous processed scrap metal in the UK; and
 - (d) the supply of non-ferrous processed scrap metal in the UK.
6. The CMA assessed the horizontal unilateral effects of the Merger in each of these frames of reference.

¹ Iron based (including steel).

² Non-iron based, including aluminium, copper, lead and zinc. Non-ferrous scrap metal is collected in smaller volumes than ferrous scrap metal but tends to be more valuable.

³ The 80% catchment area of MWR's shredder in Hitchin.

7. With regard to the purchasing of ferrous and non-ferrous scrap metal, the CMA found:
 - (a) In South Wales, the Parties had a low combined share of purchasing (20-30% by volume), and several alternative suppliers provided an effective competitive constraint.
 - (b) In the West Midlands, while the Parties' combined share of purchasing was 40-50% by volume and while EMR was the largest purchaser in the region, there were three other purchasers of a comparable size to MWR and many small competitors, which provided an effective competitive constraint.
 - (c) In the North East, while the Parties' combined share of purchasing was 70-80% by volume, they were not close competitors, the competitive constraint imposed by MWR on EMR was limited, and there were several alternative purchasers who provide a competitive constraint at least equivalent to MWR.

The CMA therefore found that the Merger will not result in a realistic prospect of a substantial lessening of competition (**SLC**) in the purchasing of ferrous and non-ferrous scrap metal in these regions.

8. However, in the London area, the CMA found that the Merger would lead to a very high combined share of purchasing (60-70% by volume, with an increment of 5-10%) and would involve the main purchaser of waste scrap metal in this region (EMR) acquiring the third largest purchaser (MWR). The only remaining competitor of significant scale in the region post-Merger would be S Norton. The CMA found that the remaining competition together would not be sufficient to constrain the Parties after the Merger. As a result, businesses, local authorities and individuals might be paid less for their waste scrap metal. The CMA noted that the competition concerns arising from the Merger in this area are particularly significant in relation to the purchasing of waste scrap metal from industrial sources (**industrial contracts**) for which the Parties are close competitors. The CMA, therefore, found that the Merger gives rise to a realistic prospect of an SLC in the purchase of ferrous and non-ferrous scrap metal in the London area.
9. With regard to the shredding of waste scrap metal in the Hitchin area, the CMA found that the Parties had a high combined share by volume and they were the two main suppliers of shredding services in this area. There were few competitors with sufficient scale to constrain the Parties after the Merger, even on the broader catchment area proposed by EMR, and some third parties raised concerns. The CMA, therefore, found that the Merger gives rise

to a realistic prospect of an SLC in the shredding of waste scrap metal in the Hitchin area.

10. With regard to the supply of ferrous processed scrap metal and non-ferrous processed scrap metal in the UK, the CMA found that the Parties' combined shares of supply were not of a level that raised concerns (respectively, 30-40% and 20-30%, with small increments of 0-5%). While few competitors are of the same scale as EMR, there are some competitors of a similar size to MWR, and there are also many smaller competitors in both these markets which provide some additional constraint on the Parties. The CMA therefore found that the Merger will not result in a realistic prospect of an SLC in the supply of either ferrous or non-ferrous processed scrap metal in the UK.
11. With regard to the frames of reference in which it had identified a realistic prospect of an SLC, the CMA concluded that entry or expansion would not be timely, likely and sufficient to mitigate the potential anticompetitive effects of the Merger.
12. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). EMR has until 31 January 2018 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 22(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

13. EMR is a wholly owned subsidiary of Ausurus Group Ltd. It operates metal recycling services across the UK, Europe and the USA and is active at all levels of the scrap metal supply chain. The turnover of EMR in 2016 was £[] worldwide, of which £[] was generated in the UK where it operates around 65 sites.
14. CuFe is the holding company of MWR. MWR is also active at all levels of the metal recycling supply chain in the UK, where it operates 9 active sites, including one shredding site in Hitchin. MWR has no activities outside the UK (other than via exports). Its turnover in the financial year ended 30 April 2017 was £[].

Transaction

15. The transaction completed on 25 August 2017, when EMR acquired the entire issued share capital of CuFe via a share purchase agreement.

Procedure

16. The CMA's mergers intelligence function identified this transaction as warranting an investigation.⁴
17. The Merger was considered at a Case Review Meeting.⁵

Jurisdiction

18. As a result of the Merger, the enterprises of EMR and MWR have ceased to be distinct.
19. The UK turnover of MWR exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
20. The Merger completed on 25 August 2017 and was first made public on 29 August 2017. The four-month deadline for a decision under section 24 of the Act is 15 February 2018, following extension under section 25(2) of the Act.
21. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
22. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 28 November 2017 and the statutory 40 working day deadline for a decision is therefore 25 January 2018.

Counterfactual

23. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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.⁶

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

⁵ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

⁶ [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).

24. EMR informed the CMA that it has entered into a binding contract to sell EMR's shredding site in [REDACTED] to [REDACTED] and submitted that the counterfactual in respect of shredding would therefore be the pre-Merger situation without the [REDACTED] site.
25. However, while EMR is intending to sell its shredding site in [REDACTED], it told the CMA that, absent the Merger, it would have sought a new site in [REDACTED] to replace this site. EMR was clear that, prior to the Merger, it was actively looking for a new site in [REDACTED] for this shredder. Furthermore, the sale of the [REDACTED] site is not expected to complete until [REDACTED] and there is no certainty as to the future use of the site.
26. For these reasons, the CMA believes that the intended sale of the [REDACTED] site does not affect the relevant counterfactual for the CMA's assessment of the effect of the Merger on the shredding of waste scrap metal in the Hitchin area. There are no other reasons to consider an alternative counterfactual.
27. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual for its assessment of the Merger.

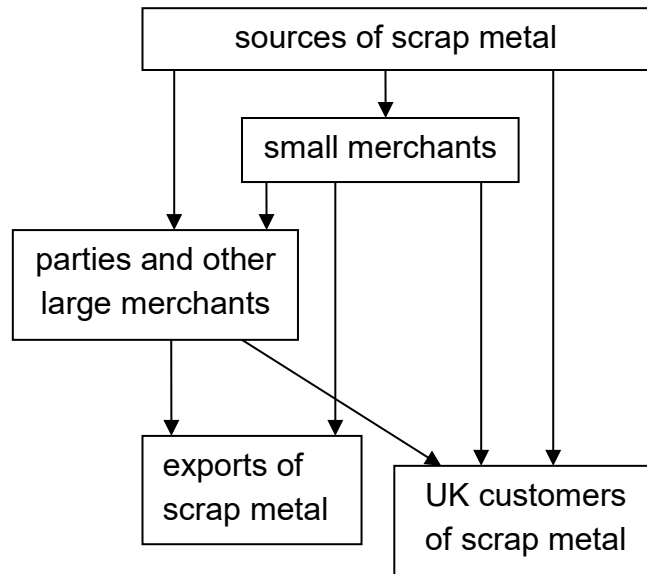
Background

28. The Parties overlap in the recycling of scrap metal in the UK at all levels of the supply chain, including collecting, processing and selling scrap metal.
29. In previous decisions,⁷ the Office of Fair Trading (**OFT**) found that the metals recycling industry consists of a chain of supply with a significant number of small- to medium-sized businesses as well as some large, nationally active businesses, including the parties. The smaller businesses often sell their scrap metal on to larger businesses, but some also sell directly to users of scrap metal, such as steel manufacturers. More than two thirds of the scrap metal collected in the UK is exported, mostly by the larger businesses but also by some smaller businesses. The main elements of the scrap metal supply chain are summarised in Figure 1.⁸

⁷ OFT decision of 7 March 2014 (ME/6240/13), [Completed acquisition by European Metal Recycling Limited of five sites and certain assets of SITA Metal Recycling Limited \(EMR/SITA\)](#) and OFT decision of 11 August 2011 (ME/5037/11) [Completed acquisition by Sims Group UK Limited of Dunn Brothers \(1995\) Limited \(Sims/Dunn Brothers\)](#).

