

Ausurus Group Ltd and Metal & Waste Recycling

A report on the completed acquisition by
Ausurus Group Ltd of Metal & Waste Recycling

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The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [X]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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Glossary

Summary of findings

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).
2. We have conducted an in-depth inquiry and consulted widely, including through publication of our provisional findings report, and a supplementary provisional findings document setting out revised provisional findings in relation to one market. We have found that the Transaction 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.
3. 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 who require scrap metal, they provide input material into a manufacturing process, such as the production of steel.
4. 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.
5. 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 fourth largest metal recycler in the UK by number of sites and by volume. In most of the markets we have examined the Parties 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, who in turn may process the scrap before selling it on 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 large recyclers.
6. We received a number of concerns from customers and suppliers about EMR's existing size and power, and examined whether, although it is smaller,

the loss of the constraint from MWR would give rise to a substantial lessening of competition (SLC).

7. EMR completed the purchase of MWR on 25 August 2017. We 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.
8. In this inquiry we defined markets in relation to the upstream purchase of waste scrap metal by metal recyclers and the downstream sale of processed scrap metal to customers such as steel mills.
9. For purchasing, we have found that geographic markets are regional - within an area of 115km around sites with shredder machines and 50km 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 under tendered contracts. We drew a distinction between purchasing large volumes of waste scrap metal via competitive tender and other purchases of 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 purchased under 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 for most grades of these metals is relatively widespread across a high proportion of metal recyclers.
10. Most scrap metal originating in the UK is exported. For sales to UK customers, we have found 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 found that there are separate markets for:

- (a) Sales of new production steel (NPS). This conclusion is based on comments from competitors and customers of the Parties that the conditions of competition in sales of NPS 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 the supply of non-ferrous metals is separate from that for the supply of ferrous metals because the two types of metal are not substitutable from the point of view of customers. There are also some specialist non-ferrous recyclers that aggregate volumes for sale to customers – often sourcing these non-ferrous volumes from other metal recyclers.
- 11. Our competitive assessment considers in detail 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 under tendered contracts in the West Midlands, North East, and Wales (chapter 10);
 - (d) Sales of NPS to UK customers (chapter 11); and
 - (e) Sales of other ferrous and non-ferrous scrap metals to UK customers (chapter 12).
- 12. We did not consider in detail, but were quickly able to rule out any competition concerns in relation to, the following markets in which the Parties overlap: purchases of ferrous and non-ferrous scrap metals under tendered contracts in London, and purchases of ferrous and non-ferrous scrap metals (other than under tendered contracts) in the West Midlands, North East, and Wales (chapter 7).
- 13. Below we set out our conclusions on whether the merger has resulted, or may be expected to result, in a substantial lessening of competition within the markets we assessed in detail. Before that, we set out some characteristics of the industry that have been pertinent to our analysis.

Background to our analysis

- 14. 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.

15. 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) 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 types or '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) NPS primarily 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 (ie mills and metal foundries). A large proportion is sold through large contracts tendered by the original supplier.
 - (c) Other ferrous materials from varied sources can require shearing, and are mostly exported in bulk, as well as being sold to UK customers.
 - (d) Non-ferrous metals come from varied sources and often require little processing before being sold to UK customers or exported. When they are exported, this usually occurs using containers, with the arrangements often being made by third party traders in such products.
16. 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.
17. Prices for scrap metal sales and purchases are generally individually negotiated, other than for very small suppliers to the Parties' sites, who will generally receive a listed price for their scrap. This has implications for our assessment because it means that competition for and the prices paid or

received by some customers or suppliers may not serve to protect the interests of other customers or suppliers at other locations who may have fewer competitive choices, even if both are present in the same geographic market.

18. It is not necessary 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.
19. 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 found that vertically integrated firms that provide multiple stages, or all the stages, involved in the supply chain have an advantage over rivals that provide only one stage.
20. 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 65 suppliers of waste scrap metal, 38 metal recyclers, and 25 customers of processed scrap metal. We understand that some of these responses were prompted by EMR getting in touch with suppliers to encourage responses. Some of these respondents changed their views relative to the initial responses they had made to us. 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 third parties have more than one relationship with the Parties, as supplier, competitor, customer, and in some cases also rival bidder or potential bidder in the sales process in which EMR bought MWR. We received many different, and often conflicting, views. In considering what weight to give to the comments from third parties, we have taken into account the nature of their relationship with the Parties and their commercial incentives.
21. 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. Notwithstanding the overall scale of the survey, 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 in size, and we have used it to understand the concerns of smaller suppliers, alongside the evidence from larger suppliers we contacted directly.
22. 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. This means that two recyclers may handle similar volumes of metal while one simply passes it directly to another recycler and the other is involved in the complete supply chain including processing and sale to a final customer.

Purchases of shredder feed in the South East

23. Our conclusion on the purchase of shredder feed in the South East is that the Transaction has resulted, or may be expected to result, in an SLC. This is based on:
- (a) 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 ([10-20]%). The merger combines the two largest purchasers of shredder feed in the region;
 - (b) Evidence indicating that the Parties are close competitors, including evidence of diversion from MWR to EMR at the time of MWR's shredder outage and comment from competitors and suppliers;
 - (c) 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;
 - (d) 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
 - (e) 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

24. Our conclusion on the purchase of ferrous and non-ferrous scrap metals (other than shredder feed) in the London region is that the Transaction may not be expected to result, in an SLC. This is based on:
- (a) The Parties' combined market shares of ([30-40]%) although we note that the increment to this as a result of the acquisition of MWR is material at [5-10%]%;
 - (b) Our finding that although some evidence points towards the Parties being close competitors, other evidence – from the survey, supplier views, and MWR's reliance on others for deep-sea exports – indicates that the constraint from MWR was not particularly strong;
 - (c) Our finding that, although the merger brings together the two largest purchasers in the region, there are a number of other metal recyclers with substantial (non-shredder feed) purchase volumes in the London region, as well as many smaller recyclers. While the strength of the constraint imposed by these other recyclers varies, there are a number with London site networks, processing capabilities, and routes to market that are similar to those of MWR; and
 - (d) Evidence that, although EMR clearly provides an important route to export through its control of one of only two metal-export deep-sea docks in the London region, the metal recyclers that sell to MWR in London have alternative routes to market, with MWR not providing a unique constraint on EMR in this regard.

Purchases under tendered contracts

25. Our conclusion on purchases under 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.
26. Comments from competitors and suppliers, and evidence on the existing contracts held by competitors, suggested that suppliers that tender contracts are the most difficult to compete for and only a limited set of metal recyclers are able to win these large contracts.
27. Based on tenders we examined, in which the Parties participated, we found that they both have 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

28. In the West Midlands, the Parties have been successful in winning tendered contracts, with most other competitors being far less successful.
29. Other constraints in the area appear to be weak, with rivals having bid very infrequently, with little success. There also appears to be an incumbency advantage, meaning that the Parties are particularly strong competitors for the contracts they currently hold and that it is difficult for other recyclers to enter and expand into purchasing from tendered contracts in the area.
30. Four out of five suppliers that tender and that we spoke to were concerned about the merger, and we have not been able to identify any countervailing factors, such as entry or expansion by rivals or buyer power by suppliers, sufficient to prevent an SLC from arising. Although one third-party metal recycler told us that it was looking to enter the West Midlands and compete for tendered contracts, it said that it had not yet secured a site and we do not consider that its entry will be timely, likely and sufficient to prevent an SLC.
31. We therefore conclude that the Transaction has resulted, or may be expected to result, in an SLC in purchasing of scrap metal under tendered contracts in the West Midlands.

North East

32. In the North East the Parties have been successful in competing for and winning bids, with limited success among other bidders for these tendered contracts.
33. There are other competitors bidding in the area, but each provides a comparatively weak constraint on the Parties when they are bidding for tendered contracts, and we consider that they are not sufficient to prevent an SLC.
34. Only one supplier that appears to have a relationship with a supplier outside the region that provides some prospect for encouraging entry from outside the region, and we have not been able to identify any other countervailing measures, such as entry or expansion by rivals or buyer power by suppliers, which would be timely, likely and sufficient to prevent an SLC from arising in the North East.

35. We conclude that the Transaction has resulted, or may be expected to result, in an SLC in purchasing of scrap metal under tendered contracts in the North East.

Wales

36. In this region the Parties' overall shares are relatively small, MWR is very small and MWR had not bid for any contract specific to Wales in the data we considered. Furthermore, EMR faces particularly strong competition from a large rival in the region, and there are a number of other bidders for tendered contracts.
37. We conclude that the Transaction may not be expected to result in an SLC in the purchasing of scrap metal under tendered contracts in Wales.

Sales of new production steel to UK customers

38. Our conclusion on sales of NPS to UK customers is that the Transaction has resulted, or may be expected to result, in an SLC.
39. 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 concerns from several customers – accounting for the majority of the Parties' UK NPS sales - who argued that EMR has existing power in this market and that MWR is an important constraint.
40. We received mixed responses from customers, with some very concerned and others unconcerned. Customers told us that they value reliable supply of high volumes and that some pay higher prices per tonne to the limited number of 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.
41. 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. We found that among the Parties' current competitors, some have no additional volumes of NPS to supply to customers in response to a price rise, and that although Sims and GES Recycling provide some constraint, 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 evidence that high-volume recyclers get paid more.

42. We have also found that customers seeking to purchase directly from suppliers or to self-supply are unlikely to represent a competitive constraint that is sufficient to prevent an SLC.

Sales of other ferrous metals to UK customers

43. Our conclusion on the sale of other ferrous metals to UK customers is that the Transaction is not likely to result in an SLC.
44. In ferrous metals other than NPS, the Parties have an estimated share of current sales to UK customers of [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, including several regions where the Parties' operations do not overlap, and the North East and West Midlands where the CMA has found competition problems only in relation to tendered contracts which relate primarily to NPS, meaning that there is little effect there in relation to other metals.
45. 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

46. Our conclusion on the sale of non-ferrous metals to UK customers is that the Transaction is not likely to result in an SLC.
47. 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.

