

Completed acquisition by Ausurus Group Limited through its subsidiary European Metal Recycling Limited of CuFe Investments Limited

Issues statement

8 March 2018

The reference

1. On 7 February 2018, the Competition and Markets Authority (**CMA**) began an in-depth investigation by a group of CMA panel members (the **inquiry group**) of the completed acquisition by Ausurus Group Limited (through its subsidiary European Metal Recycling Limited) (**EMR**) of CuFe Investments Limited (**CuFe**), holding company of Metal & Waste Recycling (**MWR**) (the **Merger**).¹ Throughout this document we refer to EMR (and its parent Ausurus) and MWR (and its holding company CuFe) collectively as the **Parties**.
2. Our in-depth phase 2 investigation follows a first phase (**phase 1**) investigation of the Merger.
3. The inquiry group must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
4. If a relevant merger situation has resulted, or may be expected to result, in an SLC, then the inquiry group must also decide:
 - (a) whether action should be taken by the CMA for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has resulted from, or may be expected to result from, the SLC;

¹ The CMA referred the Merger for a phase 2 investigation in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act).

- (b) whether to recommend the taking of action by others for such purposes; and
 - (c) in either case, what action should be taken and what is to be remedied, mitigated or prevented.
- 5. In deciding what actions should be taken, the inquiry group shall, in particular, have regard to the:
 - (a) need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it; and
 - (b) effect of any action on any relevant customer benefits (**RCBs**) in relation to the creation of the relevant merger situation concerned.
- 6. In this issues statement, we set out the main issues we are likely to consider in reaching our decision, having regard to the merging Parties' submissions and the evidence gathered to date including evidence set out in the CMA's decision to refer the Merger for further investigation.² This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
- 7. We are publishing this issues statement to help any interested parties submitting evidence to focus on the issues we expect will be relevant to our inquiry and to invite interested parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The transaction

- 8. On 25 August 2017, EMR acquired the entire issued share capital of CuFe, via a share purchase agreement.

The Parties

- 9. The Ausurus Group comprises the core EMR business, property businesses in the UK and the US and a technology business. As Ausurus is the holding entity for a number of group companies not active in the UK metal recycling sector, we will focus on EMR in our analysis.

² Phase 1 Decision

10. EMR is a wholly owned subsidiary of Ausurus Group Limited. 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 £2.2 billion worldwide, of which around £[~~2~~] billion was generated in the UK where it operates around 65 sites.
11. 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 12 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 £162 million.

The Parties' activities

12. The Parties overlap in the recycling of ferrous³ and non-ferrous⁴ 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), apply some processing to it and sell the processed scrap metal (processed scrap metal) to their customers. Some raw waste scrap metal needs to be shredded, and can therefore only be processed at sites with a shredder. Processed scrap metal can be supplied nationally or exported.
13. 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 (these include the general public, small businesses and small collectors), or have it collected by the recyclers (these suppliers are likely to be larger companies that regularly produce or themselves collect large amounts of waste requiring removal). Scrap metal is sorted and weighed, and then typically processed through 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 do this. 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

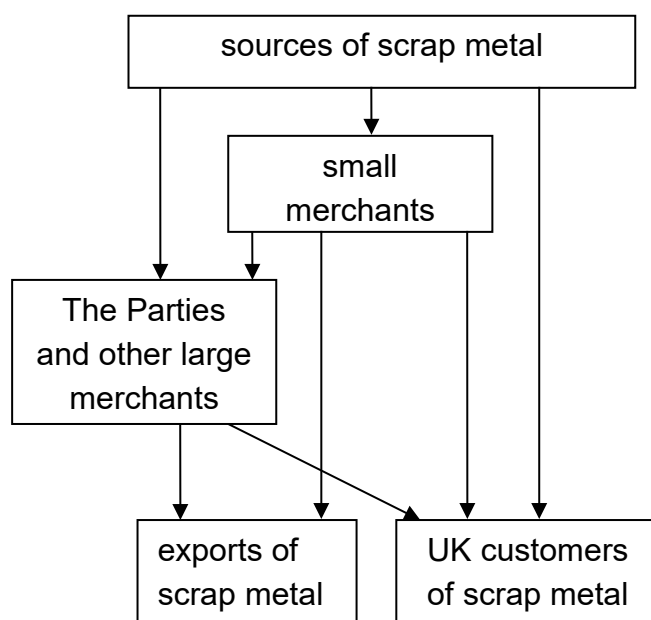
³ Iron based (including steel).

⁴ 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.

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).

14. 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
15. The main elements of the scrap metal supply chain are summarised in Figure 1.