⁸ There are some imports of ferrous and non-ferrous scrap metal from the Republic of Ireland and of non-ferrous scrap metal from other countries. The Parties told the CMA that they did not believe there to be any material imported quantities of processed scrap sold directly to UK customers.

Figure 1: Outline of scrap metal supply chain



Purchase of waste scrap metal

30. Waste scrap metal arises from a variety of sources, including end-of-life vehicles (**ELV**), household white goods, industrial sites and construction/demolition. Suppliers may drop off waste scrap metal at recyclers' yards ("drop-off" suppliers, who tend to include the general public, small business people and small collectors), or it may be collected ("collection suppliers", who are likely to be larger companies that regularly produce large amounts of waste requiring removal).

Processing of waste scrap metal and supply of processed scrap metal

31. The processing of scrap metal starts with sorting and weighing, followed typically by shearing and baling/compacting, which reduces the size of the scrap and makes it easier to handle and transport. Merchants of all sizes carry out these activities, after which the scrap is either sold directly to a customer (eg a steel manufacturer) or further processed. If further processing is required, small merchants will typically sell their semi-processed scrap to large merchants to carry this out. At the scrap metal processing sites owned by larger merchants, further processing involves the scrap metal being shredded into small lumps (which requires a large piece of equipment called a shredder), cleaned and separated. The processed scrap metal is then sold to UK customers and/or exported. The main UK end-customers are steel mills (which buy ferrous metal) and foundries (which buy both ferrous and non-ferrous metal).
32. Different scrap metal sites may be used for different purposes. For example, some sites process particular types of scrap (eg refrigerators, ELV and some

electronics, which require specialist treatment); others are “feeder sites” for larger yards (either within the same company or to other larger merchants); and others are export sites. For these reasons, it is common for scrap metal to be handled by more than one metal recycler. Scrap metal recyclers may therefore be each other’s competitors, suppliers and/or customers.

Frame of reference

33. 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 merging 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.⁹
34. The Parties overlap in the purchase of waste scrap metal, the shredding of waste scrap metal, and the supply of processed scrap metal.

Product scope

Purchase of waste scrap metal

35. In EMR/SITA the frame of reference adopted by the OFT was the purchase of waste scrap metal. The OFT did not distinguish between the purchase of ferrous and non-ferrous waste scrap metal, or between types of suppliers.
36. EMR submitted that this approach remained appropriate in the present case, although within this market EMR suggested a distinction between drop-off and collection suppliers. EMR stated that these groups of suppliers should be treated separately primarily because of their different sensitivity to distance (see paragraph 55). EMR also said that drop-off suppliers are indifferent to the size and scale of the scrap metal merchant which they use and thus have many more options than collection suppliers. EMR told us that collection suppliers are generally large and sophisticated and exercise a degree of buyer power.
37. The Parties’ competitors confirmed that they purchase waste scrap metal from sources that often combine ferrous and non-ferrous scrap and that they

⁹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

accept both kinds of scrap at almost all their yards. They also did not make any distinction between drop-off and collection suppliers.

38. On the basis of this evidence, the CMA has considered the purchase of both ferrous and non-ferrous waste scrap metal within the same frame of reference. The CMA has not identified separate frames of reference for drop-off and collection suppliers but has taken the differences between these two groups of suppliers into account where appropriate in its competition assessment.

Shredding of waste scrap metal

39. MWR operates only one shredder, at its Hitchin site, where it carries out all its shredding work. EMR operates nine shredders.
40. In EMR/SITA, while the OFT did not conclude on whether the shredding of waste scrap metal was a separate frame of reference, it considered that the evidence pointed towards this being the case. This was because around a third of ferrous waste scrap metal needed to be shredded, and there was no substitute to the shredding process for this material.
41. In the present case, EMR confirmed that a proportion of scrap metal needs to be processed by a shredder, including mixed waste (ie waste that has large amounts of non-metal combined with the metal, for example ELVs, old white goods and electronics). EMR explained that a shredder is designed to break these items down into fist-sized lumps so that they can be further separated.
42. Shredders can be used to shred both ferrous and non-ferrous scrap metal, and each of the Parties shredded both types of metal at their shredders in 2016/17. The CMA's investigation found that all except one of the Parties' competitors within the catchment area of MWR's shredder site also processed both types of scrap metal at their shredders.
43. On the basis of this evidence, the CMA has assessed the Merger in relation to the shredding of waste scrap metal. The CMA has not distinguished between the shredding of ferrous and the shredding of non-ferrous waste scrap metal.

Supply of processed scrap metal

44. In EMR/SITA, the OFT assessed the merger by reference to the supply of ferrous processed scrap metal and the supply of non-ferrous processed scrap metal.
45. In the present case, EMR submitted that the product scope adopted by the OFT in EMR/SITA and Sims/Dunn Brothers was appropriate.

46. The CMA's investigation found that, on the demand side, ferrous and non-ferrous scrap metal are not substitutable. On the supply side, certain competitors said that they have sales channels for all types of metal, but some said they focus more on ferrous or on non-ferrous processed scrap.
47. The CMA also considered whether further segmentation would be appropriate by type/grade of metal and/or by type of customer.
48. With regard to the type/grade of metal, EMR submitted that customers are generally able to switch between different grades within the same type of metal (although the type of metal itself would not be substitutable on the demand side, eg copper cannot be substituted for aluminium). The Parties said that customers frequently buy a blend of different grades in a single transaction to meet their overall needs. The CMA's investigation found that, for both ferrous and non-ferrous metal, many third parties require a specific type and grade of scrap, and that not every metal recycler is able to supply every type/grade of processed scrap in the required volumes. However, even though some customers may not be able to substitute between different grades, in view of the fact that the main suppliers all offer a broad range of grades, the CMA took the view that the distinction between grades does not materially affect the competitive assessment.
49. With regard to the type of customer, the CMA's investigation found that some customers require high volumes and may be more reliant on merchants with sufficient scale to reliably supply their needs. This means that, for some customers, the scale of a metal recycler and its processing facilities could affect the extent to which it provides a competitive constraint.
50. On the basis of this evidence, the CMA has assessed the Merger in relation to (i) the supply of ferrous processed scrap metal and (ii) the supply of non-ferrous processed scrap metal. However, it took the distinction by type of customer into account in its competition assessment.