Overall SLC findings

48. We have concluded that the Transaction has resulted, or may be expected to result, in an SLC in the following markets:

- (a) Purchasing of shredder feed in the South East;
 - (b) Purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands;
 - (c) Purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the North East; and
 - (d) Sales of NPS to UK customers.
49. We have found that the Transaction may not be expected to result in an SLC in any other region or product market, including purchasing of ferrous and non-ferrous metals in the London region.
50. In light of our SLC findings, we are required to decide whether action should be taken to remedy, mitigate or prevent the SLCs or any adverse effect arising from the SLCs.

Remedies

51. In determining whether action should be taken to remedy, mitigate or prevent the SLCs or any adverse effect arising from the SLCs, we have considered the following possible remedy options:
- (a) A behavioural remedy facilitating the use by third parties of EMR's services to help those third parties to bid for tendered contracts.
 - (b) Full divestiture: a structural remedy requiring the divestiture of MWR or substantially all of MWR to a purchaser.
 - (c) Partial divestiture: a structural remedy requiring the divestiture of certain parts of MWR to one or more purchasers.
52. We considered the effectiveness and proportionality of each of these remedy options. We have concluded that partial divestiture would be an effective and proportionate remedy to address the SLCs we have found.
53. We have concluded that the divestiture package should include the following:
- (a) MWR's Hitchin site with all associated staff and plant and equipment, including the 6000hp shredder on that site.
 - (b) All sites, assets, contracts, rights and staff necessary to carry out the MWR tendering and NPS businesses in the West Midlands (Cradley, Hockley, and Telford) and the North East (Seaham).

54. We have also decided that:

- (a) the package must include some commercial staff from MWR (not based at Hitchin) if the purchaser requires this to maintain commercial relationships in the South East;
- (b) the package must include MWR's London sites (Edmonton and Neasden) and related administrative and commercial infrastructure in London if the purchaser does not have existing feeder sites in the area and is unable to demonstrate that it does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East; and
- (c) certain specific sites and assets may be excluded from the divestiture package (the Telford Lightmore Road, Walsall, Rookes, Cox's Lane, and Newport sites; the Pinns Wharf licence; and the Granulator at Edmonton).

Findings

1. The reference

- 1.2 On 7 February 2018, in exercise of its duty under section 22(1) of the Act, the CMA referred for further investigation and report by a group of CMA panel members (the inquiry group) the completed acquisition by Ausurus Group Ltd (through its subsidiary European Metal Recycling Limited) of CuFe Investments Limited (including its wholly-owned subsidiary Metal & Waste Recycling Limited).
- 1.3 In exercise of our duty under section 35(1) of the Act, we must decide:
- (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.
- 1.4 Our terms of reference, along with information on the conduct of the inquiry, are set out in Appendix A. Following an extension to the reference period of eight weeks under section 39(3) of the Act, we are required to publish our final report by 18 September 2018.¹
- 1.5 Ausurus Group Ltd and its wholly-owned subsidiary European Metal Recycling Limited are together referred to as EMR throughout this report. CuFe Investments Limited and its wholly-owned subsidiary Metal & Waste Recycling Limited are together referred to as MWR throughout this report. Where relevant, we refer to EMR and MWR collectively as the Parties.
- 1.6 This document, together with its appendices, constitutes our findings, published and notified to EMR and MWR in line with the CMA's rules of procedure.² Further information relevant to this inquiry, including non-confidential versions of the submissions received from the Parties and third parties, and a summary of our hearings with third parties, can be found on our website.

¹ Notice of extension

² CMA rules of procedure for merger, market and special reference groups (CMA17), Rule 11.

2. The Parties

2.1 Within the metal recycling industry in the UK, four large recyclers purchase a combined share of over 70% of scrap metal volumes – these are EMR, Sims, S Norton and MWR. There are many other small and medium-sized scrap metal recyclers throughout the country which purchase the remaining volumes. Each of these small and medium competitors individually account for less than 5% of the UK volumes, with most accounting for much less than 1%. Small recyclers typically sell the majority of their volumes to larger recyclers such as EMR and MWR.

EMR

2.2 EMR is a wholly-owned subsidiary of Ausurus Group Limited. EMR is a privately-owned UK-based company, headquartered in Warrington, Cheshire, with metal recycling operations in the UK, continental Europe and the USA. It employs around 4,000 people at 150 locations around the world. Its core business is the recycling of scrap metal, which results in sales of recycled metals of around 10 million tonnes per year.³

2.3 EMR is the largest metal recycler in the UK, by some distance. Based on UK volumes it is over four times larger than Sims, the second largest. In 2017, it sold over [X] tonnes of recycled metals to UK customers and exported over [X] tonnes from the UK. It operates 65 metal recycling sites in the UK.⁴ Of these sites, 18 are feeder sites where no processing takes place, and 10 are dockside sites. EMR has deep-sea dockside sites at Cardiff,⁵ Liverpool, Tilbury, and Tyne⁶ and short-sea sites at Glasgow, Eccles, Southampton, Newhaven, Sunderland and Great Yarmouth.⁷ The rest are processing sites. EMR has a shredder at 9 of these sites (Birmingham, Hartlepool, Liverpool, East Tilbury, Erith, Newhaven, Portsmouth, Willesden and Leeds). The Erith shredder is not currently operational.^{8,9}

2.4 In the year to December 2017 EMR's group turnover was £[X] billion and its UK turnover was £[X]. In the same financial year, EMR UK reported EBITDA of £[X] and an EBITDA margin of [X] %.

³ Metric tonnes (MT).

⁴ [X].

⁵ This has not generally been used by EMR for deep-sea shipments in recent years.

⁶ This is not a quayside site, as EMR's site is located a short distance from the actual quay which is a public port.

⁷ EMR also has dockside sites at Sharpness (Gloucestershire) and Shoreham (West Sussex), but EMR told us that these have not been used for bulk export for several years.

⁸ Erith site has a quay that is occasionally used for internal transfer by barge to EMR's Tilbury Dock site.

⁹ [X].

- 2.5 EMR told us that the strategy of the EMR Group has been to pursue growth both by acquisition and through organic means, starting in the 1940s from a single site in Rochdale, Greater Manchester. It was one of the first metal recyclers to export processed scrap metal from the UK.
- 2.6 In the UK, EMR has made the following acquisitions since 2000:
- i) Mayer Parry Recycling, 2000
 - ii) Sita, 2013¹⁰
 - iii) [REDACTED], 2016¹¹
- 2.7 In addition to acquiring existing UK recycling businesses, in the last 10 years EMR has made acquisitions in the USA and continental Europe.

MWR

- 2.8 MWR is a wholly-owned subsidiary of CuFe Investments Limited, and is the fourth largest metal recycler in the UK by volume. MWR is a UK-based company, headquartered in Edmonton, London. It employs over 240 people and sold over 550,000 tonnes of metal in 2017.
- 2.9 Across the UK, MWR currently operates at eight sites, although it holds the head lease for, or has the rights to use, 12 sites in total. Of these sites, two are feeder sites and two are dock sites. MWR has one shredder at its Hitchin site. Two sites (one in Telford in the West Midlands and one in London) were closed before the Transaction.
- 2.10 In the year to 30 April 2017, prior to the acquisition, MWR's turnover was £163 million (all of which was earned in the UK). In the same financial year, MWR reported EBITDA of £7 million and an EBITDA margin of 4.3%.
- 2.11 Unlike EMR, MWR has not made any acquisitions in the last 10 years. From 1970 to 2005 MWR's site network grew through a combination of organic growth and acquisitions, including in 1998 gaining access to a wharf facility (Pinns Wharf) in London, shared with other recycled metal exporters,¹² and the acquisition in 2003 of H Williams & Sons Ltd in Hitchin.

¹⁰ This acquisition was the subject of a [merger investigation](#) by the Office of Fair Trading

¹¹ [REDACTED].

¹² [REDACTED].

EMR and MWR sites

2.12 Figure 3.1 shows the location in the UK of EMR's and MWR's sites. MWR is present in London, the South East, the West Midlands, the North East and Wales. In contrast, EMR is more broadly dispersed geographically, across London, the South and East, the North East, the East and West Midlands, Wales, and Scotland.¹³ The Parties' operations overlap in the London area, the South East, the West Midlands, Wales, and in the North East. Neither Party is present in Northern Ireland.

Figure 3.1: The Parties' sites



¹³ [REDACTED].

3. The merger and relevant merger situation

The transaction

3.1 On 25 August 2017, EMR and Bain Capital Credit (BCC) entered into a binding agreement for EMR to acquire MWR through the purchase of the whole of the issued share capital of MWR's holding company CuFe Investments Limited (the Transaction). The enterprise value of the Transaction was approximately £52.6 million.

The rationale for the transaction

3.2 EMR told us that its primary reasons for acquiring MWR were:

- (a) to broaden its geographic presence; and
- (b) to achieve operating synergies and savings from the retention of margins that other recyclers currently make from onward sale of material sold to them by MWR, a reduction of the senior management base, absorption of various head-office functions, and protection of the EMR margin made on the material sold by MWR to EMR each year. EMR estimated that together these synergies would be worth around £[redacted] per year.

3.3 EMR also noted that, following the integration of the Parties' operations, the merger [redacted].

3.4 EMR said that the acquisition of MWR was [redacted], because:

- (a) MWR holds a strong portfolio of industrial contracts and would enhance EMR's capabilities in this segment; and
- (b) enhancement of collection and processing capabilities in major cities (London and Birmingham) would provide improved stability of scrap sourcing regardless of market conditions.¹⁴

3.5 BCC told us that given the timing and age of the funds and accounts that owned the shares in MWR it looked to sell MWR as soon as commercially appropriate. In May 2017 BCC took the decision to put the business up for sale through an open sales process, and EMR's bid offered the best opportunity to maximise the value of its investment on behalf of investors.

¹⁴ [redacted].

Jurisdiction

Introduction

3.6 Under section 35 of the Act and pursuant to our terms of reference (see Appendix A), we are required to investigate and report on certain statutory questions, the first being whether a relevant merger situation has been created. Section 35 of the Act provides that a relevant merger situation has been created if two or more enterprises have ceased to be distinct within the statutory period for reference and either the turnover test or the share of supply test (or both) specified in the Act is satisfied.

The elements of the relevant merger situation

3.7 A relevant merger situation has four elements.¹⁵ First, the transaction must involve enterprises. Secondly, two or more enterprises must have ceased to be distinct as a result of the transaction. Thirdly, the enterprises must have ceased to be distinct at a time or in circumstances falling within section 24 of the Act.¹⁶ Finally, the turnover test, or the share of supply test, must be satisfied.