Figure 1: Outline of scrap metal supply chain



Frame of Reference

16. We will define the relevant market, which contains the most significant alternatives available to the customers of the merger Parties that act as a competitive constraint on the Parties.⁵ How effective the alternatives for customers are will depend on what other products or services are available to customers and how far customers are willing to travel (or pay for the goods to

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.1.

travel) in order to access them. The purpose of market definition is to provide a framework for the analysis of the competitive effects of a merger. Market definition is a useful analytical tool to focus much of our analysis but it is important to note that it will not determine the outcome of our analysis of the competitive effects of the merger. Defining the market is likely to involve an element of judgement.⁶

17. In this case, the Parties' activities cover the recycling of scrap metal in the UK at all levels of the supply chain, including purchase, collection, processing and selling scrap metal. The Parties' upstream customers for the purpose of market definition are suppliers of scrap metal who need to dispose of scrap metal and receive a service from metal recyclers, while their downstream customers are those who purchase processed scrap metal.

The CMA's phase 1 approach

18. The CMA's phase 1 investigation in this case 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 115 km around MWR's shredding site in Hitchin;⁷
 - (c) the supply of ferrous processed scrap metal in the UK; and
 - (d) the supply of non-ferrous processed scrap metal in the UK.

Proposed approach to phase 2

19. We will review whether these definitions are appropriate.
20. In relation to the purchase of ferrous and non-ferrous scrap metal we will further investigate:
 - (a) The extent to which there may exist separate markets for the purchase of scrap metal from distinct types of suppliers or types or sources of metals – such as 'new production steel' from factories. This may be due to the volume or type of the scrap materials that the supplier generates or other

⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁷ The 80% catchment area of MWR's shredder in Hitchin.

supplier characteristics such as the number or dispersion of their sites or the frequency of their requirements.

(b) The geographic scope of the market for purchase, and whether this depends on whether suppliers drop off their own scrap metal or it is collected.

21. In relation to the purchasing of waste scrap metal that requires shredding, we intend to further investigate:

(a) The extent to which, for scrap metal that requires shredding, there may exist separate markets relating to distinct types of suppliers (as discussed in relation to purchase more generally above).

(b) The extent to which alternative processing methods are sufficiently strong constraints on the cost of shredding that they should be included in the same market. This may either be because the methods themselves are good alternatives or because suppliers can very easily shift production resources away from these methods into shredding.

(c) The geographic locations of the alternative competing shredders that could be used by suppliers of MWR's shredding site and of the EMR's nearby shredding site, and whether they exert a constraint such that they should be considered to fall into the same geographic market as the MWR and/or EMR site.

22. In relation to the supply of processed (ferrous and non-ferrous) scrap metal, we plan to consider:

(a) Whether it is appropriate to consider separate product or customer markets depending on the type, grade, and/or volume of either ferrous or non-ferrous processed scrap metal, or of other customer characteristics such as size, frequency of requirement, or location and dispersion of sites. Steel mills, for example, are unlikely to purchase non-ferrous processed scrap metal and some might only purchase a particular grade of ferrous processed scrap metal.

(b) Whether the markets for ferrous and non-ferrous processed scrap metal may be wider than the UK because of the constraint on UK prices from export prices.

Assessment of the competitive effects of the merger

Counterfactual

23. We will assess the potential effects of the Merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation that would be likely to prevail absent the Merger). In making our assessment, we will consider possible alternative scenarios of competitive conditions and decide upon the appropriate counterfactual based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.⁸
24. In the phase 1 decision, the CMA found that the pre-Merger situation was the appropriate counterfactual.⁹ We will re-examine whether this is the appropriate counterfactual.

Assessment of the impact of the merger on competition

Phase 1 approach

25. The phase 1 decision assessed the following ways in which the Merger might harm competition (**theories of harm**):
- (a) In relation to purchasing of scrap metal, a reduction in competition in recycling services which might lead to worsening prices and/or service quality to suppliers of scrap metal who need to dispose of scrap metal and receive a service from metal recyclers. Such a loss of competition between EMR and MWR might arise in the areas in which the Parties overlap, namely:
- (i) the London area;
 - (ii) the West Midlands;
 - (iii) the North East; and
 - (iv) South Wales.
- (b) A reduction in competition in the supply of shredding services in the area served by MWR's Hitchin site. This could lead to worsening prices and/or service quality to suppliers of scrap metal for which a shredder is needed

⁸ [Merger Assessment Guidelines](#), paragraph 4.3.2.

⁹ [Phase 1 Decision](#), paragraph 27

for processing or possible impacts on the related onward supply of such material.

