

**COMPLETED ACQUISITION BY AUSURUS GROUP LTD THROUGH ITS SUBSIDIARY
EUROPEAN METAL RECYCLING LIMITED OF CUFÉ INVESTMENTS LIMITED**

ME/6712/17

**SUPPLEMENTARY SUBMISSION BY EMR RELATING TO THE NOTICE OF POSSIBLE
REMEDIES**

1. **Introduction**
- 1.1 This paper sets out EMR's further submissions on the Notice of Possible Remedies received on 1 June 2018 (the "**NPR**") in light of discussions that took place at the Response Hearing on 15 June 2018 (the "**Hearing**").
- 1.2 This paper supplements EMR's initial response to the NPR dated 13 June 2018 by providing further detail on potential remedies and how these may address the substantial lessening of competition ("**SLC**") provisionally identified with respect to:
 - 1.2.1 purchases of ferrous and non-ferrous waste scrap metal under tendered contracts in the West Midlands and North East and the sale of new production steel ("**NPS**") to UK customers; and
 - 1.2.2 the purchase of shredder feed in the South East.
- 1.3 This paper also addresses a number of questions that the CMA raised during the Hearing.
- 1.4 EMR is committed to engaging constructively with the CMA throughout the remedies process and this paper is intended to assist the CMA's understanding and assessment of various remedies options prior to issuing the Remedies Working Paper. As noted previously, EMR does not agree with the CMA's provisional findings that the merger can be expected to result in a SLC in a number of areas and these submissions are therefore without prejudice to the substantive submissions that EMR will be making in its response to Provisional Findings.

Behavioural remedy: purchases of ferrous and non-ferrous waste scrap metal under tendered contracts

Open access agreement
- 1.5 EMR proposes an open access arrangement whereby EMR would provide access to all necessary facilities at all MWR's sites in the West Midlands and the North East.
- 1.6 Access would be made available to:
 - 1.6.1 any competing metal recycler who requires access to facilities for the purpose of purchasing ferrous and non-ferrous waste scrap metal under tendered contracts; and
 - 1.6.2 any end customer (i.e. steel producers) who wishes to have access to MWR's facilities in order to purchase ferrous waste scrap metal at source.
- 1.7 The facilities that would be made available comprise MWR's transport fleet and an appropriate number of skips and bins¹. Whilst new production steel ("**NPS**") and non-ferrous waste scrap metal typically requires very little processing², any processing that is necessary (e.g. baling) would be undertaken by EMR on behalf of the third party.

¹ The actual number of skips and bins required may vary from contract to contract.

² Provisional Findings Report paragraphs 6.51, 6.54(g), 7.14(vii) & (ix), 7.19(a), 10.26 and 10.93.

1.8 Access to MWR's facilities as described above and the provision of services would be on arm's length terms under a service level agreement.

1.9 If required by the CMA, EMR would provide an undertaking not to bid for tendered contracts that are currently serviced by MWR when these come up for renewal.

Effectiveness

1.10 EMR submits that an access arrangement of this nature would constitute an effective remedy to the SLC that the CMA has provisionally identified.

1.11 With respect to the effect of the proposed remedy vis-à-vis metal recyclers:

1.11.1 by enabling any competing metal recycler to access MWR's sites and facilities in the West Midlands and the North East, this would address the CMA's concerns that a network of sites "in area"³ and infrastructure is required in order to compete to win tendered contracts;

1.11.2 access to MWR's sites and facilities, supported by EMR's efficient operations, would, in turn, 'level the playing field' and would enable a competing metal recycler to compete on the same basis as MWR;

1.11.3 an undertaking not to bid for certain tendered contracts (if required) would ensure that the volumes of ferrous and non-ferrous waste scrap metal previously handled by MWR would become available and contestable; and

1.11.4 the SLC provisionally identified by the CMA would be addressed at source. It would enhance the capabilities of competing metal recyclers, restore rivalry and enable competing metal recyclers to replace the constraints exerted by MWR.