3.8 Section 129 of the Act defines an 'enterprise' as 'the activities, or part of the activities, of a business'. A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge'. We consider that both EMR and MWR are enterprises since each operates a business which supplies goods and services related to scrap metal recycling.

3.9 As a result of the Transaction, EMR has ownership and control of MWR. Therefore, we are satisfied that as a result of the Transaction the enterprises of EMR and MWR have ceased to be distinct for the purposes of the Act.

3.10 The transaction completed on 25 August 2017 and was first made public on 29 August 2017. Following extension for failure to answer in good time the CMA's enquiry letter issued under section 109,¹⁷ the deadline for the CMA to make a reference decision was 15 February 2017. The reference was made

¹⁵ [Section 23 of the Act](#).

¹⁶ Subject to various qualifications and potential extensions, in relation to completed transactions [section 24 of the Act](#) requires the CMA to make a reference to its chair for the constitution of a group under Schedule 4 of the Enterprise and Regulatory Reform Act 2013 within four months of completion of the merger. Section 35 sets out the questions to be decided by the group.

¹⁷ Section 109 of the Competition Act 1998.

on 7 February 2017. Therefore, the enterprises ceased to be distinct at a time or in circumstances falling within section 24.

- 3.11 The turnover test is satisfied where the annual value of the turnover in the UK of the enterprise being taken over exceeds £70 million. The UK turnover of MWR in the financial year ended 30 April 2017 was approximately £163 million. Therefore, the turnover test in section 23 is met and it is not necessary to enquire whether the share of supply test is met.
- 3.12 In light of the above assessment, we consider that this transaction has resulted in the creation of a relevant merger situation.

4. The industry

- 4.1 EMR and MWR are principally engaged in the provision of metal recycling services. Within the industry, the recycling of metal is commonly segmented between ferrous metals (iron and steel) and non-ferrous metals.¹⁸ Ferrous metals are more abundant and less valuable than non-ferrous metals. Metals are further classified into grades according to their composition and physical properties.¹⁹
- 4.2 From the perspective of the original suppliers of waste scrap metal, the material is waste and the Parties (and other metal recyclers) supply them with a waste disposal and recycling service (although, because the waste scrap metal has value, payment generally flows from the recycler to the supplier rather than in the other direction). From the perspective of the customers buying the processed scrap metal that the metal recyclers sell, the scrap metal is an input material. For example, ferrous scrap can be melted in furnaces as a substitute for making steel from iron ore.²⁰
- 4.3 This chapter provides an overview of the scrap metal supply chain and some of the larger metal recyclers in the UK.

Supply chain

- 4.4 The supply chain in the metal recycling sector comprises the:
- (a) Purchase of waste scrap metal;
 - (b) Processing of scrap metal; and
 - (c) Sale of processed scrap metal.
- 4.5 The main metal recyclers operate from a range of site types, including feeder yards with limited or no processing equipment, yards with processing equipment (of which the largest and most expensive are shears and shredders²¹), and short-sea or deep-sea docks. Recyclers also use public docks for export via containers.

¹⁸ Such as copper, copper alloys, aluminium, zinc and lead.

¹⁹ For example, there are 12 ferrous grades, and further subgrades. See, for example, the [letsrecycle website](#).

²⁰ [§].

²¹ Shredders are sometimes also known as fragmentisers.

Purchase of waste scrap metal

- 4.6 Metal recyclers, which purchase waste scrap metal, vary in size and range from those with a national or international presence to those with a regional presence or small, local operations.
- 4.7 Metal recyclers purchase waste scrap metal from the following main sources of supply:
- (a) end-of-life vehicle (ELV) industry suppliers, such as car dealers, insurance companies, and vehicle dismantlers;
 - (b) demolition contractors;
 - (c) industrial suppliers, such as car factories or parts manufacturers;
 - (d) local authorities;
 - (e) plumbers, builders, electricians and the general public; and
 - (f) other metal recyclers.
- 4.8 Although it is common for the larger metal recyclers to source waste scrap metal from all of the above sources, the importance of individual sources of supply to the recycler will vary across recyclers and sites. For example, MWR buys a higher proportion of metal from industrial sources than EMR does in the West Midlands, Wales and North East, while in London EMR buys a higher proportion from demolition sources than is the case for MWR.
- 4.9 Metal recyclers' purchasing activities may involve suppliers dropping off waste scrap metal at recyclers' yards (drop-off suppliers, including 'door trade', ie the general public, small traders and small collectors), or suppliers who require the waste scrap metal to be collected (collection suppliers, who are likely to be larger companies that regularly produce large amounts of waste scrap metal requiring removal).
- 4.10 While some suppliers (primarily 'door trade') receive standard posted prices, negotiations are very common, and the large majority of volumes are purchased under bilaterally-agreed prices. For some suppliers, this price is set as part of a formal tender process. Less than 20% of the Parties' volumes are purchased through mechanisms they consider to be tenders, although this figure is higher for certain metal grades and for NPS, in particular.²²

²² [REDACTED].

Processing of scrap metal

4.11 Not all waste scrap metal requires processing. The three main reasons for processing waste scrap are to: (i) sort and weigh it; (ii) make the transport of it more cost effective (by reducing its volume or 'densifying' it); and (iii) to meet customer requirements (eg foundries require scrap not to exceed certain dimensions). In cases where processing is necessary, it may include the following steps:

- (a) Sorting: different types of metals are separated, cleaned and prepared for processing;
- (b) Baling: scrap metal is often baled (ie compacted) for ease of transport;
- (c) Shearing: some scrap metal is processed using a shear, to reduce it into smaller pieces for onward transport and sale;
- (d) Shredding: some ferrous and mixed materials require shredding. This 'shredder feed' includes light iron, baled cars, and other 'frag feed'. In some circumstances, final customers may also specifically require materials in the format produced by a shredder. Some other materials can be processed using either a shear or a shredder. Shredders generally process mixed material, separate metal from non-metal waste, and sort different metal types.
- (e) Other processing – examples include cutting material using hand-held equipment, cable granulation, and using trommels to remove dirt. Cable granulation is the process by which any remaining steel or plastic is removed from a shredded or stripped bare copper cable, thus leaving copper in its purest form. A trommel is a machine consisting of a large drum with screens that rotate and screen recyclable material from other waste.

4.12 Although not all waste scrap metal requires processing, in this report we refer to scrap metal available for sale to downstream customers as processed scrap metal in order to distinguish it (where necessary) from waste scrap metal supplied by upstream suppliers.

Export of scrap metal

- 4.13 Around 80% of processed ferrous and non-ferrous scrap metal arising in the UK is exported.²³ The major export destinations for UK scrap metal include Turkey, India, Pakistan and, for NPS, the USA.
- 4.14 Metal recyclers who sell directly to export customers will often need to engage in currency hedging and to arrange letters of credit from the buyer. Another route to export customers is to sell indirectly, through traders located inside or outside of the UK. Such sales tend to be concluded on a 'spot' basis.²⁴
- 4.15 The physical shipping of processed scrap metal exports from the UK occurs via:²⁵
- (a) Containers, usually shipped to markets in Asia including India, Pakistan and Indonesia. Container shipping primarily operates from the ports in Felixstowe, Southampton, Tilbury, and Grangemouth (Scotland). Container shipping is often organised by traders who arrange all logistics, from delivering the container to the metal recycler, to arranging transport to the customer and all customs paperwork in between.²⁶ Whether or not the transport is arranged by the metal recycler or a trader, it will be carried out by a freight forwarder, and the route (and dock) used in the UK is not managed by the metal recycler.²⁷ Most non-ferrous and some ferrous materials (including NPS and processed shredder feed) can be exported by container.
 - (b) Short-sea bulk export (eg to ports in Europe). This refers to the maritime transport of goods over relatively short distances, as opposed to intercontinental cross-ocean deep-sea shipping. The scrap metal is transported loose, in the hold of a bulk carrier. MWR has an agreement with a short-sea dock owner at Barking (Pinns Wharf) in London, although its licence to use this facility expires in late 2018. EMR has short-sea docks at Glasgow, Eccles, Southampton, Newhaven, Sunderland and Great Yarmouth. EMR also reaches short-sea markets from its deep-sea docks.
 - (c) Deep-sea bulk export, for example to Turkey and the US. As with short-sea export, the scrap metal is transported loose, in the hold of a bulk

²³ [REDACTED].

²⁴ That is, where prices and terms are agreed at the time and in relation to a specific transaction, rather than being part of a longer-term agreement or contract for the supply or purchase of material.

²⁵ [REDACTED]. [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

carrier. EMR has deep-sea docks at Cardiff, Liverpool, Tilbury and Tyne.²⁸ MWR has a deep-sea dock at Seaham in the North East.

- 4.16 The three routes to export markets, described above, generally have different prices at any given time, and may also be priced differently from sales to UK final customers. Each has different risks (eg foreign exchange risk and credit considerations) and prices tend to be volatile, which makes it difficult to predict price movements over time. Many external factors may affect export prices, for example, movements in foreign exchange rates, political events and public and religious holidays in overseas markets.
- 4.17 Some large metal recyclers have the opportunity to export either via containers or bulk cargo ships and will weigh up the relative revenues and costs (and risks) associated with exporting and supplying domestically. Those smaller recyclers without easy access to export routes may sell to larger recyclers that have ready access to export markets.

Sale of processed scrap metal to UK customers

- 4.18 The UK end customers for processed scrap metal are steel mills and metal foundries. In both cases the scrap metal is purchased as an input in the manufacture of metal or metal products. The main UK steel mills are operated by Celsa UK, Tata, British Steel, Outokumpu and Liberty Steel.
- 4.19 As mentioned above, the bulk of UK processed scrap metal is exported. However, the proportion of their processed scrap metal that metal recyclers sell abroad varies. The Parties told us that, along with other UK metal recyclers, they use UK export prices as a benchmark to inform what price to demand for domestic sales. Similarly, UK and export prices of processed scrap metal influence what prices UK recyclers can and are willing to pay when purchasing waste scrap.
- 4.20 For the most part, transactions involving the supply of scrap metal to final customers are contracted on a spot basis.

UK volumes of processed scrap metal

- 4.21 There is no published data on the volume of UK ferrous and non-ferrous scrap metal.

