

Completed Acquisition by Ausurus Group Ltd of Metal & Waste Recycling

Summary of provisional findings

Notified: 1 June 2018

1. Pursuant to section 22 of the Enterprise Act 2002 (The Act), on 7 February 2018 the Competition and Markets Authority (CMA) referred for an in-depth phase 2 investigation the completed acquisition by Ausurus Group Ltd (through its subsidiary European Metal Recycling Limited (EMR)) of CuFe Investments Limited, including its wholly owned subsidiary Metal & Waste Recycling Limited (MWR) (the Transaction). We have provisionally found that the merger has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in a number of markets in the UK for goods or services, as explained below.
2. The merger Parties are metal recyclers. Metal recycling involves purchasing metals from suppliers that have waste scrap metal they wish to sell, in most cases processing it, and either selling the scrap metal on to other metal recyclers, exporting it, or selling it to UK customers. For suppliers of waste scrap metal the Parties provide a waste disposal and recycling service. For customers of scrap metal they provide input material into a manufacturing process, such as the production of steel.
3. EMR operates 65 metal recycling sites across the UK. MWR is active at 8 sites across London and the South East, Wales, the West Midlands and the North East.
4. EMR is the UK's largest metal recycler by some distance – it has twice as many sites as its nearest rival, and by volume its size difference is even larger. On its own, it has a large share in most of the markets we have examined. The Transaction brings EMR together with MWR, the third largest metal recycler in the UK by sites (fourth largest by volume). In most of the markets we have examined they have a high combined share. Beyond the top four metal recyclers, the other recyclers in the industry are much smaller than MWR, and very much smaller than EMR. Smaller recyclers frequently sell to larger firms, including EMR and MWR, in order for the scrap metal to reach

final customers in the UK and elsewhere. This means that a high proportion of scrap metal in the UK passes through the hands of a small number of recyclers.

5. We received a number of concerns from customers about EMR's existing size and power, and carefully examined whether, although it is smaller, the loss of the constraint from MWR would give rise to an SLC.
6. EMR completed the purchase of MWR on 25 August 2017. We provisionally consider that the appropriate counterfactual for the assessment of the effects of the merger is MWR's operations, and the market conditions, existing before the Transaction.
7. In this inquiry, we defined markets in relation to the upstream purchase of waste scrap metal by metal recyclers, and to the downstream sale of processed scrap metal to customers such as steel mills.
8. We have provisionally found, for purchasing, that geographic markets are regional – within an area of 115 km around shredder sites, and 50 km around other sites - and that there are separate markets for:
 - (a) Purchasing of shredder feed. We drew this distinction on the basis that the processing of shredder feed requires use of a shredder, which relatively few metal recyclers have, meaning that conditions of competition are substantially different in this segment.
 - (b) Purchasing of ferrous and non-ferrous metal from tendered contracts. We drew a distinction in this way between purchasing large volumes of waste scrap metal via competitive tender and purchasing other waste scrap metal on the basis of comment from suppliers, competitors, and final customers that the conditions of competition are substantially different in the tendered segment.
 - (c) Purchasing of ferrous metals and non-ferrous metals (other than shredder feed and materials from tendered contracts). We did not draw any further distinctions between metal types because we understand that almost all metal recyclers accept both ferrous and non-ferrous materials, and that the necessary processing equipment is relatively widespread across a high proportion of metal recyclers.
9. We have provisionally found, for sales to UK customers, that geographic markets are national across all product markets. We concluded that the market is not wider than national because of the high costs of importing material, but did take account of how exports create a link between UK and

international prices. In relation to specific product markets for sales to UK customers we provisionally found that there are separate markets for:

- (a) Sales of new production steel (NPS). This provisional conclusion is based on comments from competitors and customers of the Parties that the conditions of competition in sales of new production steel are substantially different from those in the sale of other ferrous or non-ferrous metals.
 - (b) Sales of other ferrous metals; and
 - (c) Sales of non-ferrous metals. We concluded that the market for non-ferrous metals is separate from that for ferrous metals because the two types of metal are not substitutable from the point of view of customers, have distinct processing needs, and there are also some specialist non-ferrous recyclers that aggregate volumes for sale to customers.
10. Our competitive assessment considers the effects of the merger in the following markets in which the Parties overlap:
- (a) Purchases of shredder feed in the South East (chapter 8);
 - (b) Purchases of ferrous and non-ferrous scrap metals in London (chapter 9);
 - (c) Purchases of ferrous and non-ferrous scrap metals from tendered contracts in the West Midlands, North East, and Wales (chapter 10);
 - (d) Sales of new production steel to UK customers (chapter 11); and
 - (e) Sales of other ferrous and non-ferrous scrap metals to UK customers (chapter 12).
11. Below we set out our provisional conclusions on whether the merger has resulted, or may be expected to result, in a substantial lessening of competition within these markets. Before that we set out some characteristics of the industry that have been pertinent to our analysis.