Conclusion on product scope

51. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:
 - (a) the purchase of ferrous and non-ferrous scrap metal;
 - (b) the shredding of waste scrap metal;
 - (c) the supply of ferrous processed scrap metal; and
 - (d) the supply of non-ferrous processed scrap metal.

Geographic scope

52. EMR submitted that, as in EMR/SITA, the purchase of waste scrap metal, the shredding of waste scrap metal and the supply of processed scrap metal have different geographic scopes. This was confirmed by the CMA's investigation.

Purchase of waste scrap metal

53. In EMR/SITA, the OFT adopted a 50km geographic scope for the collection of scrap metal.
54. In the present case, the CMA reviewed the Parties' data on their average catchment areas (ie the distance within which 80% of waste scrap metal originates for each site, averaged across all their sites)¹⁰. Individual catchment areas differed between sites but, for both the Parties, the average catchment area without a shredder was around 40km, and with a shredder was around 70km. Data from third parties suggested that their catchment areas were similar.
55. EMR submitted that an 80% catchment area analysis was inappropriate in this case. EMR distinguished between drop-off suppliers and collection suppliers, suggesting that the former supply low volumes and can therefore be served from a wide variety of locations, while the latter are less sensitive to distance. EMR submitted that the relevant catchment area for collection suppliers was the 90-100% catchment area.
56. The CMA noted that, while a catchment area based on 80% of supplies would exclude more distant competitors in the purchase of waste scrap metal, this was consistent with its underlying purpose in defining a geographic frame of reference. This was because more distant purchasers were generally less likely to exercise a significant constraint on the Parties, and this would be reflected in the proportion of purchases achieved within different distances. Therefore, based on the evidence from the Parties and third parties, and consistent with the EMR/SITA decision, the CMA believes that a catchment area of around 50km is appropriate.
57. On the basis of a 50km catchment area, each of MWR's sites overlaps with at least one EMR site, and some (ie those in the London area and the West Midlands) are close to one another and overlap with the same EMR sites. The CMA has therefore aggregated the MWR catchment areas in the London area and the West Midlands.

¹⁰ [Retail Mergers Commentary](#), paragraph 2.18.

58. The CMA therefore focused on the following geographic areas in its analysis: the aggregated 50km catchment areas for the MWR sites within London (Edmonton, Neasden); the aggregated 50km catchment areas for the MWR sites within the West Midlands (Hockley, Sandwell, Telford); the 50km catchment area for the MWR site in the North East (Seaham) and the 50km catchment area for the MWR site in South Wales (Newport). We refer to these catchment areas as the London area, the West Midlands, the North East and South Wales.

Shredding of waste scrap metal

59. EMR submitted that, in line with the EMR/SITA decision, the catchment area for shredding should be 140km (which was the distance between the shredders of the parties in that case).
60. However, data provided by the Parties showed that the 80% catchment area of MWR's shredder in Hitchin is 115km. Within this catchment area there are two EMR shredder sites (East Tilbury¹¹ and Willesden).
61. EMR submitted that a wider area should be used as many of the suppliers located beyond 115km are collection suppliers, who are therefore unaffected by the distance to the shredder site. However, evidence from the Parties indicated that the majority of the scrap metal that travels to the MWR site in Hitchin for shredding comes from the area around Hitchin and the London area (particularly north London).¹²
62. For these reasons, the CMA assessed the effects of the Merger in shredding within 115km of MWR's Hitchin site. The 140km distance was not appropriate in this case given that it was specific to the locations of the shredders in EMR/SITA, but for completeness the CMA also considered the competitive constraints in this wider geographic area (see paragraph 127 below).
63. EMR submitted that the CMA's analysis should include seven additional shredders close to the edge of the 80% catchment area. Consistent with established practice, the CMA's analysis is not carried out through a mechanistic assessment of catchment areas, and the CMA has taken into account the constraint provided by these shredders located outside the 115km catchment area to the extent relevant (see paragraph 126).¹³

¹¹ MWR's shredder site in Hitchin is also within the catchment area of EMR's East Tilbury site, which has a catchment area of [REDACTED].

¹² MWR provided a map demonstrating the location, by volume, of its suppliers.

¹³ [Merger Assessment Guidelines](#), paragraph 5.2.2.

Supply of processed scrap metal

64. In EMR/SITA, the OFT looked at the trade in ferrous and non-ferrous processed scrap metal to end-users and found that there was evidence to support an international market. However, the OFT took a cautious approach and adopted a UK-wide geographic scope for its analysis.
65. In the present case, EMR submitted that the market for processed scrap metal is international. According to figures from the International Steel Statistics Bureau (**ISSB**) and EEF The Manufacturer's Organisation (**EEF**), around 70% of UK ferrous processed scrap is exported; and EMR used ISSB figures along with its own to estimate that [X] % of UK non-ferrous processed scrap is exported. EMR also submitted that the domestic price is set by export prices: eg if international rates rise, UK recyclers are less likely to sell to UK customers and/or will raise their prices to match the international rate. The volume of waste scrap metal arising within the UK is much greater than demand for processed scrap metal from UK end-customers.
66. The CMA's investigation found that competitors of a similar scale to the Parties also supply processed scrap metal both to customers all over the UK and for export, but some third parties told the CMA that many (mostly smaller) scrap metal recyclers do not have the facilities to export.
67. The CMA found that, as the UK has a surplus of most scrap metals, the level of imports is low,¹⁴ so the price of imports does not act as a binding constraint on UK prices for either ferrous or non-ferrous processed scrap.
68. The CMA also considered whether a narrower geographic scope than UK-wide, based on local markets or regions, could be appropriate. However, most competitors stated that they are able to supply customers all over the UK.
69. For these reasons, the CMA assessed the effects of the Merger in the supply of both ferrous and non-ferrous processed scrap metal in the UK.

Conclusion on geographic scope

70. For the reasons set out above, the CMA has considered the impact of the Merger in the following geographic frames of reference:

¹⁴ Exact figures on imports are difficult to calculate since there is no independent estimate on UK market sales. EMR provided estimates based on EMR's own data.

- (a) the purchase of ferrous and non-ferrous waste scrap metal in the catchment areas around the MWR sites in the London area, the West Midlands, the North East, and South Wales;
- (b) the shredding of waste scrap metal within the Hitchin area;
- (c) the supply of ferrous processed scrap metal in the UK; and
- (d) the supply of non-ferrous processed scrap metal in the UK.

Competitive assessment

Horizontal unilateral effects

71. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to deteriorate the terms of its offer on its own and without needing to coordinate with its rivals.¹⁵ Horizontal unilateral effects are more likely when the merging parties are close competitors.
72. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the frames of reference set out above.