²⁸ [REDACTED].

- 4.22 The Parties estimated that the volume of UK supply of ferrous processed scrap was 11.7 million tonnes in 2016. This is a sum of the International Steel Statistics Bureau (ISSB) estimate that 8.1 million tonnes of ferrous metals were exported from the UK²⁹ and the EEF³⁰ estimate that 3.6 million tonnes of ferrous metal (including 1.6 million tonnes which both arises and is consumed within steelworks, ie is self-supplied) was supplied domestically into UK steelworks.³¹ This indicates that around 10.1 million tonnes of ferrous processed scrap arising in the UK is potentially available for sale to UK customers or to export customers.
- 4.23 Volumes of non-ferrous processed scrap are more difficult to estimate because there are no independent figures for sales to UK end users. The Parties stated that ISSB estimated total non-ferrous exports from the UK in 2016 to be 0.8 million tonnes.³² EMR estimated the total volume of sales to UK end users by applying its own export to domestic sales ratio to the ISSB estimate of total non-ferrous exports. This resulted in an estimated UK market size for non-ferrous sales of 1.2 million tonnes in 2016.³³ EMR, however, believes that total UK volumes of non-ferrous processed scrap are likely to be between 1.25 and 1.5 million tonnes per year, as the ratio of exports to UK sales for EMR's non-ferrous sales is likely to be more skewed towards exports than the sector in general.

Other scrap metal recyclers

- 4.24 As noted in chapter 2, there are very few large metal recyclers, with EMR by far the largest, and MWR the fourth largest by volume. The merged firm would have a site network twice the size, and total volumes processed over four times the size, of any of the other recyclers in the industry. We now briefly describe the other large and medium-sized scrap metal recyclers present in the UK.
- 4.25 Sims Group UK Limited (with UK marketing brand names Sims Metal Management and Sims Recycling Solutions) (Sims), headquartered near Stratford-upon-Avon, is the UK subsidiary of Sims Metal Management Limited, the world's largest metal and electronic waste recycler listed on the

²⁹ [REDACTED].

³⁰ Formerly the Employers Federation

³¹ [REDACTED]. UK Steel is the trade association for the UK steel industry and EEF (the manufacturers' organisation voice for the country's steel manufacturers. Further details can be found at <https://www.eef.org.uk/uk-steel> . The report can be found at <https://www.eef.org.uk/uk-steel/news-blogs-and-publications/publications/2017/mar/key-statistics-2016>

³² [REDACTED].

³³ [REDACTED].

Australian Stock Exchange. It is the second largest metal recycler in the UK, measured by value and volume of sales. In the UK, Sims buys waste scrap metal and sells processed scrap metal to the domestic and export markets. Sims' UK turnover is around £[redacted] million a year. The business has 37 operational sites across the UK and handles [redacted] tonnes of waste scrap metal per year. Sims has recently acquired Morley Waste.³⁴

- 4.26 S Norton & Co Ltd (S Norton), a family business with UK turnover of more than £200m, is the UK's third largest metal recycler in terms of volumes purchased and sold. S Norton handles over 1.2 million tonnes of metal per year at four sites across the UK in Liverpool, Manchester, East London and Southampton.
- 4.27 The merged firm would have total volumes at least 14 times as large, and a site network at least seven times as large, as any of the following medium-sized recyclers (which comprise the next tier of UK recyclers, measured by volume):
- (a) Ward Recycling Ltd (Ward Recycling), is based in Swadlincote, Derbyshire, and advertises itself as the largest independent metal recycler in the Midlands. Ward Recycling handles over [redacted] tonnes per year of scrap metal, and is the UK's [redacted] metal recycler in terms of tonnage sold. In April 2018, it announced the opening of dedicated deep-sea export dock facility in Immingham (in Lincolnshire).³⁵
 - (b) H. Ripley & Co Ltd (H Ripley) supplies ferrous and non-ferrous metals to steelworks and refineries in the UK and internationally. H Ripley purchases over [redacted] tonnes per year of scrap metal. It has five UK sites located at Hailsham, Hastings and Newhaven in East Sussex, as well as two sites at Ashford in Kent.³⁶ Across its sites it has a shredder and six shears, as well as a short-sea dock.
 - (c) Enablelink Ltd (Enablelink) is located close to Birmingham, Dudley and West Bromwich in the West Midlands.³⁷ It purchases over [redacted] tonnes of ferrous and non-ferrous metals per year.
 - (d) Ward Bros (Steel) Ltd (Ward Bros) is based in Darlington in County Durham, with processing sites in Newcastle, Sunderland and Darlington.³⁸

³⁴ See the [CMA case page](#)

³⁵ <https://www.ward.com/ward-opens-new-dedicated-dock-facility-for-scrap-metal-export/>

³⁶ <http://www.hripley.co.uk>

³⁷ <http://www.enablelink.co.uk/>

³⁸ <https://wardbrossteel.co.uk/>

It purchases over [X] tonnes of scrap metal per year, and has access to a short-sea dock at Sunderland. The Remet Company Ltd (Remet) has one site in East London.³⁹ It purchases over [X] tonnes of non-ferrous metal per year. Given the (typically) higher market prices of non-ferrous metals compared to ferrous grades, its volumes are likely to substantially understate its size when compared to the (mainly ferrous) volumes of other metal recyclers set out in this report. Its subsidiaries include Avon Metals Limited, based in Gloucester, which also specialises in non-ferrous metals.⁴⁰

- (e) Recycling Lives Limited (Recycling Lives) has one site near Birmingham, six sites in the North West, and one site in Erith, Kent. It purchases over 190,000 tonnes of scrap per year, and across its sites operates a shredder, three shears and five balers.
- (f) Benfleet Scrap Co Ltd (Benfleet) operates 3 sites in Essex, each of which has a shear and baler. It purchases [X] tonnes of ferrous and non-ferrous scrap per year, and [X].⁴¹

³⁹ <http://www.remetcompany.com/>

⁴⁰ The Remet Company website.

⁴¹ <https://www.benfleetscrap.co.uk/>

5. Counterfactual

5.1 Before we turn to the effects of the merger, we need to assess what we expect would have been the competitive situation in the absence of the merger. This is called the ‘counterfactual’. The counterfactual is an analytical tool used to provide a benchmark against which the expected effects of the merger can be assessed. The counterfactual takes events and circumstances and their consequences into account to the extent that they are foreseeable.⁴²

The sale of MWR

5.2 MWR’s previous owners, BCC told us that:

- (a) If the business had not been sold to EMR, it would have sought to re-engage with another bidder to agree and effect a sale on mutually-agreeable terms; and
- (b) if no sale had occurred, then ‘a strategic review would have been performed and the business would have continued to operate based on the parameters determined by this review. Going forward, further expressions of interest to purchase the business would have been solicited at opportune times to maximize value on behalf of BCC’s investors.’⁴³

5.3 We therefore consider that if the merger with EMR had not happened, it is likely that BCC would have looked to sell to another buyer.

5.4 The BCC board decided to divest CuFe on 1 May 2017.⁴⁴ To facilitate bids for the business, a briefing document was sent to [REDACTED] interested parties on 12 May 2017. Ultimately, Bain received [REDACTED] bids in addition to the bid from EMR. These are described in Appendix C.

5.5 When deciding on the most appropriate counterfactual, we will consider the circumstances of the sale, including the offers of the alternative purchasers.⁴⁵ In this case, one bidder was a metal recycler with operations in a number of UK regions, one was not active in any UK metal recycling market and the third [REDACTED] is currently active in the UK industry, [REDACTED].

⁴² [Merger Assessment Guidelines](#), paragraphs 4.3.1 - 4.3.3.

⁴³ [REDACTED].

⁴⁴ [REDACTED]. MWR began preparations for the sale of the business around February/March 2017 with a view to complete in late 2017

⁴⁵ [Merger Assessment Guidelines](#), paragraph 4.3.22.

- 5.6 Two bidders – EMR and [REDACTED] – submitted bids of £[REDACTED] million which were materially higher than the other first round bids ([REDACTED] and [REDACTED] bid up to £[REDACTED] million). Both EMR and [REDACTED] advanced to the second phase of the sale process. [REDACTED].
- 5.7 We note that the description of the counterfactual is affected by the extent to which events or circumstances and their consequences are foreseeable.⁴⁶ In this case there is considerable uncertainty as to what would have happened to MWR absent an acquisition by EMR. However, we note that the bidders include buyers under which MWR would have been likely to exert the same or broadly the same competitive constraints as pre-merger.
- 5.8 In line with BCC’s submission, we consider that if it had not sold MWR at this time it would have continued to operate the business with a view to carrying out a further sales process at some point in the short to medium term. We note that BCC told us that it would have undertaken a strategic review if the business had not been sold. The outcome of such a review is uncertain. However, we consider that, as MWR was a profitable standalone business, the most likely scenario would be that MWR would have operated as previously until a further sales process was undertaken.
- 5.9 As outlined above, there are several scenarios that might have occurred in the counterfactual, and considerable uncertainty over which is the most likely. However, we note that in most of these, MWR would likely have continued to exert broadly the same constraint as it did pre-merger. Focusing only on those aspects of the scenarios that appear likely on the basis of the facts available to us, and the extent to which we are able to foresee future developments,⁴⁷ we therefore conclude that the most likely counterfactual is pre-merger conditions of competition. We have undertaken our analysis on that basis in this inquiry.

EMR’s [REDACTED] site

- 5.10 EMR stated that the correct counterfactual is the current set of competitive conditions, with the exception of shredding where the Merger should be assessed against a different counterfactual. EMR submitted that prior to the merger it entered into a binding contract to sell (subject to landlord consent) the leasehold of EMR [REDACTED] to a property developer, in light of the significant development of the area around the site. EMR has received payment of a deposit of £[REDACTED] and stated that the sale is expected to complete no later than

⁴⁶ [Merger Assessment Guidelines](#), paragraph 4.3.2.

⁴⁷ [Merger Assessment Guidelines](#), paragraph 4.3.6.

