

Ausurus Group Ltd and Metal & Waste Recycling

Representations by [X] in relation to the CMA's supplementary provisional findings report relating to the London region

1. Introduction

- 1.1. [X] would underline our strong belief that irrespective of the CMA's views on the market for the purchase of scrap metal (other than shredder feed) in the London region that the divestment of MWR's Hitchin shredder site as a single package would not allow the shredder to compete effectively with EMR due to the loss of the shredder feed from the MWR feeder sites and the redirection of this feed to EMR.

2. The London region - general comments

- 2.1. [X] considers that the "London region" is effectively the area within the boundaries of the M25 and not the wider area as currently defined by the CMA. The delays and costs associated with transport in this area mean that scrap does not travel far and accordingly the constraint provided by third party sites outside of the M25 is at best very limited. For this reason, [X] do not regard any sites operating outside the M25 as operating in the "London region". In addition, the CMA should take into account that some sites are almost entirely dedicated to non-ferrous scrap or the export of processed material.
- 2.2. More particularly, the constraint provided by sites outside the southern ring of the M25 in relation to MWR sites is even more limited. MWR's sites are located on the North of the Thames which forms a natural barrier to transport. In addition, the measure of distances on a straight-line basis fails to take into account the road network and particularly the fact that the realistic route between sites located on either side of London is by going around London rather than straight through it. This increases both actual distances and journey times between different sites, and arguably makes the London market unique compared to those outside of the M25 which have been previously investigated by the CMA and, therefore, may have adversely affected the CMA's thinking and analysis on the "London region".
- 2.3. [X] are unclear as to the extent to which the CMA has relied upon EA data to calculate the size of the market and would emphasise that such a reliance would artificially inflate the size of the market due to fact that the same scrap can pass through the hands of multiple recyclers and ultimately into the hands of EMR (i.e. there is a double, triple or even more accounting effect). In this respect, EMR has the only deep sea dock in London and there are no steel mills in the London region or the wider Southern England region which means that the majority of scrap will ultimately pass through to EMR to go via its deep sea dock in Tilbury in order to reach end markets. [X] estimate the EMR and MWR combined market share to be in excess of 80% of London scrap arisings of non-shredder feed material, even allowing for other exports channels including containers and local short and deep sea docks on the Thames which have limited capacity. Hence the reliance by other recyclers on EMR's / MRW's dock facilities.

3. Sims' Sheerness site and its competitive constraint

- 3.1. A key element of the CMA's supplementary provisional findings in relation to purchasing in the London region is the perceived constraint provided by Sims' site in Sheerness.

3.2. In [X] view, the constraint provided by Sims' Sheerness site is likely to be minimal rather than material (as stated by the CMA) and does not provide a reason for the supplementary provisional findings. In this respect, [X] would draw to the CMA's attention the following specific points:

3.2.1. No Equipment / processing capability

As noted by the CMA in paragraph 1.96 of the supplementary provisional findings, Sims does not have any processing equipment at Sheerness which consequently limits the scrap that it can receive into the site and its ability to compete with EMR . in the London region.

3.2.2. Capacity

Maximum site capacities need to be treated with caution. Capacity can be increased by increasing truck movements to a site and where further processing is not required there is limited constraint on capacity.

3.2.3. Is Sims' Sheerness an additional competitor site?

The CMA comments in paragraph 1.9(a) of the supplementary provisional findings that the Sims' Sheerness site is an additional site that it has taken into account. [X] understand that the Sims' Sheerness site is not a new site that has come into existence since the provisional findings report. Therefore, there may be double accounting in the supplementary provisional findings report.

3.2.4. Geographic location of Sims' Sheerness site

3.2.4.1. The Sims' Sheerness site is a considerable distance (107 kilometres / 66.7 miles by road) from Edmonton and requires the use of the M2, M25 and the payment of a toll on the Dartford crossing. [X] would consider it as very unlikely to provide any competitive constraint to MWR in Edmonton. Indeed, [X] understand that the Sims' Sheerness site draws its scrap from surrounding areas rather than North London. The cost of haulage from North London to Sheerness would be around double that of haulage to Tilbury and, as such, the ability of Sims to attract scrap from this area is not realistic unless considerably more is paid than EMR to attract such tonnage. The cost would be even more considerable (possibly double again) in the event that Sims' Sheerness was able to take unprocessed scrap given that less tonnage by volume can be placed on a truck.

