

**ME/6712/17**  
**COMPLETED ACQUISITION OF METAL & WASTE RECYCLING BY EUROPEAN METAL RECYCLING**  
**RESPONSE TO THE CMA'S PHASE 1 DECISION**

1. **Introduction**
- 1.1 EMR welcomes the opportunity to comment on the CMA's Phase 1 decision (the "**Decision**") and looks forward to engaging with the CMA Inquiry Group and support staff during the course of the Phase 2 investigation.
- 1.2 EMR was pleased that the CMA accepted the position of EMR in the Decision that the Merger does not give rise to a substantial lessening of competition (an "**SLC**") in: (i) the purchase of ferrous and non-ferrous waste scrap metal in the West Midlands; (ii) the purchase of ferrous and non-ferrous waste scrap metal in the North East; (iii) the purchase of ferrous and non-ferrous waste scrap metal in Wales and (iii) the supply of both processed ferrous scrap metal and non-ferrous scrap metal in the UK.
- 1.3 Naturally, however, EMR was disappointed by the Decision that the merger gives rise to a realistic prospect of an SLC:
  - 1.3.1 in the purchase of ferrous and non-ferrous waste scrap metal in the London area; and
  - 1.3.2 in the shredding of waste scrap metal in the Hitchin area.
- 1.4 EMR's position remains that the Merger will not result in a substantial lessening of competition (and nor is there a reasonable prospect of it doing so) on any possible frame of reference. EMR submits that the evidence presented to the CMA during its Phase 1 investigation clearly establishes that the metal recycling sector is highly competitive and is characterised by fierce competition between numerous effective participants who are able to serve the needs of the wide range of suppliers of waste scrap metal, as well as end customers who purchase scrap metal. Moreover, there is significant available capacity in the sector together with low barriers to entry and no material barriers to expansion.
- 1.5 This submission contains four sections, as follows:
  - Section Two: in order to assist the CMA Inquiry Group with its understanding of the Merger, the sector in which it takes place and its competitive effects, this section sets out an overview of the structure and operation of the metal recycling sector, including: the sources of waste scrap metal; the participants in the sector and the various stages of the value chain (the purchasing of waste scrap metal from suppliers, the processing of waste scrap metal (where applicable) and the supply of scrap metal to end users);
  - Section Three: contains a number of observations about available data that relates to the metal recycling sector;
  - Section Four: this contains a number of preliminary points about the frames of reference identified in the Decision; and
  - Section Five: this sets out EMR and MWR's (the "**Parties**") views and preliminary submissions on a number of aspects of the Decision. As noted below, the Parties are gathering further evidence and undertaking further analysis and therefore these preliminary points will be supplemented during the Phase 2 investigation.

**2. Overview of the metal recycling sector**

*Introduction – the value chain for scrap metal*

- 2.1 As the CMA is aware, the Parties are scrap metal merchants operating in the metal recycling sector.
- 2.2 The value chain in the metal recycling sector in essence consists of the following steps<sup>1</sup>:
- 2.2.1 the purchase of waste scrap metal: scrap metal merchants purchase waste scrap metal from suppliers. End users (metal manufacturers and industrial users) and traders may also purchase waste scrap metal directly from suppliers;
- 2.2.2 processing of waste scrap metal (where applicable): scrap metal merchants may, in some instances, undertake some processing of waste scrap metal; and
- 2.2.3 supply of scrap metal: scrap metal is used as an input in metal manufacturing. It is an internationally traded commodity sold to metal manufacturers and industrial companies. Scrap metal merchants sell scrap metal to these customers, or may sell scrap metal to traders who provide an alternative route to market.
- 2.3 In order to be able to sell scrap metal end users, scrap metal merchants must purchase waste scrap metal from suppliers. In this sense, scrap metal merchants are simply purchasing an input; this means that the price that scrap metal merchants pay for waste scrap metal must be competitive in order to access the input (waste scrap metal) that they require in order to be able to sell scrap metal to end customers.
- 2.4 The metal 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<sup>2</sup>.

*Sources of waste scrap metal*

- 2.5 Scrap metal is a waste product and arises from a variety of sources including end of life vehicles, household white goods, industrial manufacturing and construction / demolition<sup>3</sup>.

*Suppliers of waste scrap metal*

- 2.6 Suppliers of waste scrap metal are varied. Different types of supplier have different requirements and may provide slightly different qualities of scrap metal. For example, suppliers include:
- 2.6.1 individuals with scrap metal arising from clear-outs and renovation projects;
- 2.6.2 tradesmen, such as plumbers, who remove copper pipe when fitting new pipes;
- 2.6.3 industrial manufacturers who produce off-cuts of scrap metal in their manufacturing processes;
- 2.6.4 demolition contractors dismantling buildings and disposing of scrap metal from old buildings; and
- 2.6.5 smaller scrap metal merchants, who sell waste scrap metal to other merchants. This may include waste scrap metal that has already been processed, or clean,

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<sup>1</sup> Significant explanation on this has been provided to the CMA in Phase 1. The CMA is respectfully referred to the explanations provided in Mr Christopher Sheppard's presentation to the CMA on 9 October 2017, part 2 of the response to the s.109 Enquiry Letter dated 7 September, the response to RFI 1 (part 2) dated 10 October 2017 and the response to the CMA's Issues Paper dated 5 January 2018.

<sup>2</sup> This is recognised in paragraph 29 of the Decision.

<sup>3</sup> This is acknowledged in the Decision in paragraph 30.

small lumps of pure metal or long rods or bars of scrap metal which require minimal, if any, processing. In these circumstances, the scrap metal merchant who is purchasing waste scrap metal is simply buying an input to sell on to customers. This means that suppliers may also be each other's competitors.

