

AUSURUS GROUP / METAL & WASTE RECYCLING (MWR) MERGER INQUIRY

RESPONSE TO REMEDIES NOTICE BY A MARKET PARTICIPANT

13 JUNE 2018

1. INTRODUCTION

1.1 [X]

1.2 [X] welcomes the CMA's recently published provisional findings in the Ausurus Group / Metal & Waste Recycling (MWR) merger inquiry and is grateful for the opportunity to comment on the Remedies Notice.

1.3 [X] has set out below its comments on the Remedies Notice.

2. SCOPE OF THE REMEDY PACKAGE

2.1 [X] agrees with the CMA that a behavioural remedy is very unlikely to be effective in addressing the SLCs identified by the CMA. The SLCs identified by the CMA are wide ranging and cover a number of different markets. It is unlikely to be possible to specify behavioural remedies that properly address each of the identified SLC's and are capable of being effectively implemented and monitored.

2.2 [X] also agrees with the CMA's provisional view that a divestiture package consisting of all of the MWR business would comprise an effective remedy package [X].¹

2.3 As regards the CMA's consultation on whether divestiture of some parts of the MWR business may also be an effective remedy², [X] does not consider that it is well placed to comment on whether the following proposed remedies might be effective:

(a) divestiture of MWR's Hitchin site with all associated plant and equipment, including the 6000hp shredder on that site (to address the SLC identified in relation to shredder feed in the South East);³

(b) divestiture of MWR's sites at Edmonton and Neasden along with all associated plant and equipment and the licence for Pinns Wharf (to address the SLC identified in relation to ferrous and non-ferrous metals in London).⁴

2.4 Given that [X] is not well placed to comment on the potential efficacy of the above two proposed remedies, it does not consider itself in a position to comment on the efficacy, as a whole, of the divestment package set out at paragraph 20 of the Remedies Notice.

2.5 However, [X] considers that, as regards the SLC identified by the CMA in relation to tendered contracts in the West Midlands and North East, and NPS sales⁵, the divestment package described by the CMA may be capable of being an effective remedy to address that SLC. Whether, in fact, this would be an effective remedy will depend critically on the following:

¹ Remedies Notice, paragraphs 19.

² Remedies Notice, paragraphs 20.

³ Remedies Notice, paragraph 20(a).

⁴ Remedies Notice, paragraph 20(b).

⁵ Remedies Notice, paragraph 20(c).

- (a) the scope and specification of the divestment package; and
- (b) the identity of the purchaser.

2.6 Each of these is addressed below.

Scope of remedy

2.7 It is vital that all elements necessary to operate MWR's NPS business are included in a single remedy package. In particular, this should include:

- (a) all MWR sites and assets in the West Midlands and the North East of England (including mothballed sites) used for both servicing tendered contracts and selling NPS (whether domestically or abroad). This should include all assets for collecting, processing and selling NPS scrap including mobile equipment (e.g. skips), transport infrastructure (e.g. trucks and articulated vehicles) and processing equipment (e.g. shredders, shears and balers). As explained in more detail below, it is important that these assets are maintained and sold in a good condition;
- (b) know-how and staff necessary to run the business. In particular, given that a track record of capability is required to be an effective bidder for tendered contracts, key staff should include those who:
 - (i) are known to the large tenderers;
 - (ii) have experience in preparing, pricing, and submitting tender bids;
 - (iii) have knowledge and/or relationships with other (smaller) scrap merchants from which MWR acquires scrap metal;
 - (iv) have experience in selling NPS scrap. This would include [X] MWR's Purchasing Director;
 - (v) are responsible for the operation and management of the assets including yard managers and those that supervise yard managers.
- (c) the transfer of contracts to purchase NPS;
- (d) the transfer of all third party contracts necessary to service tendered contracts;
- (e) all back office staff required to operate the MWR NPS business as an independent entity (e.g. finance, operations, IT, and HR staff). [X] understands that many staff responsible for the NPS business are based at MWR's Cradley Heath site (Powke Lane, Cradley Heath, West Midlands, B64 5PT). This site should therefore be included in the NPS divestiture package; and
- (f) access to MWR's port facilities to enable the purchaser to export scrap metal

2.8 At present, [X] does not have a sufficient understanding of how the MWR sites and assets in the West Midlands and the North East of England used in respect of MWR's NPS are managed and operated to be able to determine whether those sites and assets would be capable of being operated viably independently of either

- (a) the businesses and assets proposed by the CMA to be divested to address the SLC identified in relation to;
 - (i) shredder feed in the South East; and/or
 - (ii) ferrous and non-ferrous metals in London; or

(b) the entirety of MWR's business.

2.9 Whether those sites and assets would be capable of being operated independently will depend critically on the degree to which they currently operate as discrete business units or, alternatively, are directly reliant on management, services and infrastructure that are common to the MWR business as a whole. The less those sites and assets are managed as discrete businesses, the more problematic it will be to specify the divestment package in a way that the divested business can continue to impose a competitive constraint in the market.

Identity of Purchaser

2.10 [X] agrees with the CMA that the identity of any potential purchaser will be critical in determining whether the divestment of the MWR business as a whole or the alternative package of divestments on which the CMA is consulting, will be an effective remedy to the SLCs identified by the CMA.

2.11 [X] agrees that the criteria identified by the CMA in paragraph 24 of the Remedies Notice are the key consideration in determining the suitability of any potential purchaser.

2.12 As regards the identity of potential purchasers, this may depend on whether the CMA ultimately decides it is necessary to divest the entire MWR business or, alternatively, certain of the businesses and assets of MWR. In this context, [X] makes two preliminary observations.

2.13 First, [X] notes that even prior to merger of EMR and MWR, the scrap metal market was highly concentrated. It will therefore be important to ensure that any purchaser has minimal or no overlap with the MWR business. [X] notes that this is consistent with the counterfactual against which the CMA assessed the merger of EMR and MWR.

2.14 [X]

2.15 [X] also considers that it is important that any potential purchaser intends to use the majority of the scrap metal processed by MWR domestically, rather than selling it via export. [X]

2.16 [X]

2.17 [X]

3. EFFECTIVE DIVESTITURE PROCESS

3.1 [X] agrees that if the CMA selects a partial divestiture remedy it will be necessary for these parts to be divested before integration of the retained elements is allowed to proceed.⁶ This is on the basis that any purchaser will wish to understand precisely what it is bidding for and will not wish to be reliant on EMR for on-going services (e.g. under a transitional services agreement).

3.2 [X] considers that, if not already addressed, the CMA should takes steps to ensure that, in the period now until the end of the divestment process:

(a) all assets and equipment that may form part of a divestment package are maintained and regularly used. Equipment for collecting and processing scrap metal is used in challenging environments and equipment quickly degrades if it is not used on a regular basis or is not regularly and correctly maintained. Should equipment become degraded during the divestment process, this will adversely affect the capability of

⁶ Remedies Notice, paragraph 28.

the divested business to act as an effective competitive constraint in the market;
and

- (b) MWR continues to compete aggressively for all existing and new business. Commercial relationships are very important in the scrap metal industry and it is vital that MWR maintains its existing supplier and purchaser relationships and contracts during the divestment process. Should MWR lose any material contracts during the divestment process (particularly to EMR) this may again adversely affect the capability of the divested business to act as an effective competitive constraint in the market.

3.3 In this regard [X] suggests that the role of the Monitoring Trustee should ensure that:

- (a) MWR's trading and throughput volumes are monitored to ensure volumes do not decline prior to divestment; and
- (b) monitoring MWR's maintenance records/schedules to ensure all assets are in good condition prior to divestment.