Purchase of ferrous and non-ferrous waste scrap metal in (i) the London area; (ii) the West Midlands; (iii) the North East and (iv) South Wales

73. The Parties told the CMA that they primarily compete in the purchase of waste scrap metal. The CMA noted that the Parties, and their competitors, consistently refer to suppliers of scrap metal as their customers, over whom they compete on price and service.
74. In most cases, the CMA considers theories of harm involving potential merger effects such as higher prices and lower quality. However, in this case, the CMA considered a theory of harm involving lower prices or reduced service quality to suppliers of scrap metal. In effect, metal recyclers are offering a service to individuals, local authorities and companies who need to dispose of scrap metal. An absence of competition in this service would adversely affect the interests of consumers and taxpayers in a number of ways. For example, lower prices for scrap directly to consumers (eg for ELV) would affect consumers directly; lower prices for scrap from local authorities (eg for old white goods) could increase the cost to consumers of local authority services;

¹⁵ See [Merger Assessment Guidelines](#), from paragraph 5.4.1.

and lower prices for manufacturing or construction scrap could increase the net cost of production and result in higher prices for the output products.

75. In assessing this theory of harm, the CMA started by assessing evidence relevant to all geographic frames of reference. This included the appropriate methodology to estimate the Parties' shares of purchases, third party views, internal documents, and tender data. The CMA then examined evidence specific to each geographic frame of reference (ie the London area, the West Midlands, the North East and South Wales).

General evidence – Methodology for share of purchase estimates

EMR submission

76. EMR did not provide an estimate for the Parties' combined share of purchases.¹ It submitted that, as the scrap metal industry has a multi-tiered structure and it is not unusual for scrap metal to be handled by multiple scrap metal merchants, share estimates of purchases based on sales would not be accurate.
77. In the CMA's Issues Letter, the CMA estimated shares of purchases using Environment Agency (**EA**) data on the volume of purchases reported by each recycler. In response, EMR submitted that this data was unreliable¹⁶ and that volume shares for all recyclers provide an unrepresentative view of the market. In line with its distinction between drop-off and collection suppliers, EMR proposed that different measures should be used for each group:
- (a) EMR said that, as collection suppliers are mainly interested in whether a metal recycler will collect their volumes, and not in the recycler's location or capacity, the best proxy to assess the market position of the Parties would be the number of competing metal recyclers who are able to collect in each region.

¹⁶ EMR submitted that the EA data was unreliable because some sites had no data, some scrap merchants were miscategorised and therefore not included in the data, and some sites appeared to be underreporting. The CMA worked through these challenges with the EA. The EA reviewed its data and included a small amount of previously missing data where appropriate, noting that in some cases this data was included elsewhere in the dataset. The EA noted that scrap merchants not included in the dataset would usually sell to other scrap metal merchants, and their volumes would therefore be caught eventually in the dataset. The EA considered that underreporting on any significant scale seemed unlikely, particularly as there was no incentive for merchants not to report. EMR submitted that, allowing for double handling, the EA data implied an implausibly small total for total UK purchases compared to an alternative method (based on estimated UK consumption plus exports). EMR said that the CMA's shares of purchases had been calculated on a regional rather than a national basis, and that the national shares were lower (30-40%).

(b) EMR said that, for drop-off suppliers, the best proxy for the market position of the Parties would be the number of alternative metal recyclers from which suppliers could obtain a price quotation.

78. EMR also submitted that capacity is another important measure of market power that is not caught by volume shares. EMR submitted that the size of a site could be used to estimate its spare capacity.
79. With regard to drop-off suppliers, the CMA accepted that in all regions there were a large number of alternative metal recyclers who could buy a supplier's scrap, but noted that many of these recyclers were small merchants who often sold their material on to larger merchants.
80. With regard to capacity, the CMA did not see sufficient evidence to support a simple relationship between a site's size and its capacity.

CMA methodology to estimate shares of purchase

81. The CMA calculated shares of purchases on a conservative basis within a range of 50km around each MWR site, and aggregated this analysis in the defined regions. To calculate the market size the CMA used the Parties' submissions on their main competitors for each site (where data was available), which it supplemented with additional metal recyclers within the catchment area where these were named by third parties. The CMA used purchase volumes compiled by the EA for the calendar year 2016, and amended these where the Parties and some third parties provided their volumes.¹⁷ Table 1 presents the summary results.

Table 1 – Parties' shares of purchase by volume (2016/17)

Area	Combined share of purchases (volume)	Increment
The London area	60-70%	5-10%
West Midlands	40-50%	5-10%
North East	70-80%	5-10%
South Wales	20-30%	0-5%

Source: The CMA used purchase volume provided by (i) the Parties in Annex 6.8 (2016) and 6.9 (2016/2017) of RFI1, (ii) the Parties' competitors for their last financial year, and (iii) as reported by the Environment Agency for the calendar year 2016 where available (or 2015 if not available).

82. These shares of purchase are discussed below in relation to each region.

¹⁷ Where EA data for 2016 was not available the CMA used EA data for 2015 as a proxy for 2016 purchase volumes. If competitors submitted purchase volumes to the CMA, these volumes referred to the competitors' last financial year.

83. The CMA believes that the EA data, while imperfect, provides a sufficiently reliable measure of volume shares for the purposes of this analysis. The CMA believes that a firm with a high share of volumes may be expected to have market power, which in this case would imply that it could reduce prices to suppliers to below competitive levels. In contrast, a fascia count analysis – which just looks at the number of firms without any assessment of their size – would include competitors that do not have the scale or capacity to compete effectively with the Parties, at least for some suppliers. Moreover, to the extent that capacity is relevant (as submitted by the Parties), volume shares are a better proxy than fascia shares.
84. While total capacity shares, or spare capacity shares, would both be useful tools for understanding market power, the CMA found no robust source of data for such shares. Moreover, the CMA found no reliable evidence indicating overcapacity in the market on the scale suggested by the Parties. An estimate of spare capacity on the basis of the size of a site (as the Parties proposed) would disregard the importance of the facilities on that site (and, indeed, one third party submitted that MWR’s capital equipment doubles its yard space, suggesting that without information on the equipment of each site, estimates based on size could well be misleading).
85. In light of concerns about relying on the EA data (see paragraph 77), the CMA conducted a sensitivity analysis which deducted EMR’s intra-company sales from the dataset. However, the CMA only considered this as a sensitivity, rather than as its central estimate, because it would result in EMR being represented with no intra-company sales while the intra-company sales of at least some of its competitors would still be included (which would result in the Parties appearing to have a lower share of purchases).

General evidence – Closeness of competition and competitive constraints

Third party submissions

86. Some suppliers raised concerns about the Merger, suggesting that it would reduce their options for buying scrap to two recyclers (EMR and Sims). However, other suppliers were not concerned by the Merger, either noting the benefits of EMR’s services or saying that they did not consider MWR to be a competitor to EMR.
87. Almost all suppliers of waste scrap metal considered that the location of a metal recycler’s sites was important. Some suppliers of waste scrap metal with multiple sites indicated that metal recyclers with greater geographic reach (ie multiple sites) may be preferable. There was a general consensus that the Parties’ networks and wide geographic reach were an asset. Two suppliers

also stated that the Parties' ability to accept high volumes of scrap was an advantage (with MWR's lack of scale being made up for by its strategic locations – a point reinforced by MWR's internal documents (see paragraph 89)). However, most suppliers told the CMA that they either sold to multiple metal recyclers or had alternatives to which they could sell.