[REDACTED]. EMR submitted that therefore the counterfactual in respect of shredding would be the *status quo ante* but removing consideration of [REDACTED]. This, it stated, would significantly reduce EMR's presence within the catchment area of MWR's shredder in Hitchin.⁴⁸ EMR also submitted that a counterfactual which included the competition currently provided by the [REDACTED] site is inconsistent with the CMA's assessment of the likelihood of entry of competitors based on the facts and evidence available to it.⁴⁹

- 5.11 During the phase 1 investigation, EMR told the CMA that it had, prior to striking the MWR deal, been seeking an alternative [REDACTED] site to replace [REDACTED]. It stopped looking following the acquisition of MWR, noting in its Board papers that the acquisition provided an opportunity to relocate its [REDACTED]. Given that EMR was seeking an alternative to the [REDACTED] site prior to acquiring MWR, and that the proposed closure date at that time was around two and a half years away (during which time harm would arise as a result of any SLC caused by the merger), we conclude that the removal of the competition currently provided by EMR's [REDACTED] site is not sufficiently likely or timely to justify a counterfactual which departs from the pre-merger conditions of competition.

Other considerations

- 5.12 We note that Sims has recently acquired Morley Waste.⁵⁰ The overlaps in that merger are in different local areas to this merger in relation to the purchasing of waste scrap, and the size of the increments in relation to the sale of processed scrap metal to UK final customers are not sufficient to substantially affect our analysis in this inquiry.⁵¹ This has been taken into account in our competitive assessment.

Conclusions on the counterfactual

- 5.13 In light of the above, we take as our counterfactual the pre-merger conditions of competition, save for the Sims/Morley merger, although this has very little effect on the analysis.

⁴⁸ [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ See the [CMA case page](#)

⁵¹ We note that the only material change that is of relevance to our assessment is in relation to NPS sales to UK final customers, where the addition of Morley (also trading as Lord and Midgely) sales volumes increases Sims' share of sales volumes from [0-5%] to [0-5%], as set out in chapter 11.

6. Market definition

- 6.1 The purpose of market definition in a merger inquiry is to provide a framework for the analysis of the competitive effects of the merger.⁵² The boundaries of the relevant market do not determine the outcome of the analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, it is possible to take into account constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁵³
- 6.2 The boundaries of the relevant market are determined by whether customers (and suppliers) would switch demand (or supply) between different products and geographical areas in response to a small but significant and sustained change in relevant prices, thus providing a competitive constraint.⁵⁴
- 6.3 As set out in the CMA's Merger Assessment Guidelines,⁵⁵ the boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the CMA may aggregate several narrow relevant markets into one broader market on the basis of supply-side considerations. It may do so when:
- (a) Production assets can be used by firms to supply a range of different products that are not demand-side substitutes, and the firms have the ability and incentive quickly (generally within a year) to shift capacity between these different products depending on demand for each; and
 - (b) The same firms compete to supply these different products and the conditions of competition between the firms are the same for each product; in this case aggregating the supply of these products and analysing them as one market does not affect the CMA's decision on the competitive effect of the merger.
- 6.4 In defining the relevant market in this case, we have taken into account:
- (a) Substitution by suppliers of scrap metal to metal recyclers and by customers purchasing processed scrap metal – the extent to which they can switch between different metals or different metal recyclers in response to a worsening of prices;

⁵² [Merger assessment guidelines](#), paragraph 5.2.1

⁵³ [Merger assessment guidelines](#), paragraph 5.2.2

⁵⁴ [Merger assessment guidelines](#), paragraphs 5.2.9 to 5.2.19.

⁵⁵ [Merger assessment guidelines](#), paragraph 5.2.17

- (b) Substitution on the part of metal recyclers – the extent to which they can switch between purchasing or selling different types of metals or serving different types of suppliers and customers; and
- (c) The extent to which the conditions of competition – eg the identity and strength of the competitors involved – are the same across different metal, supplier or customer types, meaning that the segments can be aggregated into single markets without affecting the outcome of our competitive assessment.

6.5 In this chapter, we set out the relevant markets in which we have assessed the effects of the merger, as follows:

- (a) Product market for the purchase of scrap metal;
- (b) Product market for the sale of processed scrap metal;
- (c) Geographic market for the purchase of scrap metal; and
- (d) Geographic market for the sale of processed scrap metal.

Relevant product markets for the purchase of scrap metal

6.6 We characterise the process of competition between metal recyclers in the purchase of waste scrap metal as follows:

- i) The ‘service’ involved is the disposal of this waste, which, unlike in other waste disposal markets, involves a payment from the metal recycler to the supplier of the waste, as the waste here has a resale value;
- ii) The metal recyclers, even though they are purchasing waste scrap metal, are competing to provide this service; and
- iii) The ‘customers’ are those firms that produce waste scrap metal as part of their business, eg demolition firms or factories, which we refer to as suppliers.

6.7 We look at two potential sources of segmentation that may be relevant to the product market on the purchasing side: metal type and supplier type.

Segmentation of purchasing by metal type

- 6.8 We note that the Office of Fair Trading's (OFT's) Phase 1 clearance decision on the *EMR/SITA* merger defined a single product market for the purchase of ferrous and non-ferrous waste scrap metal.⁵⁶
- 6.9 The Parties submitted in relation to metal type that it is appropriate to define a single frame of reference for purchases of ferrous and non-ferrous waste scrap metal, on the basis that the vast majority of metal recyclers purchase both ferrous and non-ferrous scrap metal of varying grades and that, even if this were not the case, there are no barriers that would prevent them from switching between the two, given that the necessary equipment is largely the same. The Parties also argued that suppliers of waste scrap metal may supply a mixture of ferrous and non-ferrous scrap metal of varying grades to the same site.⁵⁷
- 6.10 For the original suppliers of scrap, the scrap supplied is largely unresponsive to changes in the prices of different scrap metals - the suppliers simply provide the grade that arises as part of their main business and would not, for example, supply copper instead if the price for steel had fallen. However, in determining the scope of relevant product market, we may aggregate separate markets where the same metal recycling firms compete to purchase or supply these different grades and where, as a result, the conditions of competition between the firms are sufficiently similar for each grade.⁵⁸
- 6.11 In relation to a possible distinction between ferrous and non-ferrous metal, we found that:
- (a) A large proportion of suppliers supply a mix of both ferrous and non-ferrous metals. The Parties' transaction data indicates that many EMR and MWR suppliers (over 80% by volume and value) supply both ferrous and non-ferrous metals.
 - (b) The evidence we have received from metal recyclers indicates that, in general, many are not capacity constrained and could, in principle, switch purchases between ferrous and non-ferrous metal, which largely require the same equipment to process.

⁵⁶ The OFT was one of the CMA's predecessor bodies. *EMR/SITA* Decision: <https://www.gov.uk/cma-cases/european-metal-recycling-ltd-sita-metal-recycling-ltd>. See also the OFT's Phase 1 decision in the Sims/Dunn merger: <https://www.gov.uk/cma-cases/sims-metal-management-dunn-brothers>

⁵⁷ [REDACTED]

⁵⁸ [Merger Assessment Guidelines](#), paragraph 5.2.17

(c) Although there are some specialist non-ferrous recyclers, we contacted many metal recyclers and found that almost all accept most grades of metal (although not always at every site),⁵⁹ to the extent that we believe the conditions of competition to be broadly similar across the two categories of ferrous and non-ferrous metals.

6.12 However, we found that while many grades of metal can be processed using equipment that is available to many metal recyclers, certain grades of metal require shredding, either because of the nature of the input material or the requirements of the final customer.

6.13 The Parties argued that when purchasing shredder feed those metal recyclers that operate shredder sites are 'constrained to some extent by competitors that operate a shear',⁶⁰ and that 'shears perform a function that is partially substitutable for the function performed by a shredder',⁶¹ in particular in relation to light iron.⁶² They explained that a metal recycler's decision as to whether to shred a particular grade of scrap metal that it purchases from a supplier is influenced by the requirements of the customer. As such, even among 'shredder feed' grades, it may be the case that not all of this is material processed through a shredder. Conversely, there may be other grades (not listed among 'shredder feed' grades) that also get processed through a shredder from time to time. They also argued that there may be alternative methods available, eg clean light iron may sometimes not need to be processed or can be baled or sheared, and ELVs can be processed through a shear after manual stripping.⁶³

6.14 However, we note that responses from a number of metal recyclers indicate that shearing is not likely to be a material constraint on shredder operators:

(a) [REDACTED] argued that certain types of scrap metal (Grade 5C – which includes ELV, white goods and light iron)⁶⁴ need to be shredded and there is no alternative.⁶⁵ This grade accounts for [80-90]% of EMR's shredder feed purchases (by volume);⁶⁶

⁵⁹ For example, EMR operates one ferrous-only and one non-ferrous-only metal recycling site at Brentford.

⁶⁰ [REDACTED]

⁶¹ [REDACTED]

⁶² [REDACTED]

⁶³ [REDACTED]

⁶⁴ See the definitions for ferrous grades set out here: <https://www.letsrecycle.com/prices/metals/ferrous-metal-prices/ferrous-grades/>

⁶⁵ [REDACTED]

⁶⁶ While the industry standard grades do not always map directly onto firms' transaction data, this calculation is based on transactions that cover EMR's purchase of 'frag feed' [REDACTED] and ELV [REDACTED]. CMA analysis of EMR purchases transaction data.

- (b) A number of metal recyclers that operate shears supply significant volumes of shredder feed to the Parties, which strongly suggests that they do not consider shearing to be a viable option for this material, eg, ASM operates a shear and yet supplies shredder feed representing almost two thirds of its purchase volumes to MWR and EMR, with [REDACTED], [REDACTED] and [REDACTED] also supplying significant volumes of shredder feed to the Parties while also operating their own shears;⁶⁷ and
- (c) S Norton does not purchase 'light iron and other similar grades that need to be shredded' at two of its sites (Southampton and Barking in London) that only have shears rather than shredders.

6.15 The scope for supply-side substitution also appears to be very limited in relation to shredding because installing a new shredder requires a major investment and finding a suitable site to install a new one may be difficult. This is discussed further in chapter 8.

6.16 Even though only a small subset of recyclers have the shredding equipment required to process it, many metal recyclers accept shredder feed material.⁶⁸ Recyclers that have purchased these grades but that do not have a shredder will need to sell the material on to other recyclers that do have shredders. As a result, the conditions of competition for the initial purchase of 'shredder feed' is likely to be strongly affected by competition between recyclers that undertake shredding.⁶⁹

Conclusion on segmentation by metal type

6.17 We therefore conclude that there are distinct product markets for:

- (a) purchase of shredder feed grades; and
- (b) purchase of the other most commonly-handled grades of ferrous and non-ferrous metals.