1.12 With respect to the effect of the proposed remedy vis-à-vis end customers, this arrangement would provide end customers with access to infrastructure and sites (that most do not tend to have), thereby enhancing their capabilities and ability to bid "at source" for the purchase of waste scrap metal under tendered contracts. This would widen the pool of bidders, addressing the CMA's concerns that there is only a limited set of competitors who are able to service the needs of suppliers producing large volumes of ferrous and non-ferrous waste scrap metal. Enabling closed-loop arrangements would in turn increase rivalry and increase price competition, thereby addressing the theory of harm that the merger may be expected to result in lower prices for suppliers.

1.13 Moreover, as this remedy would enable UK customers to source NPS directly from source (thereby circumventing EMR/MWR altogether), it would also address the theory of harm identified with respect to the downstream market for the sale of NPS to UK customers, that is, EMR/MWR would pay lower prices to end users.

1.14 EMR notes that there was some discussion at the Hearing about behavioural remedies requiring the co-operation of counterparties. EMR has therefore considered whether third parties are likely to find the proposal commercially attractive. EMR acknowledges that some competing metal recyclers are unlikely to be interested in entering into an open access agreement with a competitor, although for others, the opportunity to access a network of sites and all necessary infrastructure without any accompanying investment risk may be an attractive proposition.

1.15 With respect to end customers, EMR's expectation is that an open access agreement is likely to be regarded as attractive and useful. The [redacted]⁴ discussed at the Hearing shows that there is current demand for an access arrangement of this nature; [redacted].

³ For example, the CMA notes in its Provisional Findings (paragraph 10.111) that it had found evidence that one third party was looking to enter into the West Midlands to compete for contracts but had not secured a site.

⁴ [redacted]. Supporting evidence will be provided in EMR's response to Provisional Findings.

Proportionality and practicability

- 1.16 EMR submits that the proposed remedy is proportionate and practicable in terms of implementation:
- 1.16.1 as discussed at the Hearing, only a relatively small proportion of the volumes handled by MWR’s sites in the West Midlands relate to tendered contracts – see Table 1 (below). EMR respectfully submits that divestment of MWR sites in the West Midlands would, therefore, overreach the SLC provisionally identified, whereas an access remedy would be capable of providing a comprehensive and effective solution to the issues provisionally identified in a proportionate manner; and
- 1.16.2 an access remedy would be practical to implement. EMR has previously provided logistics services to steel producers and such experience would be readily transferable to the implementation and operation of an open access arrangement. Moreover, this would be more speedy and less costly to implement than a divestment of all or some of the MWR business.

Table 1

Region	Yard	Type	Volume, MT	%
West Midlands	Cradley	Tendered contract	[X]	[X]
		Other purchases	[X]	[X]
	Hockley	Tendered contract	[X]	[X]
		Other purchases	[X]	[X]
	Telford	Tendered contract	[X]	[X]
		Other purchases	[X]	[X]

Source: CRA analysis of MWR transaction data

- 1.17 In addition, EMR would be committed to putting into place any appropriate monitoring mechanism that may be required.

2. Possible divestiture package(s)

Purchase of shredder feed in the South East

- 2.1 EMR has given further detailed consideration to the practicalities of implementing a behavioural remedy in this regard and has concluded that a tolling type arrangement could potentially present some practical challenges (e.g. sorting shredder feed from other ferrous and non-ferrous waste scrap metal that arrives on site).
- 2.2 EMR therefore accepts that divestiture would be the most effective and practicable means of addressing the SLC that the CMA has provisionally identified and respectfully submits that the divestiture of the MWR Hitchin site on a standalone basis. would be a comprehensive solution. The package would comprise the MWR site, shredder, all associated staff (technical and commercial) and assets that are necessary to conduct the shredding operation. In practical terms, divestiture would in principle be achieved by selling the site lease and associated assets, whilst employees would move across to the purchaser under a TUPE transfer.
- 2.3 With respect to the identification of potential purchasers of MWR Hitchin, EMR wishes to reiterate its comments at the Hearing that no particular commercial knowledge and experience is required over and above that which a metal recycler or a business active in

the waste recycling sector would ordinarily have⁵. This applies equally to potential purchasers who are located in the UK, as well as businesses overseas who operate in the metal or waste recycling sector and who therefore have industry knowledge⁶.