- 2.7 Suppliers may sell a combination of ferrous or non-ferrous scrap metal or both. In some cases, scrap metal may be mixed with non-metal materials (e.g. in cars, white goods, old gym equipment and household goods etc.) meaning that processing is required before the scrap metal can be sold to an end user<sup>4</sup>.
- 2.8 Some suppliers may deliver waste scrap metal to a metal recycling site, whilst others require scrap metal to be collected<sup>5</sup>:
- 2.8.1 For suppliers who require their waste scrap metal to be collected due to larger volumes or a regular requirement for removal, the location of a metal recycler's site is unlikely to be important; all that the supplier requires is for the metal recycler to travel to the supplier's premises to collect the waste scrap metal. The price paid will also be important. Suppliers falling into this category generally include demolition contractors, industrial suppliers and waste management companies, all of whom will have a deep understanding of the sector and its pricing dynamics.
- 2.8.2 Smaller suppliers (e.g. plumbers, builders, electricians and the general public) tend to drop off waste scrap metal. For these suppliers, convenience price and service are more likely to be important, rather than the size of a site or indeed the equipment that is operated on site.
- 2.9 EMR's experience is that suppliers shop around before selling their waste scrap metal and some maintain long standing relationships with a number of scrap metal merchants in order to be able to do so. In many cases, suppliers will call multiple scrap metal merchants seeking "bids" for the purchase of waste scrap metal; some suppliers will also seek 'bids' by email. Suppliers will often regularly obtain price lists and will routinely play merchants off against others in order to obtain the best price; for example, [X]. The majority of purchases are therefore on a spot basis<sup>6</sup>, with the agreed price being the outcome of a negotiation.
- 2.10 A small number of larger suppliers (e.g. industrial factories or car manufacturers) with larger quantities of waste scrap metal may enter into longer term contracts with metal recyclers to collect and process their waste. These contracts typically run for 1-3 years and are usually tendered out under by suppliers' procurement functions under formal processes. Bidders may include large international (including non-UK) and national metal recyclers (e.g. Sims; S Norton; CF Booth; GES; Suez; TSR), as well as those with a regional or smaller local operations who may choose to subcontract to other local scrap merchants to achieve wider coverage, where this is required. Pricing is usually determined by reference to published market prices. These type of contracts are generally rare<sup>7</sup>.

*Purchase of waste scrap metal by scrap metal merchants*

- 2.11 The key constituent elements of a metal recycling site constitute a fenced, concreted site (typically c.3 acres) and some means of weighing waste scrap metal that is received (e.g. a weighbridge). Other equipment that may be on site (e.g. a baler or a shear) depends on the scrap metal merchant's offering.

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<sup>4</sup> Effectively, scrap metal merchants need to have relatively un-contaminated metal of a size which can be inserted into steel mills' or foundries' large furnaces. In some cases, this will necessitate physical processing of metal to reduce it in size, in others, it may not.

<sup>5</sup> This is acknowledged in paragraph 30 of the Decision.

<sup>6</sup> [X]% in the case of EMR and [X]% in the case of MWR.

<sup>7</sup> See paragraph 93 of the Decision.

- 2.12 Although the Decision is correct to state<sup>8</sup> that different scrap metal sites may be used for different purposes (i.e. that some scrapyards have an ability to process specialist waste such as electronics) these are rarely exclusive. In reality, only a small number of scrap metal merchants limit the types of metal which they receive; the vast majority of scrapyards accept a mixture of ferrous and non-ferrous metals of varying grades.
- 2.13 There are a very large number of scrap metal merchants who purchase waste scrap metal, including scrap metal merchants with a national presence, such as Sims and Norton; those with a regional presence, and those with smaller, more local operations.
- 2.14 Waste disposal and the disposal of scrap metal is regulated by statute and, for scrap metal merchants a licensing regime is in place administered by the Environment Agency in England (the "EA") and Natural Resources Wales ("NRW"). This regime permits thousands of scrapyard sites across the country. These sites fall into the following categories:
- 2.14.1 **T9 Exemption Sites**<sup>9</sup> – these sites are scrapyards which operate under an exemption from the requirement to be licensed. There are 6,000 sites in the UK falling into this category. Exemptions are automatically granted online following the provision of basic information and meeting relatively basic criteria. T9 Exemption Sites can store up to 1,000mT of scrap metal at any given time<sup>10</sup> and by moving stock quickly off site as it is received, have the ability to purchase and process significant volumes of waste scrap metal. T9 Exemption Sites are not necessarily smaller in size than EA licensed scrap metal sites (see below); in fact, T9 Exempted Sites can be larger.
- 2.14.2 **EA Licensed Scrap Metal Sites** – these are sites covering the full spectrum of scrap metal recycling including vehicle recycling. There are some administrative and practical requirements (aimed at environmental protection such as ensuring correct surface and drainage is in place) in order to be licensed by the EA but this removes the cap on volume of scrap metal to be held. These sites provide annual returns to the EA detailing scrap metal received into and sent out of the site.
- 2.14.3 **EA Licensed non-Scrap Metal Sites** – these are waste sites which are not principally scrapyards but which purchase and process scrap metal. These sites are required to provide annual returns to the EA on waste received into and sent out of the site.
- 2.15 From a supplier's perspective, whether a scrap metal merchant operates under an exemption or a licence is largely irrelevant; the primary concern of the supplier is the price it will be paid.
- 2.16 Location of a metal recycler's sites for those suppliers who require collection is not an important factor. The supplier simply needs the metal recycler to offer a collection service, either by having a collection capability themselves or by organising collection by a third party. For drop-off suppliers, convenience will be more important.
- 2.17 Similarly, the equipment that a metal recycler may have on site or indeed the scale of a site will be irrelevant to many suppliers as long as the metal recycler can accept the supply in question. It is not necessarily the case that larger sites will have more complex equipment and smaller sites will have little equipment. The great majority of suppliers simply require a scrap merchant to receive their scrap and pay them for it.