6.18 We now consider whether it is appropriate to segment the product further, depending on the type of supplier.

⁶⁷ [REDACTED]

⁶⁸ We note the example set out above of S Norton not accepting light iron and other grades that require shredding at two of its sites.

⁶⁹ As set out in chapters 8 (competition for shredder feed purchases) and 9 (competition for the purchase of non-shredder feed grades in London), an important feature of the sector is the extent to which small and medium-sized metal recyclers purchase shredder feed material, e.g., ELV, which is then sold to the Parties – and other shredder site operators – for shredding and onward sale.

Segmentation of purchasing by supplier type

6.19 We have examined three potential sources of segmentation by supplier type:

- (a) Collection vs delivery;
- (b) Metal recyclers vs other supplier types; and
- (c) Suppliers that tender contracts for the sale of waste scrap metal vs suppliers that do not use a tender process.

6.20 In considering these supplier segments, we have also taken account of whether competitive conditions vary by size of supplier.

Collection vs delivery

6.21 We found that suppliers that deliver their metal tend to be much smaller than those that have it collected.⁷⁰ To the extent that particular suppliers may have a preference for delivery or collection, that could limit demand-side substitutability. However, we also found that the Parties and almost all of the metal recyclers from which we have received evidence offered a collection service at all or most of their sites.⁷¹ We therefore believe that the conditions of competition are likely to be broadly similar across suppliers that deliver and those that collect, meaning that they can be aggregated for the purposes of our competitive assessment.

Purchases from metal recyclers

6.22 The trading of scrap metal – both processed and unprocessed – between metal recyclers accounts for a significant share of volumes among the large recyclers. For example, for EMR, MWR and Sims the proportion of volumes from this source are [30-40]%,⁷² [50-60]%⁷³ and [X%] respectively.

6.23 The Parties argued that, as in the OFT's clearance decision in *EMR/SITA*,⁷⁴ separate markets should be defined for purchases from other metal recyclers and purchases from other types of suppliers,⁷⁵ because:

⁷⁰ CMA analysis of Parties' transaction data.

⁷¹ [X] offers a collection service at [X] of its sites and has its own fleet of [X] vehicles based across these sites. [X] S Norton offer a collection service at X of its sites, [X].

⁷² Transaction-level data provided by Parties. Calculated by dividing the total tonnage purchased by EMR from metal recyclers by the total tonnage purchased from all suppliers in 2017.

⁷³ Transaction-level data provided by Parties. Calculated by dividing the total tonnage purchased by MWR from metal recyclers by the total tonnage purchased from all suppliers pre-merger.

⁷⁴ [CMA reference decision](#), paragraph 35.

⁷⁵ See paragraph 30 of the decision in the [EMR/SITA](#) case.

- (a) inter-merchant trade 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 and, as a result, end users (in UK and export markets) and traders are also competing with metal recyclers to purchase this type of waste scrap metal; and
- (b) metal recyclers are knowledgeable suppliers and waste scrap metal can be moved in bulk at low cost over large distances in order to obtain the best prices.⁷⁶

6.24 The Parties also argued that, even if no separate frame of reference were 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.⁷⁷

6.25 As set out in Chapter 7, metal recyclers may sell to other metal recyclers to quickly balance the volume of metals that they expect to purchase from suppliers and sell to final customers. They may also do so because they do not themselves have the necessary processing equipment, dock facilities, or the processes and relationships necessary to sell to customers in the UK or abroad. We consider that this means that metal recyclers who want to sell to other metal recyclers are likely to choose from a more limited subset of recyclers than is the case for the original suppliers of scrap. In the case of balancing supply and demand, while there may be no specific constraints on the recyclers that can compete for these purchases (such as specific processing equipment or dock facilities), there may be a limited number of recyclers that are able to handle the specific volume of material at that particular point in time.

6.26 We also note that metal recyclers supply larger volumes on average than do other supplier types.⁷⁸

6.27 Given that, for the above reasons, the conditions of competition are likely to be different for purchases from metal recyclers than for purchases from other types of supplier, we would typically define a separate market for these purchases. However, in this case we think it is more appropriate to take account of these differences in our competitive assessment as this enables us to better take account of the various reasons for purchases from other metal recyclers and their impact. In particular:

⁷⁶ [REDACTED]
⁷⁷ [REDACTED]
⁷⁸ [REDACTED]

- (a) Competition for purchases from metal recyclers is likely to feed through into competition for purchases from original suppliers because if metal recyclers do not face a sufficiently competitive set of larger metal recyclers competing for their volumes, they themselves will not be competitive purchasers of material. As a result of this relationship, we consider that the conditions of competition for purchases from both metal recyclers and from other supplier types will be driven by competition between those (larger) recyclers with the processing equipment and routes to market necessary to compete strongly for purchases from other metal recyclers.⁷⁹
- (b) Different metal recyclers may be strong competitors for purchasing from other metal recyclers, depending on the reasons for the sale – for some recyclers, routes to export or UK final customers may be a stronger driver, while for others processing capabilities will be more (or also) important.
- (c) There are other large suppliers that potentially share some characteristics with metal recyclers – such as requiring a recycler that is able to take large volumes at short notice (as can be the case for demolition contractors).⁸⁰

6.28 In light of the above, we have not defined a separate frame of reference for purchases from metal recyclers. Instead we have taken into account, as part of our competitive assessment, factors (such as dock facilities and processing equipment) that mean that individual metal recyclers have a stronger effect on competition in an area. This effect may arise directly through purchasing from original suppliers, or indirectly through purchasing from other metal recyclers who themselves purchase from original suppliers.

Tendered contracts

6.29 A number of metal recyclers indicated that industrial sources of waste scrap metal (which often involve supply of NPS) have different characteristics and are often more difficult to serve than other waste scrap metal suppliers. They often involve a tendering process (unlike the spot trading more common in the industry) and frequently also involve relatively large volumes. As such, we have considered whether the purchase of waste scrap metal under tendered contracts may form a separate relevant product market.

⁷⁹ The 'double-counting' of inter-merchant sales in our market share data is discussed in chapter 7 and in Appendix D.

⁸⁰ [REDACTED]

- 6.30 The Parties argued that NPS should not be defined as a separate product market.⁸¹ Given that the issues that distinguish NPS from other grades generally relate to the way in which many suppliers use tendered contracts in finding purchasers, the Parties' arguments are also relevant to the assessment of the relevant market here. First, they submitted that it is not necessary for a metal merchant to have scale, national presence, or a site network in order to serve industrial suppliers, as most of these contracts involve only one or a small number of sites within a particular region. Second, in relation to purchases of NPS, the Parties stated that the majority of metal can be collected and sold without processing, meaning that there is often no requirement for competitors to have access to any processing equipment and that capital requirements are low.⁸² They pointed out that among the largest contracts, many suppliers (eg Nissan, Honda, BMW, Vauxhall) carry out on-site handling of waste scrap metal, often using their own balers, such that the service required from metal recyclers is essentially one of logistics.⁸³ Finally, they argued that, while some suppliers of NPS have particular service requirements, these are not unique to NPS suppliers, with all supplier decisions being driven by a combination of price, service and convenience.⁸⁴
- 6.31 In coming to a view on whether the purchase of waste scrap metal (including NPS) from large tendered contracts is likely to form a separate product market we examined other metal recyclers' views, the views of the relevant suppliers, and tender data submitted by the Parties.
- 6.32 A number of other metal recyclers, as well as some large suppliers, stated that large tendered contracts can be challenging to serve and the set of effective competitors may be significantly narrower than for purchases from other types of suppliers, for a number of reasons:
- (a) Large factory suppliers are risk averse, as selling scrap is not part of their core business and problems in dealing with scrap could have serious adverse impacts on their core business.⁸⁵ As a result, a number of metal recyclers argued that this leads to an 'incumbency advantage' for a small number of recyclers that are known to the suppliers in question.⁸⁶
 - (b) For a recycler to compete without a strong UK record in tendered contracts, it needs to invest substantial time and money in relationship

81 [REDACTED]
82 [REDACTED]
83 [REDACTED]
84 [REDACTED]
85 [REDACTED]
86 [REDACTED]

management and the tender processes involved in winning factory contracts.⁸⁷

- (c) The recycler needs sites that are close to the factory site⁸⁸ (unless the factory is willing to have processing take place on its own site).⁸⁹
- (d) The ability to deal with large and fluctuating volumes can be important, meaning that a recycler needs several nearby sites and access to large numbers of skips and vehicles.⁹⁰
- (e) The service requirements of factory suppliers can be demanding, for example, because of the need to minimise traffic at the factory sites and prevent any interference with production processes.⁹¹
- (f) In relation to NPS specifically, competitors and suppliers broadly agreed with the Parties that NPS often requires relatively little processing.⁹² However, we were told that a baler is necessary to compete strongly.⁹³
- (g) Access to international markets⁹⁴ and large purchase volumes give some metal recyclers an advantage in bidding for these contracts, as it allows them to pay a higher price.⁹⁵

6.33 Many metal recyclers do not have the appropriate logistics, services, and locations to serve these suppliers. Even a large national metal recycler like [REDACTED] noted its weak position in relation to ‘factory contracts’, outlining the need to:

- (a) develop relationships with suppliers which, in turn, requires a dedicated workforce that [REDACTED] does not have in place;
- (b) have a logistical network of sites and servicing capability which is close to the supplier; and
- (c) provide ‘... a full-service delivery proposition rather than a commodity sale and purchase based model’.⁹⁶

87 [REDACTED]
88 [REDACTED]
89 [REDACTED]
90 [REDACTED]
91 [REDACTED]
92 [REDACTED]
93 [REDACTED]
94 [REDACTED]
95 [REDACTED]
96 [REDACTED]

- 6.34 These comments from other metal recyclers and suppliers indicate that, contrary to the Parties' arguments, large industrial suppliers frequently do have specific service requirements or need metal recyclers with particular site locations in order to serve them. In addition, although processing requirements are often limited, a baler is often required.
- 6.35 Tender data submitted by the Parties supports the proposition that [REDACTED].⁹⁷ The tender data also points to an incumbency advantage for a small number of the largest metal recyclers in bidding for these contracts, which is consistent with third-party views that suppliers tend to be risk-averse and that it is difficult to gain new contracts serving large industrial suppliers. This tender data is discussed further in chapter 10.
- 6.36 We conclude that the purchase of waste scrap metal under tendered contracts, typically from industrial suppliers with large volumes and often including NPS supplies, constitutes a relevant product market separate from other purchases of ferrous and non-ferrous grades.