- 2.4 In addition, sales markets for shredded scrap metal are readily accessible and can be served directly from MWR Hitchin without the need for additional infrastructure. EMR's expectation is that other metal recyclers or operators in the waste recycling sector would be likely to have transport available to them, although EMR would include any transportation customarily used at the site, if required.

Purchases of other (non-shredder) ferrous and non-ferrous waste scrap metal in London

- 2.5 As discussed during the Hearing, EMR considers that divestment of the MWR Neasden site with assets / staff customarily associated with that site (either on a standalone basis or as a package with MWR Hitchin) would be sufficient to remedy the SLC that the CMA has provisionally found with respect to the purchase of ferrous and non-ferrous waste scrap metal in London.
- 2.6 MWR Neasden is a well located, large site in North London. MWR Neasden is of a similar acreage to ASM's Aylesbury site (around [X] acres) which operates as a processing yard with a [X] on site. Based on its volumes and ability to shear material, ASM has been identified by the CMA as a credible competitor by the CMA⁷. Whilst MWR Neasden is currently used as a feeder yard, there is ample space for a shear to be located on site therefore replicating the principal activity undertaken at MWR Edmonton. Alternatively, the site could continue to be used to feed processing sites outside of London, because waste scrap metal travels at low cost⁸.
- 2.7 If a trade buyer were to use MWR Neasden as a processing site, EMR's expectation is that it would be likely to have processing equipment at its disposal that could be deployed at MWR Neasden. That said, EMR proposes to include a shear equivalent to that currently operated at MWR Edmonton in the divestiture package⁹, along with the necessary commercial and operational staff, to the extent that these may be required by a potential purchaser.
- 2.8 In addition, as noted at the Hearing, [X].
- 2.9 Finally, EMR respectfully submits that a potential purchaser of the divestiture package described in paragraph 3.6 above would not need to be vertically integrated in order to replace the competitive constraint exerted by MWR in the London region. Whilst MWR has access to a short sea dock (Pinn's Wharf), it has used this on an infrequent basis (only [X] times in 2017¹⁰). However, without prejudice to this position, EMR would propose including the lease of Pinn's Wharf in the divestiture package, if this were to be required.

⁵ EMR anticipates potential purchasers who already operate in the metal or waste recycling sector would be likely to have commercial staff in place, although as noted above, all staff necessary for the conduct of the shredding operation at Hitchin would be included in the divestment package, if required.

⁶ For example, as the CMA is aware, the Dutch subsidiary of German metal recycler TSR Group recently acquired the Van Dalen business in Dagenham - EMR's Response to Q.22(c) and Q.25 of the CMA's S.109 Notice dated 7 March 2018 and EMR's Response to Q.6 of the CMA's S.109 Notice dated 19 April 2018. By way of further example, Sims Group UK Limited (which operates a number of shredder sites in the UK) is the UK subsidiary of a global metal recycler that is listed on the Australian Stock Exchange. The fact that overseas players in the metal or waste recycling sectors or waste have deep industry knowledge that would be transferable to the UK applies equally to the other areas of concern identified by the CMA and are not confined to the purchase of shredder material.

⁷ Provisional Findings Report, paragraph 9.54(a).

⁸ EMR has made numerous submissions on this point previously – see for example Annex 7 to the Response to the Annotated Issues Statement and paragraphs 4.2.3 and 5.8.3 of the Response to the Phase 1 Decision.

⁹ Most non-ferrous waste scrap metal requires little if any processing. EMR submits that it would not be necessary to include the cable granulator in any such package for the reasons stated at footnote 8 of EMR's response to the NPR.

¹⁰ Annex 002 to Phase 2 RFI9 (dated 25 April 2018).