*Processing of waste scrap metal*

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<sup>8</sup> Paragraph 32.

<sup>9</sup> These sites are required to keep records of the scrap metal received at and taken away from the site but are not required to provide this to the EA unless requested to do so.

<sup>10</sup> They are also unable, automatically, to process end of life vehicles.

- 2.18 The Decision describes<sup>11</sup> processing as beginning with sorting and weighing of scrap metal. Whilst this is true, weighing and sorting does not in the Parties' view constitute 'true' processing of waste scrap metal – weighing and sorting simply enables a scrap metal merchant to identify what type of metal has been supplied and this in turn informs the price that is paid to the supplier. Some suppliers will pre-sort scrap metal, whilst in other cases, mixed loads may be provided.
- 2.19 From a supplier's perspective, once it has sold its waste scrap metal to a metal recycler, any further processing of the scrap metal that may be necessary is irrelevant. Further processing of scrap metal is, in essence, a matter for the scrap metal merchant and may comprise the following steps:
- 2.19.1 scrap metal is often baled or compacted for ease of transportation, but this is not strictly necessary. A significant proportion of scrap metal can be loaded into freight containers, trains or ships without baling or compacting to be sold directly to end users.
- 2.19.2 some scrap metal which is mixed with non-metal products or is particularly bulky may need processing to remove the non-metal elements and to reduce it into small lumps for onward sale. This is typically done by machines called shredders which 'shred' (principally ferrous) scrap metal such as end of life vehicles and white goods. Another option for cutting scrap metal into smaller lumps is to use a shear. Both machines feed large pieces of scrap metal in and produce smaller lumps of scrap metal. Shredders generally process mixed metal and non-metal scrap and shears tend to be used for cutting metal only scrap but there is a degree of overlap between them and they can be used in conjunction with each other.

*Inter-merchant trade*

- 2.20 As noted above, smaller scrap merchants often sell their scrap metal onto larger scrap metal businesses. Once waste scrap metal is received at a site, it can be moved in bulk at low cost enabling the selling scrap merchant to seek the best price for it from other merchants over large geographic areas.
- 2.21 In addition, selling scrap metal to traders (see below) or end users may also be a credible option in circumstances when a scrap metal merchant has a significantly large volume of already processed or 'clean' waste scrap metal to sell.

*Supply of scrap metal to customers*

- 2.22 Scrap metal can be used as an input in metal manufacturing. Scrap metal is therefore generally sold to, and used by, metal manufacturers (e.g. steel manufacturers and foundries) and industrial companies using metal in manufacturing processes. It can be melted in furnaces as a less expensive substitute for primary inputs (for example, iron ore) which has a cost of extraction from its source. Customers can and do substitute different grades of a particular metal in their manufacturing processes depending on the product mix required in a furnace.
- 2.23 Processed ferrous and non-ferrous scrap metal is an internationally traded commodity. Metal manufacturers and industrial companies purchase raw inputs for their manufacturing processes on the global commodities market where prices are heavily influenced by international commodities benchmarks and tracked by a number of widely available publications, such as Metal Bulletin. Similarly, these manufacturers sell their output (i.e. metal) on international commodities markets. The prices of metal are also based on international benchmarks which are widely publicised in industry publications.
- 2.24 The price at which scrap metal is sold to metal manufacturers and industrial companies for use in their manufacturing processes is, therefore, heavily influenced by the prices which

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<sup>11</sup> Paragraph 31.

these customers are willing to pay. These, in turn, are informed by widely publicised international benchmarks.

*Export of scrap metal*

- 2.25 A significant proportion of scrap metal arising in the UK is exported as the UK has significant overcapacity in the supply of scrap metal<sup>12</sup>. This means that scrap metal merchants will often look to export scrap metal to countries (such as Turkey) where demand is higher. Export sales are primarily concluded on a spot basis. The cost of transporting scrap metal globally is low (US\$15- 20 per mT) and scrap metal merchants export to customers abroad shipped in bulk or by using intermodal containers shipped by rail and sea.
- 2.26 There are c.20 scrap metal merchants (excluding EMR) that operate bulk export facilities using dock sites to export directly to end customers, including CL Prosser, GLJ Recycling, H. Ripley, Mettalis Nationwide Metal Recycling, Robert Gibbs, Sims, S Norton, Van Dalen and Ward Bros (Steel). In addition, many other merchants are able to load containers for sale to export markets.
- 2.27 Metal traders also provide a route to the export markets for all but the very smallest scrap metal merchants. Metal traders arrange the logistics of collection and supply to export customers, often taking the FX risk and paying scrap metal merchants instantly (whereas supplying export customers directly will often involve hedging and letters of credit).

*Domestic supply of scrap metal*

- 2.28 A number of steel mills and foundries exist in the UK which purchase scrap metal as an input. Foundries will purchase from any scrap metal merchant or supplier who is able to supply c.10 tonnes of ferrous scrap metal and steel mills will purchase directly from any scrap metal merchant or supplier which is able to supply c.200 tonnes of ferrous scrap metal<sup>13</sup>.
- 2.29 Domestic prices are closely aligned to export prices: prices charged to customers in the UK are equivalent to prices charged to overseas customers (less transport costs).
- 2.30 There are a number of advantages to supplying UK based customers. Haulage by road or rail is an option and the transaction is completed more quickly without FX risk and credit considerations. However, due to over-capacity in the UK and the size and sophistication of buyers of scrap metal, they exercise significant buyer power. This is all the more the case given that the prices that steel mills and foundries are ultimately able to charge their own customers are determined by benchmarks and international commodities markets (see above).
- 2.31 Some scrap metal merchants may therefore decide to sell scrap metal to other, larger, scrap metal merchants. The latter therefore provide a route to export markets and the domestic market alike without the cashflow and credit risk. Many smaller scrap metal merchants combine supply to larger scrap metal merchants and supply to end customers to balance risk and margin.