88. Several third parties (competitors and customers) told the CMA that both EMR and MWR are particularly strong in the purchase of waste scrap metal from industrial/factory suppliers. Third party evidence suggested that EMR and MWR are one another's closest competitor in this area. Third parties added that the purchase of waste from industrial suppliers can provide access to reliable volumes of specific types/grades of waste scrap metal. While the CMA's investigation found that some suppliers of these contracts did have alternative customers, in other areas the Parties' competitors may be limited in their ability to compete for these contracts due to their lack of scale and their limited relationships with these suppliers.

Internal documents

89. Statements in the Parties' internal documents indicated that the Parties were close competitors to one another. For example, a briefing on the potential Merger prepared by Livingstone Partners (the **Livingstone Partners' briefing document**) suggests that MWR's lack of scale in comparison with EMR is compensated for by its strength in purchasing scrap from source (ie from a supplier that has produced the waste scrap metal itself, rather than from another metal recycler), and consequent reliability: "[redacted]", and "[redacted]".¹⁸ The same document also describes MWR's strategic locations: "[redacted]".¹⁹
90. Another internal document, a briefing document prepared by Ausurus Group Limited for the purposes of seeking board approval for the Merger, suggests that MWR was a particularly close competitor to EMR for industrial contracts, stating that "[redacted]".²⁰
91. The Livingstone Partners' briefing document also suggests that industrial contracts are relevant in all four of its "regional areas", [redacted]:
- (a) [redacted];

¹⁸ Annex 18a to EMR's response of 29 September 2018 to the CMA's Enquiry Letter (**EMR's Response**), page 7.

¹⁹ Annex 18a to EMR's Response, page 7.

²⁰ Annex 21b to EMR's Response, page 3.

- (b) [REDACTED];
- (c) [REDACTED]; and
- (d) [REDACTED].²¹

92. This evidence is discussed below in relation to each region.²²

Tender data

- 93. While EMR submitted, and third parties confirmed, that longer term contracts are unusual in this market, the Parties and some third parties provided the CMA with tender data.
- 94. The tender data indicated that, for these contracts, there was limited switching between the Parties (particularly from EMR to MWR), but also showed that the Parties competed against each other regularly in the last three years. Overall, EMR bid for [REDACTED]% of the contracts that MWR bid for, and MWR bid for [REDACTED]% of the contracts that EMR bid for. [REDACTED] and [REDACTED] also bid regularly and there were several other infrequent bidders.
- 95. The CMA believes that this evidence suggests that the Parties are close competitors for tendered contracts, although the CMA did not put much weight on this evidence given the limitations of the data.

Specific evidence by region – Shares of purchases, closeness of competition and competitive constraints

The London area

96. Table 2 shows the number of sites and the volumes of waste scrap metal purchased by each metal recycler in the London area, as well as the shares of purchasing of the Parties and their competitors by volume in the last financial year/calendar year.

Table 2 – Shares of purchase in the London area (2016/17)

Company	No. sites	Volumes (t)	Share
EMR	11	[REDACTED]	60-70%
MWR	2	[REDACTED]	5-10%
Combined	13	[REDACTED]	60-70%
S. Norton & Co Ltd	1	[REDACTED]	10-20%

²¹ Annex 18a to EMR’s Response, page 16-19.
²² Hitchin is considered at paragraph 122 below.

ASM	2	[X]	0-5%
Remet	1	[X]	0-5%
BFA	1	[X]	0-5%
Benfleet	3	[X]	0-5%
Scrap Co	2	[X]	0-5%
VAN DALEN	1	[X]	0-5%
LKM SITTINGBOURNE	1	[X]	0-5%
Other ²³	11	[X]	0-5%
TOTAL	36	[X]	100%

Source: The CMA used purchase volume provided by (i) the Parties in Annex 6.8 (2016) and 6.9 (2016/2017) of RFI1, (ii) the Parties' competitors for their last financial year, and (iii) as reported by the Environment Agency for the calendar year 2016 where available (or 2015 if not available).

97. The CMA estimated that EMR and MWR have a combined share of purchases of 60-70% by volume, with an increment of 5-10%. These shares are strongly indicative of competition concerns. The Merger would combine the largest and third largest metal recyclers in the London area.
98. The CMA noted that these figures may understate MWR's share as they do not include purchases recorded at MWR's Hitchin site, which is within 50km of at least of one of EMR's sites in the London area. Moreover, MWR's Hitchin site purchases a significant proportion of its volume from the London area (see paragraph 126).
99. Even deducting EMR's intra-company sales²⁴ (as a sensitivity), and continuing to exclude Hitchin, the Parties' combined share of purchases remains substantial, accounting for more than half of scrap metal purchases within the London area.
100. Prior to the Merger, EMR operated 11 sites in the London area while MWR operated two. EMR is the largest purchaser in this region by volume, followed by S Norton and MWR and, while there are 20 competitors in this region with some comparable equipment (ie at least a shear), the combined share of purchases of the Parties is over four times greater than that of its largest competitor. Only one competitor has a share of above 10% in this region (Sims, the largest national competitor to EMR, has no presence in the London area).
101. Third parties and the Parties' internal documents²⁵ indicated that London is an important location for sourcing waste scrap metal, and that waste scrap metal

²³ Argall Metal Recycling, London City Metals, Capital Metals, Crow Metals, and Lowes Metals have shares of purchasing of [X]. No data was available for LKM Chatham, FJ Church, A1 Metal Recycling, Crew Hill Metals, Southwark Metals, Spartan Metals (M&A Metals Ltd).

²⁴ EMR intra-company sales tonnage represents movements between EMR sites.

²⁵ Annex 18a to EMR's Response, page 7 and Annex 21b to EMR's Response, page 3.

does not travel far out of the area. The Parties' data demonstrates that MWR's sites in the London area are among its busiest for purchasing.

102. Third parties also told the CMA that EMR and MWR were close competitors in the London area, and that the merged entity is the main route to market, since transport and congestion constraints limit the distances that scrap can travel from the London area. One customer told the CMA that using an alternative recycler would increase its haulage costs, as EMR and MWR's competitors do not have sites in such good locations. Customers said that EMR was already dominant in the London area prior to the Merger and that the acquisition of MWR would strengthen its position further.
103. Third parties also told the CMA that barriers to entry in London were particularly high given the difficulties of finding an available and appropriate site (see paragraphs 151-153).
104. EMR submitted that there were a sufficient number of competitors to constrain the combined entity post-Merger. However, the CMA noted the significant difference in scale between the Parties and their competitors in this area, and the views of third parties which confirmed that the merged entity would have market power.
105. The CMA also noted the Livingstone Partners' briefing document,²⁶ which recorded that major sources of scrap in the London area are demolition and industry, which are sectors often requiring recyclers to deal with a high volume of scrap, for which the Parties would be significantly better equipped than their competitors.

Conclusion on the London area

106. On the basis of this evidence, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the purchase of ferrous and non-ferrous waste scrap metal in the London area.

West Midlands

107. Table 3 shows the number of sites and the volumes of waste scrap metal purchased by each metal recycler in the West Midlands area, as well as the shares of purchasing of the Parties and their competitors by volume in the last financial year/calendar year.