3.2.4.2. The Sims' Sheerness site is 46 kilometres / 29 miles by road to EMR in Rochester assuming the use of the M2. This is considerably further than the 17 kilometres referred to in Table 3 of the supplementary provisional findings. In this respect in addition to the fact that the Sims' Sheerness site does not appear to provide competition to EMR Rochester for the purchase of unprocessed scrap, it is outside of the London region in any event (see also paragraph 4.3 below).

3.2.5. EMR Rochester

EMR's Rochester site is a very small site that primarily handles non-ferrous scrap. It also collects general domestic ferrous waste from "passing trade" and scrap cars. This is a very different type of site to the Sims' Sheerness site which only handles a limited volume of processed ferrous scrap. As such, any constraint provided by the Sheerness site to EMR Rochester would appear to be very limited on the basis that the Sims' Sheerness site is not competing with EMR Rochester for non-ferrous scrap, domestic ferrous scrap from passing trade or scrap cars as these sites effectively compete in different market segments (i.e. for materials at different stages of the supply chain).

4. London City Metals and Southwark Metals (and other merchants)

- 4.1. The CMA has referred to the inclusion of London City Metals and Southwark Metals as changing its views on the competitive constraints to EMR.
- 4.2. On the basis of the redactions to the information concerning both recyclers, it is difficult to provide considerable analysis / commentary on either recycler. However, we would note the following:
 - 4.2.1. The CMA comments itself that London City Metals may offer a limited constraint to EMR (paragraph 1.129 of the supplementary provisional findings). [REDACTED] understanding of London City Metals would support this given that it has limited processing capacity.
 - 4.2.2. The CMA appears to have reservations in terms of the constraint provided by Southwark Metals (paragraph 1.171(c) of the supplementary provisional findings). [REDACTED] understanding of Southwark Metals would suggest that its constraint is limited as it has no shear or processing capability.
 - 4.2.3. [REDACTED] understand that both recyclers may supply the majority (if not all) of their scrap to EMR or MWR and, as such, simply feed to EMR/MWR anyway (i.e. while these sites may compete to purchase scrap their route to market is through EMR/MWR anyway - see paragraph 4.3 below for a more general comment on the dynamics of the market within the M25). In this sense, there is likely to be significant double accounting of the scrap which also inflates the size of the market.
 - 4.2.4. On the basis of the above, it seems difficult to conclude that either recycler provides meaningful competition to EMR due to the presence of "*substantial processing capabilities and a range of routes to market*". This is noted as important by the CMA in paragraph 1.28 of the supplementary provisional findings.
- 4.3. As a more general point, the dynamics of the market for the purchase and onward sale of scrap within the M25 area mean that the constraint provided by merchants (including London City Metal and Southwark Metals) to EMR/MWR is limited. The route to market for scrap in the area is export and EMR/MWR has effective control of the export routes. Merchants have very limited choice in terms of who they can sell to and this means that EMR/MWR can effectively control merchant purchase prices in order to maintain their own profit margin on the deep-sea/short-sea international sales markets. In essence, merchants such as London City Metals and Southwark Metals are price takers rather than price setters. Indeed, the costs and time constraints associated with transport outside of the M25 area mean that scrap does not flow to sites such as Sims' Sheerness and EMR/MWR can flex its pricing to

ensure that this does not happen. Furthermore, its distribution of feeder sites means that it also has the ability to cut out the “middle man” by lowering its prices to them thereby making it uneconomical for them to purchase in competition with EMR/MWR’s own feeder sites. (Paragraph 5.3 below considers this point from the perspective of MWR.)