**3. Data available in the sector**

- 3.1 There are no available third party statistics regarding the purchase of waste scrap metal.
- 3.2 The EA's waste returns data in the Waste Data Interrogator contains data on volumes of waste scrap metal received at and taken away from licensed waste sites, including metal recycling sites. Whilst EMR understand the attractiveness of using government data in light of the lack of other third party statistics, it is important to note that this data has some

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<sup>12</sup> This is noted in the Decision in paragraph 29. EMR's estimates are that c.80% of scrap metal arisings in the UK are exported.

<sup>13</sup> Given the higher value of non-ferrous metals, foundries will typically purchase these in even lower quantities.

limitations which need to be taken into account and/or adjustments that need to be made when using it for the purposes of calculating shares of purchases. In particular:

- 3.2.1 Only scrap metal merchants operating a site under a licence are required to submit data and the Waste Data Interrogator does not include data for the large number of sites operating under a T9 exemption.
- 3.2.2 Scrap metal recorded as being received by a site has not necessarily been purchased from suppliers; it may have been moved from another licensed metal recycling site (e.g. a metal recycler may move waste scrap metal from a smaller, "feeder" site to a larger site, or from a site to an export or loading facility). This can therefore result in double counting. This double counting can occur both between sites operated by the same company ("intra-depot" movements) and between sites operated by different scrap metal merchants.
- 3.3 With respect to the supply of scrap metal, third party data is available from the International Steel Statistics Bureau and the EEF which may be used to estimate shares of supply<sup>14</sup>. As the scrap metal that is supplied to end users must ultimately reflect the waste scrap metal that is purchased from suppliers, and as a significant proportion of waste scrap metal is handled by more than one scrap metal merchant, such data may be used a proxy for the total volume of waste scrap metal that is available to scrap metal merchants.

#### 4. **Frames of reference**

##### *Purchase of waste scrap metal*

- 4.1 EMR agrees that the purchase of all waste scrap metal is the appropriate product frame of reference. In terms of supply-side substitutability, the vast majority of scrap metal merchants purchase both ferrous and non-ferrous scrap metal of varying grades. Even if this were not the case and a scrap metal merchant were to purchase only ferrous or non-ferrous waste scrap metal, there are no barriers that would prevent them from switching to purchasing ferrous or, as the case may be, non-ferrous waste scrap metal in the event of a significant and non-transitory increase in price of 5-10%. For example, a scrap metal merchant would use largely the same equipment on site (e.g. weighbridge) and would transact with suppliers in broadly the same way. Similarly, suppliers of waste scrap metal may supply a mixture of ferrous and non-ferrous scrap metal of varying grades to the same site.
- 4.2 However, the Decision is not correct to state that in *EMR / SITA*, the Office of Fair Trading ("**OFT**") made no distinction between types of supplier of scrap metal. In that case, the OFT identified a separate frame of reference for inter-merchant trade (i.e. the supply of waste scrap metal by scrap metal merchants to other scrap metal merchants)<sup>15</sup>. This is important for the following reasons:
  - 4.2.1 first, merchants who supply waste scrap metal to other (possibly larger) merchants are not only suppliers, but competitors. As noted below, this is a relevant factor that needs to be taken into account when evaluating submissions and representations made by suppliers about the competitive impact of the Merger;
  - 4.2.2 second, whilst inter-merchant trade may include scrap metal which requires further processing (such as shredding), it also includes a large proportion of scrap metal which has already been processed or does not require any (or minimal) processing prior to sale to customers. This means that end users in the domestic or export markets, as well as traders, are also competing with scrap merchants to purchase this type of waste scrap metal; and

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<sup>14</sup> See paragraphs 136 and 139 of the Decision.

<sup>15</sup> See paragraph 30 of the decision in that case.

- 4.2.3 third, scrap metal merchants are knowledgeable suppliers and, as noted above in paragraph 2.20, waste scrap metal can be moved in bulk at low cost over large geographical areas in order to obtain the best prices.
- 4.3 The Decision does not acknowledge these important distinctions.
- 4.4 In terms of 'true' suppliers (i.e. those suppliers who are in a purely vertical relationship with the Parties), EMR notes that the CMA did not consider there to be a separate frame of reference for those suppliers who drop off waste scrap metal and those who have it collected.
- 4.5 It is EMR's view that even if no separate frame of reference is identified for either inter-merchant trade or for collection and drop-off suppliers, a proper consideration of the different needs of these suppliers and the distances that merchants may travel to deliver or collect waste scrap metal is required. Whilst the CMA notes that it has considered these differences in its competition assessment<sup>16</sup>, EMR would respectfully suggest that significant consideration of these factors is not evident in the Decision. EMR anticipates providing further analysis in this regard.