Background to our analysis

12. Waste scrap metal is a by-product of other activities. This means that the factories, demolition companies, car breakers, local authorities, tradespeople and households that sell their waste scrap to the Parties are not suppliers in the usual sense of an upstream firm producing an input. Instead, for suppliers, metal recyclers provide a service that allows them to dispose of waste materials.

13. Once purchased by a metal recycler, there are various routes that scrap metal can take to reach a final customer in the UK or abroad. There are important distinctions between four categories of scrap metal in relation to the route to a final customer. Broadly:
 - (a) Non-ferrous metals come from varied sources and often require little processing before being sold to UK customers (ie mills and metal foundries) or exported. When they are exported, this usually occurs using containers, often via traders.
 - (a) Shredder feed comes from varied sources but there are certain types of scrap which usually need to be shredded (for example cars and white goods), others that may need to be shredded depending on customer requirements, and further grades which are sometimes or often shredded but can be processed in other ways. For customers, the output of shredding is in most cases substitutable for other non-shredded grades, and is almost all exported, usually in bulk.
 - (b) New production steel comes from factories, requires limited processing other than, sometimes, baling, and is exported in containers or bulk, as well as being sold to UK customers.
 - (c) Other ferrous materials from varied sources can require shearing, and are mostly exported in bulk, as well as being sold to UK customers.
14. Metals can be exported in containers (primarily to Asia), through short-sea bulk to European customers, or deep-sea bulk to more distant customers, or can be sold to UK customers. Each of the export routes reaches different international markets and may have different prices at any given time, which may also differ from sales prices to UK customers. Individual metal recyclers may, depending on the extent of their export capabilities and ability and appetite for dealing with UK customers, sell directly to some or all of these four markets, or to other metal recyclers that do so.
15. It is not essential for each recycler to offer every stage in each route to market, because if metal recyclers find it more profitable (or feasible) they can sell to other recyclers rather than themselves doing certain types of processing, or making UK or export sales.
16. However, competitive purchase and sale prices (and service), for any given category of waste or processed scrap metal, depend on there being sufficient competition at each stage of the supply chain that applies to each metal type, and we provisionally found that firms that can provide multiple stages, or all the stages, involved in the supply chain have an advantage over rivals that can provide only one stage.

17. We have taken into account submissions from the Parties and third parties which are specific to each area and market in question. In the course of the inquiry we received evidence from 26 suppliers of waste scrap metal, 31 metal recyclers, and 46 customers of processed scrap metal. With a small number of third parties we conducted in-depth hearings. A summary of these hearings is available on the EMR/MWR case page on the CMA website. We note that some of these third parties may have more than one relationship with the Parties, as supplier, competitor, customer, and in some cases also rival bidders or potential bidders in the sales process in which EMR bought MWR. We received many different, and often conflicting, views and have interpreted third party comments in light of their varied relationships and resulting incentives.
18. We also conducted a survey of 800 mostly small suppliers in London, the South East and the West Midlands, of which 58 were also metal recyclers. At many of the Parties' sites the survey achieved only a very small sample size and as such has been interpreted with caution. At all sites, respondents were primarily very small, and we have used it to understand the concerns of that group, alongside the evidence from larger suppliers we contacted directly.
19. Where relevant, our assessment has been informed by data on the Parties' and competitors' purchase and sales volumes, and bidding activity. This data has been collated from a range of sources and as such is not comprehensive. Interpretation of shares data is complicated by the fact that many metal recyclers sell to and buy from one another, as well as from original suppliers and to final customers, meaning that two recyclers may handle similar volumes of metal while one simply passes it directly to another recycler and the other conducts a complete supply chain including processing and sale to a final customer.