Conclusion on the product market for the purchase of waste scrap metal

- 6.37 Our conclusion on the relevant product markets for the purchase of scrap metal is as follows:
- (a) The purchase of ferrous and non-ferrous scrap metal (other than purchases under tendered contracts, and of shredder feed) form a relevant market on the purchasing side. This is because most grades are accepted by most recyclers, with those that do not have the ability to process or efficiently sell the material to a final customer or export market having the option of selling to a range of other metal recyclers. Within this broader market, we have taken account of any differences in competitive conditions when purchasing from other metal recyclers versus other types of suppliers in our assessment of competitive effects.
 - (b) The purchase of shredder feed forms a separate market, due to the equipment required to process this material for sale to final customers or for export.
 - (c) Purchases under large tendered contracts form a separate market, due to evidence that the conditions of competition in this segment differ from those in other segments.

⁹⁷ [REDACTED]

Relevant product market for the sale of processed scrap metal

- 6.38 In the reference decision, the sale of ferrous and the sale of non-ferrous processed scrap metal were included as separate frames of reference. This was based on a lack of demand-side substitutability among customers between ferrous and non-ferrous metals. The evidence on supply-side substitutability was more mixed, with some metal recyclers having sales channels for all types of metal, while others focussed more on ferrous or non-ferrous. This distinction is consistent with the OFT's Phase 1 decision in the *EMR/SITA* merger,⁹⁸ while the OFT's decision in the *Sims/Dunn* merger also distinguished between the supply of ferrous and non-ferrous metals.⁹⁹
- 6.39 In relation to the product markets for the sale of scrap metal, the Parties argued that the supply of ferrous and non-ferrous scrap metal to end users should be looked at separately, given that ferrous metals are not substitutable for non-ferrous metals in manufacturing processes. They also argued that, as customers can and do substitute different grades of a particular metal in their manufacturing processes, and given the fact that the main suppliers of processed scrap metal all offer a broad range of grades, it would not be appropriate to undertake further segmentation (within ferrous or non-ferrous metals) on the basis of type or grade of metal.¹⁰⁰
- 6.40 In our assessment we have examined whether:
- (a) There is scope for demand-side substitution between ferrous and non-ferrous and across specific grades, ie whether customers can switch between purchasing these;
 - (b) There is scope for supply-side substitution between ferrous and non-ferrous and across specific grades, ie whether metal recyclers can easily switch between supplying these, or the same firms compete across different segments and the conditions of competition are the same;
 - (c) The conditions of competition in the sale of NPS are different from other grades, given that NPS largely derives from industrial sources, which are concentrated in certain areas and in some cases use tendered contracts (for which we have defined a separate purchasing market); and
 - (d) The limited set of metal recyclers that can compete effectively in the purchase and processing of shredder feed grades means that we should

⁹⁸ *EMR/SITA* decision: <https://www.gov.uk/cma-cases/european-metal-recycling-ltd-sita-metal-recycling-ltd>

⁹⁹ *Sims/Dunn* decision, paragraph 25: <https://www.gov.uk/cma-cases/sims-metal-management-dunn-brothers>

¹⁰⁰ [§<

also assess competition in the sale of shredder feed separately from competition in sales of other metal types.

Demand-side substitution between grades

6.41 Generally speaking, customers require a specific type of metal (eg copper cannot be substituted for aluminium). The Parties argued that different grades within the same metal types (eg different grades of carbon steel) can be substituted by customers, however responses from customers indicated that this is not always the case:

- (a) A number of non-ferrous customers outlined specific needs, eg, [REDACTED] stated that the [REDACTED] that it produces require specific grades of [REDACTED] that only a subset of metal recyclers could consistently supply to it.¹⁰¹
- (b) As set out below, the requirements of some steel mills mean that only recyclers with access to sources of NPS are credible competitors. A number of the Parties' NPS customers raised concerns in relation to EMR's strong position in NPS supply and the effect of the removal of MWR as a competitive constraint in NPS supply, implying a lack of close demand-side substitutes.

Supply-side substitution between grades

6.42 Metal recyclers, including the Parties typically supply across a broad range of types and grades – the Parties' transaction data and competitor responses show that many recyclers supply across a range of commonly-sold ferrous and non-ferrous grades.

6.43 However, both customers and competitors have pointed to specific issues in relation to the sale of NPS, as set out below.

New production steel

6.44 As set out in the discussion of the purchasing product market above, the main source of NPS supplies is from manufacturing plants, especially in the automotive sector. The larger of these suppliers typically demand a range of services in connection with the sale of their scrap NPS arisings and so only a subset of the metal recyclers can effectively compete for the purchase of these grades of ferrous metal. This limitation on competition on the purchasing side means that the sale of NPS is similarly only possible (at least

¹⁰¹ [REDACTED]

in significant quantities¹⁰²) for a subset of metal recyclers who can service the ‘factory contracts’ where it arises or can buy materials from other metal recyclers that do so. This is reflected in market shares that we have calculated for sales of NPS (see Chapter 11) which appear to be substantially different from those for other metal types (see Chapter 12), indicating that the conditions of competition are different for NPS. Given our findings in relation to tendered contracts, it seems unlikely that supply-side substitution is likely to occur for NPS, as there are substantial barriers to winning the relevant supply contracts.¹⁰³

- 6.45 There were mixed views among customers on demand-side substitutability. One customer [X] stated that, given the metal type that it produces, it can substitute NPS for other grades if necessary. [X] NPS customer of both Parties, expressed the view that, for the end-products that [X] produces (‘high end steel for demanding sectors’) there is no scope for demand-side substitution.¹⁰⁴ Another customer, [X], stated that different types of NPS can possibly be substituted but NPS cannot be substituted with other types of ferrous grades. [X] agreed that there is no substitute for the NPS they use, Outokumpu stated that this was the case in relation to certain grades of stainless steel that it produced.¹⁰⁵

Shredder grades

- 6.46 As set out above, we have defined a separate market for the purchase of shredder feed based on those metal recyclers that operate the appropriate equipment needed to efficiently process these grades of metal. We have not heard any customer concerns specific to the sale of shredded grades, which suggests that, in general, these grades are substitutable for other grades, or that the conditions of competition in the sale of shredded material are similar to those for other metals. We note that the vast majority of the Parties’ shredded metal output is exported from the UK – [80-90]% overall and [90-100]% of EMR’s shredder feed sales.¹⁰⁶

Conclusion on the product market for the sale of processed scrap metal

- 6.47 We found that there were separate markets for the sale of ferrous and non-ferrous metals, due to the lack of demand-side substitution among customers, different processing needs, and the presence of some specialist non-ferrous

¹⁰² NPS is purchased in smaller quantities by a broader range of metal recyclers. We understand that it is difficult for purchasers to obtain supplies of NPS by buying small quantities from a large number of small suppliers.

¹⁰³ [X]

¹⁰⁴ [X]

¹⁰⁵ [X]

¹⁰⁶ CMA analysis of Parties’ purchases transaction data.

suppliers. We have also considered whether there are any specific grades of ferrous or non-ferrous metals in which the parties compete and where the conditions of competition may vary from other grades. On this basis, we have concluded that sales of NPS should form a separate product market, given that some customers cannot substitute NPS for other grades of ferrous metal and given the more limited set of metal recyclers that can access the main sources of NPS.

Geographic market definition

6.48 This section sets out our assessment of the geographic markets for:

- (a) The purchase of scrap metal, focussing on the catchment areas across which metal recyclers' sites draw their supplies; and
- (b) The sale of scrap metal, focussing on the scope of the geographic area over which metal recyclers compete in selling processed scrap metal.

Geographic market for the purchase of waste scrap metal

6.49 As set out in the Merger Assessment Guidelines, geographic markets may be based on the location of suppliers or customers. In markets involving multiple local geographic markets (such as grocery retail), the CMA may examine the geographic catchment area within which the majority of a store's customers are located.¹⁰⁷

6.50 In this case, as a starting point for assessing the geographic area over which competition is likely to take place, we have calculated for each of the Parties' sites in the main overlap areas the size of the area over which the suppliers accounting 80% of the volume supplied to the site are located (ie the distance from the site that must be travelled before the supplier locations accounting for 80% of volume have been reached). The approach of using 80% catchment areas has been used in a number of previous cases, including by the OFT in the *EMR/SITA* merger.¹⁰⁸ In the *Sims/Dunn* merger, the OFT defined regional markets for the collection and processing of scrap metal.¹⁰⁹

¹⁰⁷ [Mergers Assessment Guidelines](#), paragraphs 5.2.21 to 5.2.27

¹⁰⁸ See [EMR/SITA merger decision](#), paragraph 37. The use of 80% catchment areas to define geographic markets has been widely applied by the OFT, the Competition Commission and the CMA in this and other sectors. The [CMA's Retail Mergers Commentary](#) states that the CMA usually uses 80% catchment areas – see paragraphs 2.20 to 2.22. See also examples of the use of 80% catchment areas for customers in the aggregates and ready-mix concrete sector, eg: [Breedon/Hope](#) merger (paragraphs 73 to 75); [Breedon/Aggregate Industries](#) merger (paragraphs 49 to 64); [Anglo-American/Lafarge](#) merger (paragraph 6.11); [Northstone/Catherwood](#) merger (paragraph 20).

¹⁰⁹ [Sims/Dunn decision](#), paragraph 36.