*Shredding*

- 4.6 EMR agrees that shredding of scrap metal should be assessed under a separate frame of reference and that there is no need to distinguish between the shredding of ferrous and non-ferrous scrap metal given that shredders can shred both types of metal.
- 4.7 With respect to the relevant geographic frame of reference, EMR's experience is that there is significant over-capacity in the shredding market and scrap metal for shredding regularly travels significant distances, well in excess of the 115km catchment area for 80% of MWR Hitchin's supply; this is clearly evident in the EA returns made by a number of significant competitors with shredders including Sims, Hawkeswood, H Ripley, Briggs and Light Bros, some of which even show scrap metal being imported for shredding. Whilst EMR anticipates making further submissions in this regard, in short, using an 80% catchment area as a matter of economic practice is designed to filter outliers and anomalies in datasets. In a market where scrap metal merchants travel to collect from suppliers (rather than the other way around) distances travelled indicate a willingness and revealed preference to service suppliers at this distance. An 80% catchment area analysis therefore artificially limits the scope of the geographic frame of reference and the area over which competition takes place.

*Sale of scrap metal to end users*

- 4.8 EMR agrees that separate frames of reference for the supply of ferrous and non-ferrous scrap metal to end users is appropriate given that ferrous metals are not substitutable for non-ferrous metals in manufacturing processes.
- 4.9 As noted above, customers can and do substitute different grades of a particular metal in their manufacturing processes. This will differ from time to time for any given customer, depending on the properties of the end product, which in turn will inform the input (and mix) required. The CMA also concluded that the main suppliers of processed scrap metal all offer a broad range of grades<sup>17</sup>. For these reasons, EMR is of the view that it would not be appropriate to undertake further segmentation on the basis of type or grade of metal.
- 4.10 EMR notes that the CMA's investigation found that most competitors are able to supply processed scrap metal to customers all over the UK<sup>18</sup>. On this basis, the CMA concluded that the appropriate geographic scope of the frame of reference was the UK (having considered and discounted a narrower frame of reference). Whilst the CMA acknowledges that this is a cautious approach, this appears to be more conservative than the approach

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<sup>16</sup> Paragraph 38.

<sup>17</sup> Paragraph 48.

<sup>18</sup> Paragraphs 65-68 of the Decision.



taken by the OFT in *EMR / SITA* where the OFT recognised that assessing the sale of scrap metal to end users could take place in a market much wider than the UK<sup>19</sup>.

- 4.11 As described above, and for the reasons noted below, EMR considers that it operates in a global market for the sale of commoditised inputs to steel metal producers. For these reasons, EMR's position is that the market for the sale of processed scrap metal to end users is global and, at the very least, significantly wider than a UK market. Any analysis which does not take account of that wider competitive space is overly conservative.

## 5. **The Decision**

- 5.1 The Decision finds that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects with respect to:

5.1.1 the purchase of ferrous and non-ferrous waste scrap metal in the London area; and

5.1.2 the shredding of waste scrap metal in the Hitchin area.

- 5.2 The Parties respectfully submit, however, that the Phase 2 investigation will show that the merger will not result in an SLC in relation to either of these, or any other product or geographic frame of reference.

- 5.3 In particular, the Parties consider that:

5.3.1 the metal recycling sector is highly competitive and the Parties will continue to face strong constraints from a large number of effective competitors and potential competitors at all levels of the supply chain. Indeed with respect to the purchase of waste scrap metal, the Decision recognises that:

5.3.1.1 most suppliers told the CMA that they either sold to multiple metal recyclers or had alternatives to which they could sell (paragraph 87); and

5.3.1.2 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 (including small merchants who may sell material to larger merchants) (paragraph 79);

5.3.2 in relation to the purchase of ferrous and non-ferrous waste scrap metal in all areas, including the London area:

5.3.2.1 the number of effective competitors is higher than those identified in the Decision and these competitors will provide an effective competitive constraint post-Merger;

5.3.2.2 there are a number of competitors in each area with better capability in terms of equipment, fleet and number of sites than MWR;

5.3.2.3 the data set on which the CMA relies in the Decision to support its conclusions is inaccurate and unreliable. However, using the EA Waste Data Interrogator as a base and properly constructing a data set that takes account of the large number of effective competitors for all types of suppliers in all areas, as well as being adjusted to take account of movements of scrap metal between licensed metal recycling sites and omissions of which the Parties are aware, the shares of purchases of the Parties will be lower than the shares of purchases relied upon in the Decision;

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<sup>19</sup> See paragraph 45 of the decision in that case.

- 5.3.2.4 there is significant available capacity in all regions;
- 5.3.2.5 EMR is not a particularly close competitor of MWR with respect to industrial sources of waste scrap metal, who in any event tend to be large suppliers with buyer power;
- 5.3.2.6 there are low barriers to entry and no material barriers to expansion;
- 5.3.3 in relation to the shredding of waste scrap metal in the Hitchin area:
  - 5.3.3.1 the number of effective competitors is greater than those identified in the Decision, when taking into account that the geographic area over which competition takes place is wider than the 115km catchment area identified by the CMA;
  - 5.3.3.2 the shares of purchases of the Parties are lower than the shares of purchases relied upon in the Decision;
  - 5.3.3.3 shredder sites are, in addition, constrained to some extent by competitors that operate a shear, which can be used to cut both ferrous and non-ferrous materials;
  - 5.3.3.4 there is significant available capacity;
  - 5.3.3.5 suppliers of shredding material tend to be other scrap metal merchants, car breakers and sophisticated suppliers of scrap metal, who exercise countervailing power; and
  - 5.3.3.6 barriers to entry and expansion are not high.
- 5.4 To the extent that the CMA may wish to give further consideration during its Phase 2 investigation to the supply of processed ferrous and non-ferrous scrap metal, the Parties submit that, consistent with the CMA's conclusions at Phase 1, no competition concerns arise on any feasible frame of reference:
  - 5.4.1 EMR's view is that this is a global (and not a UK-wide) market. Processed ferrous and non-ferrous scrap metal is an internationally traded commodity and UK prices are constrained by export prices;
  - 5.4.2 there is significant spare capacity in UK sales volumes. Evidence presented to the CMA indicates that around 80% of processed ferrous and non-ferrous scrap metal is exported;
  - 5.4.3 export sales are predominantly concluded on a spot basis. This means that if, post-merger, the Parties were to attempt to raise prices or diminish service levels to customers, the c.80% of processed scrap metal which is estimated to be exported would be quickly diverted and sold profitably in the UK to UK affected customers;
  - 5.4.4 MWR sales to UK end customers are not high: these represent only [X]% of its sales of processed ferrous and non-ferrous scrap and a very small proportion of total sales of processed scrap metal in the UK<sup>20</sup>. Moreover, a comparison of the volumes of processed scrap metal supplied by MWR against competitors supplying at least the same volume within [X]<sup>21</sup> of each MWR site demonstrates that a significant proportion of volume of processed scrap metal is in the hands