Purchases of shredder feed in the South East

20. Our provisional conclusion on the purchase of shredder feed grades in the South East is that the Transaction has resulted, or may be expected to result, in an SLC. This is based on:
 - (d) The Parties' high combined shares of shredder feed purchases at shredder sites within 115km of their sites at Hitchin, Willesden or East Tilbury, of [60-70]%, and the very substantial increment provided by the acquisition of MWR ([20-30]%). The merger combines the two largest purchasers in the region;
 - (e) The weaker capability of other shredders in the catchment area. Whilst there are competing shredder sites and some have spare capacity, these

competitors operate much less powerful shredders than the Parties, which limits their capacity and the grades that they can process;

- (a) The distant location of some shredders in the catchment area, when assessed from the point of view of the suppliers most likely to currently choose between the Parties. While we considered competition from shredder sites across a wide geographic area, evidence on supplier locations and on transport costs indicated that those shredders located in the West Midlands and in Sussex were unlikely to impose a sufficient constraint to prevent an SLC for suppliers close to the Parties' shredder sites in north London, Essex and Hertfordshire. Such suppliers would have to travel well over 115km to reach these alternative shredders; and
- (b) High barriers to entry for shredder sites, in particular given the difficulty of finding a suitable site and securing planning permission in London and the South East, as well as the costs of such sites and the length of time required to commission them.

Purchases in the London region of ferrous and non-ferrous metals other than shredder feed

21. Our provisional conclusion on the purchase of ferrous and non-ferrous scrap metals (other than shredder feed) in the London region is that the Transaction has resulted, or may be expected to result, in an SLC. This is based on:
- (a) The Parties' high combined market shares ([40-50]%) and the material increment to this provided by the acquisition of MWR ([5-10]%) – the merger brings together the two largest purchasers in the region (with EMR by far the largest);
 - (f) Evidence that both Parties are important in providing an onward route to market for smaller recyclers who themselves lack necessary processing equipment or export capabilities – indicating both that the Parties are close competitors and that smaller recyclers are a weaker constraint;
 - (g) Weak constraints from other recyclers. Our detailed assessment of the other competitors in the region suggests they provide some constraint, but these competitors all purchase much lower volumes than the Parties, and many are distant from the areas where the Parties' catchments overlap or use EMR (and MWR) as an important route to market. The remaining competition therefore appears unlikely to be sufficient to constrain the Parties post-merger; and

- (h) High barriers to entry in London for a site or sites which would provide an equivalent constraint to the independent processing and exporting capabilities and capacity that would be lost by the acquisition of MWR's London sites and assets.

Purchases from tendered contracts

22. Our provisional conclusion on purchases from tendered contracts is that the Transaction has resulted, or may be expected to result, in an SLC in the West Midlands and in the North East, but not in Wales.
23. Comments from competitors and suppliers, and evidence on the existing contracts held by competitors, suggested that tendered contracts are the most difficult to compete for and only a limited set of metal recyclers are able to win these large contracts. NPS makes up a large proportion of the material from tendered contracts and half of all purchased NPS comes from this route.
24. We investigated whether the merger would enable the Parties to submit bids for the contracts at prices below the pre-merger levels and/or worsen the quality of service provided to suppliers that use large tendered contracts.
25. Nationally, we have found that the Parties account for over [60-70]% of NPS volumes purchased (with an increment of [10-20]%). Based on tenders we examined, in which the Parties participated, we found that they had a strong position in the tendered segment, with other competitors being, in general, far less successful. A summary of our analysis by region is below.

West Midlands

26. In the West Midlands, the Parties have been successful in winning tendered contracts, with most other competitors being far less successful.
27. Other constraints in the area appear to be weak, with rivals having bid very infrequently, with little success.
28. Five out of nine large suppliers we spoke to were concerned about the merger, and we have not been able to identify any countervailing measures, such as entry or expansion by rivals or buyer power by suppliers, which would prevent an SLC from arising. One third-party metal recycler told us that it was looking to enter the West Midlands and compete for tendered contracts, but it had not secured a site and therefore we cannot be sufficiently sure that it would enter and provide a sufficient constraint to prevent an SLC.

29. We therefore provisionally conclude that the Transaction has resulted, or may be expected to result, in an SLC in purchasing of scrap metal from tendered contracts in the West Midlands.