(c) A reduction in competition in the supply of ferrous process scrap metal in the UK, leading to higher prices and/or reduced service quality.

(d) A reduction in competition in the supply of non-ferrous process scrap metal in the UK, leading to higher prices and/or reduced service quality.

26. At phase 1, the CMA 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, and in the shredding of waste scrap metal in the area served by MWR's Hitchin site. It did not find a realistic prospect of an SLC in relation to the other theories of harm, although the phase 1 decision notes that some concerns were received in relation to the supply of processed scrap metal.¹⁰

Proposed approach to phase 2

27. We are considering the ways in which an SLC may result from the Merger. Here we set out the issues that we are currently minded to investigate. However, we may revise these as our inquiry progresses. Identifying an issue to investigate in this issues statement does not preclude an SLC being found on another basis following further work by us, or the receipt of additional evidence.

28. Given the interlinkages between the purchase, processing, and supply of scrap metal, and bearing in mind the customer and supplier concerns received, we propose at this stage that the CMA's phase 2 investigation should not limit itself to those theories of harm in which the phase 1 decision found a realistic prospect of an SLC. The CMA will investigate whether the Merger gives rise to a realistic prospect of an SLC in the purchase or supply of scrap metal (including of material that require shredding).

29. In each of purchase and supply (including of material that requires shredding), we will investigate:

(a) The closeness of competition between the parties, and whether and how this varies across sub-segments of supplier, customer, or metal types. For purchasing and shredding we will also investigate how this varies by geography within the UK.

¹⁰ [Phase 1 Decision](#), paragraph 144

- (b) The identity and strength of competitors in each of these segments, including how this is affected by the number of sites a competitor has, the capacity and facilities of those sites, and the sub-segment of supplier, customer, or metal types, or geography under consideration.
 - (c) How prices are set, including the relationship between the price of scrap and processed scrap metal in the UK and international prices.
 - (d) How competition is affected by vertical inter-relationships between purchase, shredding and supply, as well as by sales between different metal recyclers.
30. We will carry out a survey of suppliers of scrap metal to the Parties' sites in London and West Midlands. This survey will provide some evidence to the aspects of our investigation summarised in sub-paragraphs 29(a) and 29(b) above.

Countervailing factors

31. Any analysis of a possible SLC involves considering the responses of others (eg rivals, potential rivals, suppliers and customers).¹¹ Such responses which could potentially mitigate a possible SLC might include entry or expansion of rivals, or the exercise of countervailing negotiating power by suppliers or customers.

Entry and expansion

32. We will consider whether entry or expansion by competitors could prevent any SLC that might otherwise arise. To do this, we may assess evidence relating to:
- (a) whether entry or expansion by rivals is likely to occur in a timely manner, which may include an assessment of the costs and time necessary to enter and/or expand;
 - (b) whether entry or expansion by rivals is likely, including any plans and the certainty of those plans; and
 - (c) whether entry or expansion is likely to be sufficient to prevent an SLC from arising.

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

Countervailing negotiating power

33. In some circumstances, suppliers and customers may be able to use their negotiating strength to limit the ability of the merged firms to worsen prices or service.¹² We will examine whether such power exists in the current case and whether it is sufficient to prevent an SLC from arising.

Efficiencies

34. We will examine any submissions made in relation to efficiencies arising from the Merger. In particular, we will examine whether any potential efficiencies are rivalry-enhancing and could be expected to offset any loss of competition.

Possible remedies and relevant customer benefits

35. Should we provisionally conclude that the Merger may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a remedies statement around the time of our provisional findings.
36. In any consideration of possible remedies, we will take into account whether any relevant customer benefits might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.

Evidence sources

37. Our evidence sources may include:
- (a) A survey of the Parties' suppliers;
 - (b) Views gathered from suppliers, competitors and customers of the Parties through requests for information and hearings;
 - (c) Data from a variety of sources on the number, location and characteristics of competitors and their sites, including the volume of scrap metals processed, and the capacity and equipment installed at each site;
 - (d) The Parties' transaction data, including information on the characteristics and segmentation of their suppliers and customers;

¹² [Merger Assessment Guidelines](#), paragraph 5.9.1.

- (e) Internal documents belonging to the Parties, and public documents relating to the industry;
- (f) Examples of entry and/or expansion in the relevant areas by either the Parties or their competitors; and
- (g) Other comment and evidence requested from the Parties.

Responses to the issues statement

38. Any party wishing to respond to this statement of issues should do so in writing, by no later than 27 March 2018. Please email Alison Trinkl at Alison.trinkl@cma.gsi.gov.uk or write to:

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