Purchases under tendered contracts and sales of NPS to UK customers

- 2.10 As noted in EMR's response to the NPR, EMR's position is that any remedy which effectively addresses the SLC with respect to upstream tendered contracts would solve the SLC identified with respect to the downstream sale of NPS to UK customers:
- 2.10.1 NPS accounts for [X]% of volumes purchased by MWR under tendered contracts¹¹ and the CMA's primary concern in the downstream sales market is, essentially, one of volume share of sales.
- 2.10.2 As is shown in Table 2 below, the vast majority of MWR's sales of NPS to UK customers is made from its sites in the West Midlands and North East.

¹¹ Data is for 2017 and calculated across all MWR sites. Non-ferrous waste scrap metal accounts for only [X]% of volumes purchased by MWR under tendered contracts for 2017, across all MWR sites. As there is spare capacity in the metal recycling sector (acknowledged by the CMA) and non-ferrous waste scrap metal requires little specialist processing equipment, it would be disproportionate to require the divestment of sites in order to address this element of the SLC that the CMA has provisionally identified.

Table 2

MWR's NPS sales to UK customers by yard, 2017

Yard	Weight, MT	Value	Share in weight, %	Share in value, %	% of Parties' NPS sales to UK customers	% of total NPS sales to UK customers
Cradley	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Edmonton	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Hockley	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Newport	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Pinns Wharf ¹²	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Seaham	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Grand Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: Parties' submission to CMA (RF112 Q1c & RF17 Q2c)

Note: * Across all MWR yards.

2.11 If the CMA were to require a structural remedy, EMR submits (without prejudice to its representations about the suitability of a behavioural remedy), that the divestment of a package comprising:

- 2.11.1 relevant commercial and logistics staff (to the extent required by a potential purchaser);
- 2.11.2 supplier / customer contracts where formal contracts exist. As noted during the meeting, the vast majority of sales of NPS to UK customers are concluded on a spot basis ([REDACTED]% for EMR and [REDACTED]% for MWR¹³);
- 2.11.3 either a MWR or EMR site capable of servicing these contracts; and
- 2.11.4 any necessary assets, including transportation licenced to the site; additional equipment required to service suppliers (e.g. skips and bins); transportation and environmental licences attached to the site,

would constitute a comprehensive package that would effectively address the SLC identified in both the upstream and downstream markets in a proportionate manner.

3. Additional questions at the Hearing

3.1 With respect to specific areas discussed at the Hearing:

- 3.1.1 In terms of transport licensing, EMR anticipates that, should the outcome be that the MWR business is divested in separate packages, either a buyer would have its own operator's licence that it could use, or, if necessary, it could apply for a

¹² EMR notes that sales from Pinns Wharf were to a single customer ([REDACTED]) [REDACTED]. As an aside, EMR notes that this is evidence of out-of-region supply.

¹³ Paragraph 48 of the Response to the Annotated Issues Statement and paragraph 4.23.1 of the Response to the Issues Paper.

new licence. EMR's understanding is that interim licences are issued while applications are being processed which would mean that there would not be a disruption to the running of the acquired business;

- 3.1.2 the sale of NPS to UK customers does not necessitate specialist commercial skills or expertise, nor does it necessarily require separate commercial teams on the buying and sales side; and
 - 3.1.3 both the purchase of waste scrap metal and sales of NPS to UK customers would also require a transport logistics function. This essentially entails the scheduling and dispatch of loads and there are no specific differences between this function on the purchasing or sales side. Existing metal or waste recyclers (whether located in the UK or overseas) will be likely to already have their own transport logistics capability and may not require continuation of these services.
- 3.2 EMR anticipates that carving out the package described in paragraph 2.11 above would not present particular difficulties in terms of implementation. As the CMA will recall, at the Hearing, EMR discussed how to address the concern arising out of the inability to assign customer contracts which are held by MWR as, hypothetically, the other party to a factory contract could object to the contract being assigned to a buyer of MWR. EMR submits that this could be resolved by transferring out of MWR the parts of the business and assets which are to be retained by EMR (or sold to another buyer) and then selling the shares in MWR which will continue to hold its contracts, licences etc. Moreover, in terms of the time needed to prepare the carved out business and to put the arrangements in place, this would be no more costly than divestiture of sites.