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<sup>20</sup> The CMA is respectfully referred to the estimates provided in its response to Question 10.1 of the Enquiry Letter dated 7 September 2017, i.e. namely [0-5]% for ferrous and [0-5]% for non-ferrous.

<sup>21</sup> The Parties provided data in Annex 7.1 to the response to RFI 1 (part 2) in relation to the average catchment area of their sites in the UK, which indicated that they supply scrap metal in the UK with catchments of [X].

of competitors<sup>22</sup>. For these reasons, MWR cannot properly be characterised as a significant competitive force for UK end customers; and

5.4.5 UK end customers are sophisticated purchasers, who maintain relationships with multiple suppliers and who exercise buyer power.

5.5 The Parties are continuing to gather evidence and conduct further analysis of the competitive landscape in the waste scrap metal recycling sector. The remainder of this paper therefore sets out the Parties' response to the Decision and a number of preliminary submissions on the competitive impact of the merger, based on the information that is currently available. The Parties will update and supplement these submissions as the analysis progresses.

*Overly conservative approach to identifying effective competitors*

5.6 The Decision relies upon a very cautious and conservative approach to the identification of the effective competitor set. This has the effect of significantly overstating the competitive constraint imposed by MWR and significantly under-estimating the constraint posed by other competitors, including those located within and outside the relevant catchment areas.

5.7 The Decision indicates that the CMA has adopted an approach of identifying the effective competitor set on the basis of competitors having equipment which is comparable to MWR. For example, in relation to the purchase of ferrous and non-ferrous waste scrap metal in the London area, the CMA identified 20 competitors with comparable equipment to MWR (i.e. at least a shear). The CMA then considered the volumes of purchases made by each of the 20 competitors. However, the CMA in effect discounted the ability of those 20 competitors to constrain the Parties because the combined shares of purchases of the Parties were high and the competitors' individual volumes were not comparable to those of MWR.

5.8 However, identifying competitors on the basis of comparable equipment alone and then discounting the constraints exerted by those who do not have comparable scale (by volume) to MWR does not take account of the different needs of different types of suppliers of waste scrap metal. As a consequence, there are a large number of other effective competitors that should properly be considered when assessing the effective competitor set:

5.8.1 for example, for suppliers who drop off waste scrap metal, it is not appropriate to limit the effective competitive set to only those competitors with comparable equipment to MWR and there are in practice a much greater number of competitors for these suppliers. These include scrap metal merchants operating under a licence and utilising the same equipment as the Parties but who have not been included in the CMA's list, as well as scrap metal merchants with T9 exemption, of which in any region there are a very large number and who are particularly a constraint for drop off suppliers. The table below sets out the number of these competitor sites within 50km<sup>23</sup> of each MWR site:

MWR site	Licensed scrap metal and ELV recycling permits <sup>24</sup> within 50km	T9 metal recycling exemptions within 50km
Seaham	115	45

<sup>22</sup> The CMA is respectfully referred to the analysis provided in Annex 2 to the response to the Issues Paper.

<sup>23</sup> 50km is the geographic frame of reference identified by the CMA in the Decision. EMR does not necessarily accept that this is the most appropriate geographic frame of reference given that scrap metal merchants can and do travel much further distances in order to collect waste scrap metal from suppliers. Even if it were, such a static analysis fails to take account of the large number of competitors which travel and operate outside of the geographical area in which their site is based.

<sup>24</sup> Scrap metal sites must be specifically licensed to receive end of life vehicles. Some ELV sites are licensed as ELV only sites (although typically they will accept other scrap metal) whilst others combine general scrap metal and ELV. As previously described to the CMA, recycling ELV involves an initial de-pollution stage to remove fluids such as oil and

<b>MWR site</b>	<b>Licensed scrap metal and ELV recycling permits<sup>24</sup> within 50km</b>	<b>T9 metal recycling exemptions within 50km</b>
Telford	265	187
Walsall	275	226
Cradley Heath	267	218
Birmingham	273	228
Hitchin	121	113
Edmonton	205	227
Neasden	192	232