²⁶ Annex 18a to EMR's Response, page 17.

Table 3 – Shares of purchase in West Midlands (2016/17)

Company	No. sites	Volumes (t)	Share
EMR	5	[REDACTED]	30-40%
MWR	3	[REDACTED]	5-10%
Combined	8	[REDACTED]	40-50%
Ward Recycling	1	[REDACTED]	20-30%
Sims Group UK	7	[REDACTED]	10-20%
Enablelink	1	[REDACTED]	10-20%
Hawkeswood	1	[REDACTED]	0-5%
Alutrade	1	[REDACTED]	0-5%
Other ²⁷	13	[REDACTED]	5-10%
TOTAL	32	[REDACTED]	100%

Source: The CMA used purchase volume provided by (i) the Parties in Annex 6.8 (2016) and 6.9 (2016/2017) of RF11, (ii) the Parties' competitors for their last financial year, and (iii) as reported by the Environment Agency for the calendar year 2016 where available (or 2015 if not available).

108. The CMA estimated that the Parties' combined share of purchases in the West Midlands was 40-50% by volume, with an increment of 5-10%.
109. The CMA identified 17 competitors to the Parties in this region operating comparable equipment. MWR is only the fifth largest competitor in this region (including EMR). There are three metal recyclers with operations on the same scale as, or significantly larger than, MWR (Ward Recycling, Sims and Enablelink), meaning that, post-Merger, there would be four recyclers of significant scale operating in the area.
110. Some suppliers raised concerns that there were few options as to where to sell their scrap in the West Midlands area, but others were not concerned. Most suppliers listed at least one alternative metal recycler that they could continue to use. Some competitors raised concerns, but their comments also indicated that EMR and MWR were not each other's closest competitor.²⁸
111. The Livingstone Partners' briefing document stated that MWR's main sources of scrap in the West Midlands are from the engineering and automotive sectors, suggesting that industrial contracts are important in this region, and some competitors raised concerns as to the effect of the Merger for these

²⁷ "Others" include B Shakespeare, Whites of Coventry Ltd, Beaver Metals (Flexdart Ltd), Taroni's of Birmingham Ltd, H L Thorne, GEO Johnson (Metals) Ltd, R Davies Metals, Autobits, Mormet Alloys who have volume shares of [REDACTED], and Onestop Recycling, Midland Industrial Metals, H W Taroni Metals Ltd, and Roba Metals for which volume data is not available.

²⁸ [REDACTED].

contracts. However, given that three competitors operated on a larger scale than MWR, the CMA found that alternative buyers of waste scrap metal will remain in this region after the Merger.

Conclusion on the West Midlands

112. On the basis of this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the purchase of ferrous and non-ferrous waste scrap metal in the West Midlands area.

North East

113. Table 4 shows the number of sites and the volumes of waste scrap metal purchased by each metal recycler in the North East, as well as the shares of purchasing of the Parties and their competitors by volume, in the last financial year/calendar year.

Table 4 – Shares of purchase in the North East (2016/17)

Company	No. sites	Volumes (t)	Share
EMR	8	[REDACTED]	60-70%
MWR	1	[REDACTED]	5-10%
Combined	9	[REDACTED]	70-80%
Ward Bros Steel Ltd	3	[REDACTED]	10-20%
Sims Group UK	1	[REDACTED]	5-10%
Jebb Metals	1	[REDACTED]	0-5%
Pout & Foster	1	[REDACTED]	0-5%
Other ²⁹	7	[REDACTED]	0-5%
TOTAL	22	[REDACTED]	100%

Source: The CMA used purchase volume provided by (i) the Parties in Annex 6.8 (2016) and 6.9 (2016/2017) of RFI1, (ii) the Parties' competitors for their last financial year, and (iii) as reported by the Environment Agency for the calendar year 2016 where available (or 2015 if not available).

114. EMR is by far the largest purchaser of waste scrap metal in the North East, followed by Ward Bros, Sims and MWR. EMR is the only large-scale purchaser in the region. The CMA estimated that the Parties' combined share of purchases in the North East was 70-80% by volume, with an increment of 5-10%.

²⁹ Other includes J Denham, John Kerr Metals, BA Commercials (NE Metals Ltd) who have volume shares of [REDACTED], and CL Prosser, JJ Stanley, Rooneys Metal Merchants for whom volume data is not available.

115. Although the Parties have a high combined share in this region, the CMA found that the Parties were not competing closely with each other. This is because MWR only operates one site in this area, in Seaham, and more than 80% of the waste scrap metal purchased by this site comes from a single industrial source, which has had an agreement with MWR for many years. EMR has [REDACTED]. Moreover, [REDACTED]. The small volumes purchased by MWR from other suppliers could be sold to alternative suppliers such as Ward Bros or Sims.
116. No third parties raised concerns specific to this area.

Conclusion on the North East

117. On the basis of this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the purchase of ferrous and non-ferrous waste scrap metal in the North East.

South Wales

118. Table 5 shows the number of sites and the volumes of waste scrap metal purchased by each metal recycler in South Wales, as well as the shares of purchasing of the Parties and their competitors by volume, in the last financial year/calendar year.

Table 5 – Shares of purchase in South Wales (2016/17)

Company	No. sites	Volumes (t)	Share
EMR	2	[REDACTED]	10-20%
MWR	1	[REDACTED]	0-5%
Combined	3	[REDACTED]	20-30%
Sims Group UK	5	[REDACTED]	60-70%
JC Thomas	1	[REDACTED]	0-5%
Bayliss Metals	3	[REDACTED]	0-5%
ELG HANIEL METALS	1	[REDACTED]	0-5%
Other ³⁰	13	[REDACTED]	0-5%
TOTAL	26	[REDACTED]	100%

³⁰ Other includes SL Recycling, Bendall Metals, Broughshire, Abbey Metal Recycling who all have volume shares of [REDACTED], and GD Environmental, GLJ Recycling, Bidwell Metals, Liberty Steel, EPS for whom volume data is not available.

Source: The CMA used purchase volume provided by (i) the Parties in Annex 6.8 (2016) and 6.9 (2016/2017) of RFI1, (ii) the Parties' competitors for their last financial year, and (iii) as reported by the Environment Agency for the calendar year 2016 where available (or 2015 if not available).

119. The Parties have a low combined share of purchases in South Wales at around 20-30% by volume, with a small increment of 0-5%. Sims is the largest metal recycler in this area, with JC Thomas and Bayliss Recovery operating at a comparable scale to MWR. MWR only operates a feeder site with no processing equipment in this area, whilst all of the Parties' large competitors operate a processing yard with at least a shear or baler.
120. No third parties raised concerns in this area.

Conclusion on South Wales

121. On the basis of this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the purchase of ferrous and non-ferrous waste scrap metal in South Wales.

Shredding of waste scrap metal in the Hitchin area

122. To assess the effects of the Merger in the shredding of waste scrap metal in the Hitchin area, the CMA considered the Parties' shares by volume, the closeness of competition between the Parties as indicated by third parties, and whether there were competitors active in this region that would act as a competitive constraint on the Parties post-Merger.