North East

30. In the North East, the Parties have been successful in competing for, and winning bids, with limited success for other bidders for these tendered contracts. Two large suppliers of NPS raised concerns about the merger.
31. There are other competitors active in the area, but each is weak, and we provisionally consider that they are not sufficient to prevent an SLC: a competitor that competes weakly from outside the area, others that bid infrequently or with little success, and only one supplier that appears to have some prospect for encouraging entry from outside the region.
32. We have not been able to identify any countervailing measures, such as entry or expansion by rivals or buyer power by suppliers, which would be sufficient to prevent an SLC from arising in the North East.
33. We provisionally conclude that the Transaction has resulted, or may be expected to result, in an SLC in purchasing of scrap metal from tendered contracts in the North East.

Wales

34. In Wales, there are no large contracts of the scale that we have seen in the other regions that we have examined. This indicates that a broader range of competitors are likely to compete for each contract than in other areas. In line with this, very little NPS is purchased by the Parties in the Wales region, and the merger also creates a very small increment in overall purchases in the area.
35. We did not receive any concerns about the merger from large suppliers in Wales, and the bidding data available to us is consistent with this lack of concern. Therefore, we provisionally consider that the Parties will continue to face sufficient competition for tendered contracts in Wales after the merger.
36. We provisionally conclude that the Transaction may not be expected to result in an SLC in the purchasing of scrap metal from tendered contracts in Wales.

Sales of new production steel to UK customers

37. Our provisional conclusion on sales of new production steel to UK customers is that the Transaction has resulted, or may be expected to result, in an SLC.
38. The Parties' estimated [50-60]% combined share of current sales of NPS to UK customers (with a [5-10]% increment) raises a strong reason for concern. This was reinforced by the concerns from several customers who argued that EMR has existing power in this market and that MWR is an important constraint.
39. Customers also told us that they value reliable supply of high volumes and pay higher prices per tonne to those recyclers that can provide this. MWR's position as the provider of the second-highest volumes of NPS to UK customers, in a market where very few recyclers sell similar quantities, makes it a close competitor to EMR.
40. We assessed the constraint provided by other recyclers, taking into account both volumes that they supply to UK customers, and the volumes they currently export or sell to other recyclers. However, we provisionally found that although the Parties face some constraint from Sims, GES Recycling, Ward Bros and Enablelink, including to an extent from volumes that these recyclers currently export, this is not likely to be sufficient to prevent an SLC given the Parties' high market share and existing evidence that high-volume recyclers get paid more.
41. We have also provisionally found that customers seeking to purchase directly from suppliers are unlikely to represent a competitive constraint sufficient to prevent an SLC.

Sales of other ferrous metals to UK customers

42. Our provisional conclusion on the sale of other ferrous metals to UK customers is that the Transaction is not likely to result in an SLC.
43. In ferrous metals other than NPS, the Parties have an estimated share of current sales to UK customers of around [20-30]%, but the increment provided by MWR is [0-5]%. Moreover:
 - (a) There are many UK recyclers that currently sell to UK customers;
 - (b) Customer concerns were few, with most telling us that they have multiple other recyclers from whom they can purchase non-NPS grades and that competition is stronger than in NPS; and

(c) Competition in sales is affected by recyclers' access to metals through competition for purchases, and competition for purchases in non-NPS ferrous materials takes place across the country. As well as London (where we have found an SLC in purchasing), it includes the West Midlands and North East where MWR's focus is on industrial NPS contracts (which relate primarily to NPS, meaning that there is little effect in relation to other metals), and several regions where the Parties do not overlap and there is no merger effect.

44. Assessing this evidence in the round, we found that an SLC is not likely to arise in the sale of ferrous metals (other than NPS) to UK customers.

Sales of non-ferrous metals to UK customers

45. Our provisional conclusion on the sale of non-ferrous metals to UK customers is that the Transaction is not likely to result in an SLC.

46. Although we received one complaint from a large customer specific to the supply of copper, other large customers of copper were not concerned. The Parties have a low overall share in the supply of non-ferrous metals, and customers and competitors listed multiple competitors, including for copper.

Provisional findings

47. We have provisionally concluded that the Transaction has resulted, or may be expected to result, in an SLC in the following markets, involving a large proportion of the MWR business:

- (a) Purchasing of shredder feed in the South East;
- (b) Purchasing of ferrous and non-ferrous scrap metals in the London region;
- (c) Purchasing of ferrous and non-ferrous scrap metals through tendered contracts in the West Midlands;
- (d) Purchasing of ferrous and non-ferrous scrap metals through tendered contracts in the North East; and
- (e) Sales of new production steel to UK customers.