*Source: EMR*

- 5.8.2 indeed, paragraph 79 of the Decision indicates that the CMA accepted it is the case that in all regions there are a large number of alternative metal recyclers who could buy a supplier’s scrap where a supplier drops-off;
- 5.8.3 by contrast, for suppliers who require their waste scrap metal to be collected the location of a metal recycler’s site is unlikely to be important. In this respect, it is important to note that waste scrap metal can be moved in bulk at low cost and scrap metal merchants who are based in one region are willing to and do travel ‘out of region’ to buy waste scrap metal from suppliers in other regions<sup>25</sup>. For example, the Parties’ supplier level data shows that they are prepared to travel significantly further than 50km to collect waste scrap metal from suppliers (on occasion in excess of [§]km)<sup>26</sup>. The Parties respectfully submit, therefore, that it is necessary to take into account the constraints imposed by competitors out of region. This is particularly pertinent with respect to the London area; whilst the CMA states at paragraph 100 of the Decision that Sims has no presence in the London area (as identified by the CMA), the Parties note that Sims regularly buys scrap metal from the London area. It operates two depots on the edge of the London conurbation at Yatley and Aldershot in Hampshire, as well as a large new export site in Sheerness in Kent and a large processing and export site in Bristol;
- 5.8.4 as noted above, some suppliers to the Parties are scrap metal merchants. For some of these, the Parties simply provide a logistics-style service; that is, the Parties’ purchase waste scrap metal which requires minimal or no processing. For other suppliers (which may include scrap metal merchants or industrial customers), the Parties may simply transport waste scrap metal from the supplier’s premises directly to other third-party premises (so-called “truck trade”), again with no processing being required and the scrap metal not even being received on the Parties’ sites. For these, the availability of particular equipment or the volumes that a site can handle is not, therefore, a relevant consideration; and
- 5.8.5 as described above, scrap metal merchants who sell waste scrap metal to the Parties may also have the option of selling direct to end customers. EMR is aware of c.40 scrap metal merchants who are believed to supply end customers in the UK, including for example Benfleet Scrap Metal Company Ltd, London City

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fuel and to remove airbags before the vehicle is sent for further processing; it is this initial de-pollution stage for which a specific ELV licence is required.

<sup>25</sup> The Parties note that that the OFT accepted in EMR / SITA that scrap metal merchants are prepared to travel significant distances of 200 – 300 km (paras 35 and 36 of the OFT decision); further evidence in this regard was presented to the CMA in Phase 1 in Mr Christopher Sheppard’s presentation to the CMA on 9 October 2017.

<sup>26</sup> The Parties respectfully refer the CMA to paragraph 4.16 of its response to the Issues Paper.

Metals Ltd, B Shakespeare, Beaver Metals, R Davies Metals, One Stop Recycling, CF Booth Doncaster and Nationwide Metal Recycling Ltd.

- 5.9 Whilst the CMA states in the Decision (at paragraph 38) that it has taken into account where appropriate the differences between suppliers who drop off and suppliers who require collection in its competition assessment, the Parties respectfully submit that it is not clear from the Decision - in particular from the CMA's approach to share of purchases calculations - that these were fully explored or given due weight. Whilst this may be understandable in the context of a Phase 1 investigation, the Parties respectfully submit that the differences between different types of supplier and the full range of options available to each is a relevant factor that merits further examination over the course of a Phase 2 investigation.

*The CMA gives considerable weight to shares of purchases of waste scrap metal in order to draw conclusions about the effectiveness of constraints*

- 5.10 The CMA's Decision places considerable weight on shares of purchases to formulate its conclusions on the effectiveness of constraints imposed on the Parties.

- 5.11 The Parties wish to make the following preliminary submissions in this regard:

5.11.1 first, the share of purchase calculations undertaken by the CMA depended on the size of the effective competitor set. Not taking into account a large number of effective competitors means that the Parties' shares of purchases are significantly inflated and, conversely, means that the Decision underestimates the effectiveness of the constraints imposed on the Parties;

5.11.2 second, the data set constructed and used by the CMA in the Decision for calculating shares of purchase by volume is, in the Parties' view, inaccurate and unreliable for the reasons previously explained<sup>27</sup>. The Parties have not yet had an opportunity to undertake its own analysis of this data set and is therefore unable at this stage to make further detailed representations on the methodology described by the CMA in the Decision;

5.11.3 third, and acknowledging the absence of other third party industry data which may be suitable for calculating shares of purchases based on volume, when using the available EA Waste Data Interrogator as a basis and properly constructing a data set that:

5.11.3.1 takes into account the full range of competitors who have the capabilities to serve the needs of different suppliers of waste scrap metal;

5.11.3.2 makes adjustments for anomalies and omissions in the data of which the Parties are aware; and

5.11.3.3 removes movements of scrap metal between licensed metal recycling sites as these result in double counting,

the Parties consider that their combined share of purchases using the EA data would be significantly lower than that asserted by the CMA. Further detailed analysis is being undertaken in this regard, including in relation to the most appropriate metric for assessing the competitive impact of the merger. Nevertheless, the Parties wish to note that, simply using the EA Waste Data Interrogator data without any adjustments and including all EA licensed competitors (who will represent a credible alternative for all suppliers who drop off and for most suppliers who require collection), the Parties combined share of purchases would be significantly lower than the 60-70% asserted by the CMA in the London area and the 70-80% asserted by the CMA in the North East. Equally, the Parties' combined share of purchases would also be lower than the

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<sup>27</sup> The CMA is respectfully referred to paragraphs 4.2 – 4.8 of EMR's response to the Issues Paper.