Shares of purchase

123. Two EMR shredders are within the Hitchin area at East Tilbury and Willesden.³¹
124. The Parties did not provide estimates of their shares of shredding. The CMA used data from the Parties and the EA to calculate shares of shredding by volume, and found the Parties' combined share to be around 50-60% by volume, with a 20-30% increment. These shares are indicative of competition concerns. Table 6 shows the volumes purchased by the Parties and their competitors in the Hitchin area, along with their shares of purchases and the number of sites operated by each company in the area.

Table 6 – Shares of purchase in the Hitchin area (2016/17)

³¹ As noted above, EMR is due to complete the sale of its site at [REDACTED] in [REDACTED]. However, given that absent the Merger EMR would have sought another site in the area, this does not affect the analysis.

Company	No. sites	Volumes (t)	Share
EMR	2	[X]	30-40%
MWR	1	[X]	20-30%
Combined	3	[X]	50-60%
Riddle	1	[X]	10-20%
Sackers Recycling	1	[X]	5-10%
Amphill Metal	1	[X]	5-10%
Total Waste	1	[X]	0-5%
LKM Sittingbourne	1	[X]	0-5%
Charles Muddle Ltd	1	[X]	0-5%
Van Dalen	1	[X]	0-5%
Spartan Metals	1	[X]	0-5%
TOTAL	11	[X]	100%

Source: The CMA used purchase volume provided by (i) the Parties in Annex 6.8 (2016) and 6.9 (2016/2017) of RFI1, (ii) the Parties' competitors for their last financial year, and (iii) as reported by the Environment Agency for the calendar year 2016 where available (or 2015 if not available).

125. As with the purchasing of waste scrap metal, it was not possible to estimate total capacity shares; however, the CMA noted that it would not expect shares by capacity to differ significantly given that both EMR and MWR operate some of the largest shredders in the UK and therefore have significant capacity between them.
126. EMR submitted that there were several sites on the edge of the catchment area that should be included in the CMA's analysis. Five of these sites were in the West Midlands and two were on the south coast of England. However, heat maps provided by the Parties showed that the great majority of MWR's business in Hitchin came from the London area, and in particular from the area north of London, a considerable distance from the West Midlands and inconveniently located for transport links to the south coast. The CMA also noted that the volumes processed by the shredders on the south coast were very small, such that including them in the share analysis would have little effect.
127. For the sake of completeness, the CMA also considered the competitor set on a wider catchment area of 140km around MWR's Hitchin site. However, this area then included an additional three EMR shredder sites, which meant that the Parties' combined share of shredding increased. While the analysis was limited by an incomplete dataset, the CMA found it to provide a sufficiently reliable picture to demonstrate that, even on this wider geographic scope, the

Parties still had a combined share of supply that was at least twice as large as their closest competitor.

Closeness of competition and competitive constraints

128. There are eight other metal recyclers who operate shredder sites in the catchment area around Hitchin. However, EMR and MWR are (respectively) the first and second largest operators by volume. The Parties' combined share of supply is over five times greater than the share of the next largest competitor.
129. The CMA's investigation found that the other shredders in the area were much smaller than the Parties' (by both capacity and horsepower) which could therefore limit their ability to compete. This was supported by data submitted by the Parties and by publicly available information. The Parties' internal documents stated that MWR's shredder is one of only five of its size in the UK.³²
130. Third parties also expressed concerns in relation to the shredding of waste scrap metal in the Hitchin area, indicating that there were limited alternatives to the Parties' shredders.
131. The CMA notes that, according to MWR's internal documents (see paragraph 91), Hitchin is an important site for industrial contracts, for which recyclers with smaller shredding capacity may be less able to compete.

Conclusion on shredding in the Hitchin area

132. On the basis of this evidence, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the shredding of waste scrap metal in the Hitchin area.

Supply of ferrous and non-ferrous processed scrap metal in the UK

133. The CMA found that its competitive assessment of the effects of the Merger in the supply of ferrous and non-ferrous processed scrap metal did not differ materially between these two frames of reference, and it therefore presents these assessments together.

³² Annex 18a to EMR's Response, page 7.

Shares of supply

134. The CMA found that [redacted]% of MWR’s ferrous processed scrap metal sales and [redacted]% of its non-ferrous processed scrap metal sales were sold to end-customers, with the rest being exported or sold to traders (who would typically go on to export the processed scrap). For EMR, around [redacted]% of each of its ferrous processed scrap metal sales and non-ferrous processed scrap metal sales were sold to end-customers, with the rest being exported.

Shares of supply: ferrous processed scrap metal

135. Table 7 shows the volumes of ferrous processed scrap metal supplied by each of the Parties and their competitors in the UK, and their corresponding shares of supply.

Table 7 – Shares of supply of ferrous processed scrap metal

Company	Volumes (MT)	Share
EMR	[redacted]	20-30%
MWR	[redacted]	0-5%
Combined	[redacted]	30-40%
Enablelink	[redacted]	5-10%
A Goodman	[redacted]	0-5%
Sims	[redacted]	0-5%
S. Norton	[redacted]	0-5%
Amphill	[redacted]	0-5%
Sackers	[redacted]	0-5%
Ward Recycling	[redacted]	0-5%
Other	[redacted]	50-60%
TOTAL	[redacted]	100%

Source: Parties’ and competitors’ submissions, Annexure 10.1(a) for total market size.

136. In respect of ferrous metal, EMR used data from the EEF and the ISSB to estimate the market size and its share of supply. The ISSB estimated that 8,128,000t of ferrous metals were exported from the UK in 2016, while the EEF estimated that 3,600,000t of ferrous metal was supplied domestically into UK steelworks.
137. The CMA used the same figures, supplemented by more precise data from the Parties’ main competitors, but excluded exports for the purposes of estimating UK shares of supply. The CMA also excluded self-supply (ie supply that is produced by customers themselves and re-used).

Shares of supply: non-ferrous processed scrap metal

138. Table 8 shows the volumes of non-ferrous processed scrap metal supplied by each of the Parties and their competitors in the UK, and their corresponding shares of supply.

Table 8 – Shares of supply of non-ferrous processed scrap metal

Company	Volumes (MT)	Share
EMR	[REDACTED]	20-30%
MWR	[REDACTED]	0-5%
Combined	[REDACTED]	20-30%
S Norton	[REDACTED]	0-5%
Sims	[REDACTED]	0-5%
Amphill	[REDACTED]	0-5%
Enablelink	[REDACTED]	0-5%
Other	[REDACTED]	60-70%
TOTAL	[REDACTED]	100%

Source: S109, Q10.1. Responses to competitor questionnaire.