5. MWR’s constraint on EMR

- 5.1. The CMA has taken the view that MWR provides a more limited constraint to EMR than it previously considered to be the case.
- 5.2. This view needs to be set in the context of the comments above on the constraint offered by other recyclers (see paragraph 4 in particular). In particular, [Scissors] view is that the constraint provided by sites outside the M25 in the South East e.g. Sims’ Sheerness is very limited as is that of London City Metals and Southwark Metals given their dependence on supplying EMR and their limited (if any) processing capacity.
- 5.3. It is also worth noting that MWR has access to a short-sea dock which does provide an alternative route to market. Currently, more scrap goes through the deep-sea dock route due to the premium currently paid by the destination countries. As such, MWR has the choice (rather than the necessity) to sell to EMR but could change this in the event that the deep-sea premium reduces. By way of illustration, given that MWR has access to the short-sea export market, it can either sell to this short-sea market or sell to EMR. It is only likely to sell to EMR if the price offered by EMR is close to or same as the MWR short-sea price equivalent. These prices would be considerably above the prices EMR would need to pay to other merchants (such as London City Metals and Southwark Metals). As such, MWR can compete far more effectively than other merchants (including London City Metals and Southwark Metals) due its option of a viable alternative route to market. In turn, this by implication also provides a competing alternative purchaser for those merchants without a route to export. The loss of this alternative removes a significant constraint on EMR (see paragraph 4.3 above). Separately, it is worth highlighting that a significant proportion of OA grade scrap is exported by short-sea to Spain and, as such, notwithstanding the general point about current routes to market, MWR does provide a real constraint to EMR in respect of this grade of scrap.
- 5.4. As recognised by the CMA, the barriers to entering the London market are high and MWR is an important source of competition in the London region and particularly the North London area. This competition will not be replaced easily. In [X] view, it cannot be ignored that MWR will no longer be present as a competitor buying a considerable volume of non-shredder feed scrap with the option of using its own short-sea dock as a viable route to market.

6. Comments on remedies

- 6.1. In the event that the CMA remains of the view that there is no SLC in relation to the purchase of scrap (other than shredder feed) in the London region, [X] would reiterate
- 6.2. [X] view that anyone who bought the Hitchin shredder would need to have a presence in the area in terms of feeder sites. In effect, without access to in-feed tonnage, the shredder will not be viable. As such, the absence of an SLC in relation to non-shredder feed does not alter the nature of the remedies package to address the SLC in relation to shredder feed.

- 6.3. In essence, the viability of the shredder is reliant upon sufficient feed from the feeder sites and [X] regards the shredder and feeder sites as constituting a single package/business rather than one that can be split into multiple packages. [X] believes that a considerable proportion of the Edmonton and Neasden scrap would provide feed for the Hitchin shredder. As such, the retention of the MWR feeder sites by EMR would simply divert the supply of feed, on which the Hitchin shredder is reliant, to EMR's own shredder sites. This further enhances EMR's market power and would significantly lessen/harm competition in respect of shredder feed in the event that the Hitchin shredder ceases to be a viable competing operation.

7. Conclusions

- 7.1. Overall, [X] is not of the view that the evidence supports a view that there is no longer an SLC in relation to the purchase of scrap (other than shredder feed) in the London region (i.e. as defined by the CMA or [X]). In particular, [X] are of the view that there is a reality gap between what volume figures / statistics may show and the issues associated with transportation in the London region (and particularly the region inside the M25 and North of the Thames) given the reality that scrap does not travel any distance inside the M25.
- 7.2. In any event, we do not consider that the revised findings change [X] views in relation to the viability of any remedies package in the South East of England. [X] would emphasise as strongly as we can that MWR's shredder is not viable as a stand-alone asset but requires feeder sites. Any sites outside the M25 are too remote due to both distance and transportation constraints (and some sites are almost entirely a non-ferrous site and Sims' Sheerness is an export dock site without processing equipment) and we believe that the CMA understands the barriers to anyone acquiring such sites in the London area. The likely diversion of material from MWR's Edmonton and Neasden sites to EMR will further enhance EMR's market power and harm competition in both the shredding and non-shredding markets.
- 7.3. [X] believes that the CMA's original provisional findings hold good as the market percentages do not move significantly to dilute market shares as the supplementary provisional findings report suggests due to double accounting and/or the fundamental point in relation to the CMA's definition of the "London region" given the practical and realistic issues associated with transport and its consequent impact on the spheres of market influence of EMR and MWR.