40-50% share of purchases asserted by the CMA in the West Midlands. These alternative calculations are set out in the table below:

<b>Region</b>	<b>Competitor share</b>	<b>MWR share</b>	<b>EMR share</b>	<b>Parties' share</b>
London	[50 – 60]%	[5 – 10]%	[30 – 40]%	[40 – 50]%
North East	[30 – 40]%	[5 – 10]%	[50 – 60]%	[60 – 70]% <sup>28</sup>
West Midlands	[60 – 70]%	[10 – 20]%	[20 – 30]%	[30 – 40]%
South Wales	[80 – 90]%	[0 – 5]%	[10 – 20]%	[10 – 20]%

*Analysis prepared by Charles River Associates, using the EA Waste Data Interrogator for 2016, for all EA licensed competitors within 50km of a MWR site*

5.11.4 lastly, and importantly, the CMA’s analysis of shares of purchases is self-evidently inconsistent with the Parties’ combined share of sales of processed waste scrap metal. As the Parties are only able to sell scrap metal that they purchase from suppliers, and absent any very significant inventory changes in the overall UK supply chain, they are highly unlikely to have a combined share of supply of purchases which is so significantly different from the Parties’ combined share of supply of sales (estimated by the CMA to be 30-40% with respect to the supply of ferrous processed scrap metal in the UK and 20-30% with respect to the supply of non-ferrous processed scrap metal in the UK). The Parties respectfully submit that the Decision indicates that little consideration has been given to this important point during the Phase 1 process.

*The CMA’s Decision appears to give considerable weight on specific concerns relating to the purchase of waste scrap metal in the London area*

5.12 The Decision appears to place considerable weight on specific concerns relating to the purchasing of waste scrap metal from industrial sources in the London area<sup>29</sup>. In support of these concerns, the Decision refers to a Livingstone Partners briefing document, which states 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. The Decision then goes on to state that “the Parties would be significantly better equipped than their competitors” for dealing with these requirements. Whilst it is true that demolition and industry suppliers may produce larger volumes of waste scrap metal, the Decision does provide any evidence or further analysis in support of the statement that the Parties are better equipped to deal with waste scrap metal produced by these suppliers, relative to their competitors. Instead, the CMA appears to rely on high combined shares of purchases that it asserts for the Parties and a corresponding lack of competitive constraints exerted by other competitors. The Parties’ reservations about the appropriateness of this approach are set out above.

*The CMA’s Decision appears to give considerable weight to third party complaints*

5.13 The CMA’s Decision to refer the merger for a Phase 2 investigation appears to give considerable weight on complaints from suppliers of waste scrap metal. The detail of these complaints are largely unsubstantiated in the CMA’s Decision.

<sup>28</sup> The Parties respectfully submit that the relevant analysis for MWR’s Seaham site in the North East is different from other regions. This is because the Seaham site is predominantly a single contract site serving a single industrial source, [X]. This contract accounts for [X]% of MWR’s volumes. [X]. There is, therefore, no significant competition between the Parties, given that MWR is not a significant competitive force in the North East with respect to general purchases of scrap metal, whilst EMR is not a competitive constraint for the [X] contract. This is acknowledged in paragraph 115 of the Decision.

<sup>29</sup> Paragraphs 8 and 105 of the Decision.

5.14 The Parties have therefore been unable to verify at this stage the detail of the complaints on which the CMA relies to support its conclusions, whether such complaints are accurate or the weight given by the CMA to such submissions. This is particularly important with respect to submissions which have been made by other scrap metal merchants who are therefore the Parties' competitors. The Parties therefore wish to note this important point at this time and respectfully requests that the CMA gives this point due consideration as the Phase 2 investigation proceeds.

*The CMA's approach to assessing the competitive landscape for shredding in the Hitchin area is overly conservative*

5.15 The Parties consider that assessing the effects of the merger with respect to shredding in the Hitchin area is overly conservative. Specifically, the Parties submit that purchases of material for shredding take place over a large geographic area, which is greater than the cautious 115km approach used in the Decision. This is because, based on MWR's data, [X] volumes outside 115km are collection based, indicating that MWR is willing, by preference, to travel much further to purchase shredding material. The evidence demonstrates that this is also the case with respect to other competitors. EMR is regularly told by suppliers that EMR is in competition with scrap metal merchants whose shredders are located in other regions and EMR has presented evidence to the CMA of suppliers serviced by scrap metal merchants who are located in excess of 115 km<sup>30</sup>. Origin data which is provided by shredder sites to the EA also show that competitors collect waste scrap metal originating from a wide variety of locations<sup>31</sup>.

5.16 The consequence of adopting an overly cautious response is that the Decision does not take into account the strong competitive constraints exerted by shredders located outside of the 115km radius and this in turn overstates the extent of competition between MWR and EMR, and understates the competition from other operators.

5.17 In particular, the Parties disagree with the statement in paragraph 127 of the Decision that the Parties' combined share of shredding increases if considered on the basis of a competitor set on a wider catchment of 140km around MWR's Hitchin site. As noted above, we have not yet had an opportunity to analyse the data set used by the CMA in its Decision and we cannot therefore comment on the CMA's methodology. However, using the EA Waste Data Interrogator that is available to the Parties as well as the Parties' own data, CRA has calculated that on a 140km catchment basis, the Parties' combined share of volumes would be significantly lower than the shares of supply asserted by the CMA (50-60%):

	<b>Competitor share</b>	<b>MWR share</b>	<b>EMR share</b>	<b>Parties' share</b>
Hitchin	[60 – 70]%	[5-10]%	[20-30]%	[25 – 35]%

*Analysis prepared by Charles River Associates, using the Parties' own data and the EA Waste Data Interrogator for 2016 for all competitors operating a shredder within 140km of MWR Hitchin*

5.18 Moreover, the Parties consider that this calculation alone does not reflect the competitive constraints exerted by merchants who operate a shear. As explained earlier, as shears perform a function that is partially substitutable for the function performed by a shredder. it would be overly conservative to disregard the competitive pressures exerted by merchants with this equipment.

<sup>30</sup> The CMA is respectfully referred to Annex 6 and Annex 7 of EMR's response to the Issues Paper.

<sup>31</sup> For further detail, the Parties refer to paragraphs 4.61 – 4.63 of the response to the Issues Paper.