139. In respect of non-ferrous metal, only estimates of total exports were available from the ISSB. No estimates of total domestic supply were available and therefore EMR extrapolated from its own proportion of exports ([REDACTED]%) to calculate an estimated total market size.
140. The CMA notes that EMR exports a much higher proportion of its processed metal than many other metal recyclers (including MWR), so this calculation would be expected to underestimate the total market size (and overstate EMR's share of supply).
141. For each of ferrous and non-ferrous processed scrap metal, the Parties have a moderate share of supply of, respectively, 30-40% and 20-30%, with small increments of 0-5%.
142. However, EMR submitted that volume shares are not a good proxy for market power in the supply of processed scrap metal as, in the event of a price rise, any supplier could shift current export volumes to supply UK demand. The CMA recognised this possibility but noted that, while some competitors could readily shift their export volumes to supply UK customers, other metal recyclers (such as [REDACTED]) operate a business model that is structured to focus on exports and their ability to restructure could be limited in the short-term.

Closeness of competition and competitive constraints

143. The CMA found that there were several suppliers of both ferrous and non-ferrous processed scrap metal competing on a similar scale as MWR. The CMA found no evidence indicating that the Parties were each other's closest competitor.
144. Some third parties raised concerns about the Merger, although an equal number did not. Some customers noted that EMR's network of sites and its sophisticated logistics allow it to access all waste scrap metal arising in the UK, which enables it to supply higher volumes of processed scrap metal to customers than any of its competitors. These customers told the CMA that the acquisition would consolidate EMR's market power downstream in the supply of processed scrap metal as much as upstream in the purchasing of waste scrap metal. Some customers said that only a limited number of competitors to EMR can provide the volumes required by certain customers, and that MWR was a valuable alternative for some customers as it was one of the few which could source significant volumes.
145. However, MWR's sales data shows that only a small proportion of its UK supply was sold to UK end-customers, with the majority sold to other metal recyclers and traders, typically for export. The CMA found that, throughout the UK, there are a large number of alternative metal recyclers supplying UK customers, many supplying volumes similar to MWR. The CMA also noted that the majority of customers use multiple metal recyclers to fulfil their requirements for processed scrap metal in order not to be dependent on a single large supplier.

Conclusion on supply of ferrous and non-ferrous processed scrap metal

146. On the basis of this evidence, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of either ferrous or non-ferrous processed scrap metal in the UK.

Conclusion on horizontal unilateral effects

147. As set out above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the purchasing of waste scrap metal in the London area, and the shredding of waste scrap metal in the Hitchin area. The CMA believes that the Merger does not give rise to a realistic prospect of an SLC in any other market.

Barriers to entry and expansion

148. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.³³
149. The CMA has not had to conclude on barriers to entry or expansion in respect of the purchase of waste scrap metal outside of the London area or in respect of the supply of either ferrous or non-ferrous processed scrap metal in the UK as the Merger does not give rise to competition concerns on any basis in these frames of reference.
150. The CMA considered barriers to entry or expansion in the frames of reference in which it found a realistic prospect of an SLC (see paragraph 147)

Purchase of waste scrap metal in the London area

151. EMR submitted that barriers to entry and expansion in the purchase of waste scrap metal in the London area are low. EMR said that there are no particular technical or regulatory barriers and the basic equipment is simple. EMR provided evidence of various recent expansions across the UK.
152. Third parties told the CMA that one of the biggest barriers to entry or expansion is finding a suitable location in an area of high waste scrap metal, since these tend to be built-up urban areas. Third parties said that this was a particular challenge in the London area, where there was limited availability of land, and finding a site which would satisfy the planning, regulatory and licensing requirements constituted an insurmountable barrier. The CMA noted that EMR's failure to date to find an alternative site for its [X] in [X] illustrated the difficulty its rivals could face in expanding into this area on a significant scale. Third parties cited several similar specific examples where they had faced difficulties finding a site in the London area. Although the Parties provided various examples of expansion in the London area these appeared mainly to be site upgrades.
153. For these reasons, the CMA believes that it cannot rely on entry or expansion in the London area being sufficiently timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

³³ See [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Shredding of waste scrap metal in the Hitchin area

154. EMR submitted that barriers to entry and expansion in the shredding of waste scrap metal in the Hitchin area are low, with mobile shredders available and leasing options open to metal recyclers without sufficient capital to invest. EMR also said that shredder sites are constrained by competitor sites without shredders.
155. The CMA's investigation did not support these suggestions, with third parties suggesting that both the size of the shredder and the size of the site are important aspects of a firm's competitive position. Third parties indicated that smaller mobile or leased shredders, and sites without shredders, would provide a limited constraint on the Parties' shredding of waste scrap metal in the Hitchin area. In addition, the CMA noted EMR's internal documents, which suggested that owning the largest possible shredder (as MWR does) would be a considerable advantage,³⁴ suggesting that smaller shredders would not provide an equivalent competitive constraint.
156. Third parties told the CMA that finding a suitable site for a large shredder, and the cost of a large shredder, would represent significant barriers to entering or expanding in the shredding of waste scrap metal.
157. For these reasons, the CMA believes that it cannot rely on entry or expansion in the Hitchin area being sufficiently timely or likely to prevent a realistic prospect of an SLC as a result of the Merger.

Third party views

158. The CMA contacted suppliers, competitors and customers of the Parties.
159. A small number of suppliers raised concerns regarding their options for selling their waste scrap metal post-Merger, though others were unconcerned.
160. A small number of competitors responded to the CMA but, of those who did respond, most raised concerns regarding the high combined shares of the Parties post-Merger.
161. Some customers also raised concerns, although several did not.
162. Third party comments have been taken into account where appropriate in the competitive assessment above.

³⁴ Annex 18a to EMR's Response, pages 7, 17, 29, 31 and 33.

Decision

163. Consequently, the CMA believes that it is or may be the case that (i) a relevant merger situation has been created; and (ii) the creation of that situation has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
164. The CMA therefore believes that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised³⁵ whilst the CMA is considering whether to accept undertakings³⁶ instead of making such a reference. EMR has until 31 January 2018³⁷ to offer an undertaking to the CMA.³⁸ The CMA will refer the Merger for a phase 2 investigation³⁹ if EMR does not offer an undertaking by this date; if EMR indicates before this date that it does not wish to offer an undertaking; or if the CMA decides⁴⁰ by 7 February 2018 that there are no reasonable grounds for believing that it might accept the undertaking offered by EMR, or a modified version of it.
165. The statutory four-month period mentioned in section 24 of the Act in which the CMA must reach a decision on reference in this case expires on 15 February 2018. For the avoidance of doubt, the CMA hereby gives EMR notice pursuant to section 25(4) of the Act that it is extending the four-month period mentioned in section 24 of the Act. This extension comes into force on the date of receipt of this notice by EMR and will end with the earliest of the following events: the giving of the undertakings concerned; the expiry of the period of 10 working days beginning with the first day after the receipt by the CMA of a notice from EMR stating that it does not intend to give the undertakings; or the cancellation by the CMA of the extension.

Adam Land
Senior Director, RBFA
Competition and Markets Authority
24 January 2018

ⁱ Paragraph 76: This sentence should read 'EMR did not initially provide an estimate for the Parties' combined share of purchases.'

³⁵ Section 22(3)(b) of the Act.

³⁶ Section 73 of the Act.

³⁷ Section 73A(1) of the Act.

³⁸ Section 73(2) of the Act.

³⁹ Sections 22(1) and 34ZA(2) of the Act.

⁴⁰ Section 73A(2) of the Act.