- 6.51 We have also considered whether the geographic area over which competition takes place is likely to differ according to the nature of the supplier, in particular:
- (a) Suppliers that deliver their scrap to the Parties' sites versus those that have their scrap collected – where the latter may imply a wider geographic market;
 - (b) Suppliers of ferrous versus non-ferrous metal – where the latter may have a wider catchment area due to the higher value and, therefore, relatively lower transport costs;
 - (c) Sites with processing equipment versus those that act as feeders – where we would expect the latter to have smaller catchment areas;
 - (d) Metal recyclers versus other types of suppliers – where metal recyclers may have a higher willingness to travel if they are supplying large volumes, or are supplying processed (or part-processed) scrap, as this is more cost-efficient to transport (because it has been 'densified'); and
 - (e) The volumes of scrap metal being supplied – where suppliers with higher volumes may be more willing to travel or metal recyclers may be more willing to offer collection over a wider area.
- 6.52 One type of supplier that we are particularly interested in is metal recyclers. While there may be numerous small recyclers that provide a suitable option for some suppliers (in particular door trade with small volumes), the extent to which they are able to provide an effective competitive constraint will depend on the options available to them for selling on to other larger recyclers, either for processing or to obtain a route to market. It is therefore particularly important to understand the locations of these suppliers and the distances they are prepared to travel in order to assess the options available to them post-merger.
- 6.53 Another source of supplier segmentation that we have considered is in relation to those suppliers with multiple sites across different regions. Suppliers that require national coverage, such as the Ministry of Defence or [X], are likely to face a restricted set of competing metal recyclers (regardless of the catchment areas of specific sites), although the Parties have argued that metal recyclers without a national presence are capable of winning

contracts with such suppliers by subcontracting with local metal recyclers or by being willing to offer collection services over a longer distance.¹¹⁰

6.54 On the scope of the geographic market for purchases, the Parties put forward a number of arguments. They argued that:

- (a) The geographic market is wider than the distance suggested by the 80% catchment areas, in particular for collection customers. The Parties argued that 80%-volume catchment areas were a poor proxy for the extent to which marginal sales would divert to other areas in response to a price change.¹¹¹ In their view, the large jump in the size of the catchment area between 80% and 90% of volumes suggested that these marginal suppliers were spread over a wide area and were likely to be capable of being served by a significant number of other competitors. They also argued that using the wider 90 to 100% catchment areas would be a more appropriate market definition for collection, as these suppliers were less sensitive to distance.
- (b) Catchment areas calculated vary over time. The Parties calculated catchment areas for three years (2015-2017) and argued that taking the widest of these three catchment areas would represent a better reflection of the suppliers' willingness to travel and the area over which competition for collection takes place.¹¹²
- (c) Processing sites have wider catchment areas than feeder sites. The Parties calculated that the 80% catchment areas were 49 to 88km for their processing sites compared to 21 to 35km for their feeder sites.¹¹³ They also pointed out that these were not independent, as EMR's network of feeder sites was likely to be a factor in its processing sites having narrower measured catchment areas.¹¹⁴ They also pointed out that Edmonton's 80% catchment area was [REDACTED]km, which was significantly more than the 50km distance adopted by us.¹¹⁵
- (d) The catchment areas for demolition and industrial customers are wider. The Parties argued that this means that these suppliers have a wider selection of competitors to choose from.¹¹⁶

110 [REDACTED]
111 [REDACTED]
112 [REDACTED]
113 [REDACTED]
114 [REDACTED]
115 [REDACTED]
116 [REDACTED]

6.55 In relation to the geographic market for shredding, the Parties argued that there is significant over-capacity in the shredding sector and that scrap metal for shredding regularly travels significant distances, well in excess of the 115km catchment area calculated based on 80% of volumes supplied to MWR Hitchin.¹¹⁷ They pointed out that this is borne out in the Environment Agency 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. The Parties submitted estimates of transport costs for a range of vehicle sizes and argued that transport costs were low. They argued that, given that scrap metal is transported by the lorry-load, incremental distances of 15-25km are *de minimis* and that a number of suppliers will ‘backload’¹¹⁸ their lorries, the incremental cost of sending material longer distances is low.¹¹⁹ They also argued that, in line with the *EMR/SITA* decision, the catchment area for shredding sites should be 140km (which was the distance between the parties’ shredder sites in that case).

6.56 The Parties submitted 70, 80 and 90% catchment areas for all of their sites in the overlap regions (London, South East, West Midlands, North East and London), pointing out that there was a significant difference between the 80 and 90% catchment areas, and that over half of their sites (55%) had an 80% catchment area of more than 50km.¹²⁰ These results are summarised for each Party in Table 6.1, below, and indicate that:

- (a) MWR’s catchment areas tend to be somewhat wider than EMR’s, consistent with EMR’s larger site network;
- (b) For both Parties, their 90% catchment areas are somewhat wider than their 80% catchment areas – for EMR this is c.40km, but we note that for MWR sites the difference is much smaller and only 6km based on the weighted averages across all of its sites; and
- (c) Across both Parties and all sites, the 80% catchment areas are between [redacted] (based on an unweighted average) and [redacted]km (based on a volume-weighted average).

¹¹⁷ [redacted]

¹¹⁸ Backload means ensuring that they are full going in both directions.

¹¹⁹ [redacted]

¹²⁰ [redacted]

Table 6.1: Parties' catchment area calculations for overlap regions, 2015-2017 (km)

	% of total volume supplied from catchment area		
	70%	80%	90%
<i>EMR sites</i>			
Simple average	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average	[REDACTED]	[REDACTED]	[REDACTED]
<i>MWR sites</i>			
Simple average	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average	[REDACTED]	[REDACTED]	[REDACTED]
<i>All Parties' sites</i>			
Simple average	[REDACTED]	[REDACTED]	[REDACTED]
Weighted average	[REDACTED]	[REDACTED]	[REDACTED]

Source: Parties' calculations based on their purchasing transaction data [REDACTED].

Catchment area analysis

6.57 At Phase 1 the CMA calculated (based on 2016 transaction data) the 80% catchment areas for each depot, ie the radius within which 80% of waste scrap metal originates, calculated by volume. The catchment areas varied between depots, but the average catchment area for a site without a shredder was 40km.¹²¹ This is broadly consistent with the 50km geographic scope adopted in the *EMR/SITA* merger. On this basis, the CMA believed that a distance of around 50km was appropriate.

6.58 For sites with a shredder, the average 80% catchment area was calculated to be around 70km and the 80% catchment area for MWR's shredder site at Hitchin was 115km.¹²² EMR submitted that a wider area should be used as many suppliers located beyond 115km are collection suppliers that are unaffected by the distance to the shredder.

Our catchment area results

6.59 At Phase 2, we have re-calculated these catchment areas using transaction data for the pre-merger period of 2017, ie January to August.

6.60 There are a number of caveats regarding this analysis, which, cumulatively, mean that it should be interpreted with some caution.¹²³ These issues include:

- (a) First, the locations may not always reflect the site where the scrap metal originated. The Parties explained that they collect suppliers' contact details only in order to comply with legislation that requires the identification of the person supplying the metal, so for suppliers working in

¹²¹ [CMA reference decision](#), paragraph 54.

¹²² [CMA reference decision](#), paragraphs 54 and 60.

¹²³ As these relate to the underlying data, these caveats apply equally to the Parties' analysis of catchment areas.

multiple locations, such as demolition firms, the postcode will usually be that of the head office rather than the site where the scrap originates.

- (b) Second, the data supplied by both Parties contains a number of transactions for which there are missing postcodes.¹²⁴ The proportion of missing postcodes varies considerably between depots but overall accounted for 7% of MWR volumes (6% of value) and 9% of EMR volumes (9% by value).¹²⁵
- (c) Finally, the calculated catchment areas appear to vary considerably over time. The Parties have pointed out that catchment areas at individual sites can change significantly as contracts are won and lost, and large suppliers switch to alternative sites and competitors. In response to this issue, the Parties have looked at catchment areas over three years, but, as set out below, these results do not point to substantially different catchment areas to those calculated using 2017 data.

6.61 Our catchment area analysis is based on straight-line distances, which may not always reflect the geographic constraints that affect particular areas in practice. For example, in London the distance that suppliers can be expected to travel to deliver to a depot may be impacted to a significant extent by congestion.¹²⁶ One option for taking this into account would be to look at drive-time catchment areas. However, given the issues identified above regarding data quality in relation to supplier locations, we consider that a more detailed analysis involving drive-times is unlikely to give a materially more accurate picture and would suffer from the same limitations as the more straightforward analysis presented below.

6.62 The catchment areas that we have calculated are a starting point in identifying the geographic area over which a scrap metal recycler finds it economic to compete. In our more detailed assessments of competition at the site and region level, we have taken account of those areas where the Parties' suppliers are clustered and the Parties are likely to compete most intensely, rather than assuming that the conditions of competition are uniform across the entire catchment area.

¹²⁴ In dealing with this issue, the suppliers with missing postcodes have been removed from the dataset. This effectively assumes that the transactions for which the postcodes are missing have the same distribution across distances as those for which postcodes are available.

¹²⁵ [REDACTED].

¹²⁶ See, for example, [REDACTED].

Catchment area calculations for London, the South East and the West Midlands

6.63 While bearing in mind the significant caveats set out above, we have looked at whether catchment areas differ between:

- (a) Ferrous and non-ferrous metal;
- (b) Suppliers that deliver and those that have their scrap collected;
- (c) Sites which have processing facilities and those which act as feeder sites
- (d) Shredder sites, in particular MWR's Hitchin site, and non-shredder sites;
- (e) Metal recyclers and other types of suppliers; and
- (f) Suppliers of different sizes.

6.64 Based on calculating where 80% of supplier volumes had originated, Table 6.2, below, sets out catchment areas for the Parties' sites – with distances for ferrous/non-ferrous and collection/delivery presented separately.

Table 6.2: 80%-volume catchment areas for Parties' sites in London, South East and West Midlands, 2017 (km)

<i>Parties' sites</i>		<i>Ferrous metal</i>	<i>Non-ferrous metal</i>	<i>Collected</i>	<i>Delivered</i>
<i>London and South East</i>					
EMR sites	Feeder	[X]	[X]	[X]	[X]
	Processing	[X]	[X]	[X]	[X]
	Shredder	[X]	[X]	[X]	[X]
MWR sites	Feeder	[X]	[X]	[X]	[X]
	Processing	[X]	[X]	[X]	[X]
	Shredder	[X]	[X]	[X]	[X]
<i>West Midlands</i>					
EMR sites	Feeder	[X]	[X]	[X]	[X]
	Processing	[X]	[X]	[X]	[X]
	Shredder	[X]	[X]	[X]	[X]
MWR sites	Feeder	[X]	[X]	[X]	[X]
	Processing	[X]	[X]	[X]	[X]
	Shredder	[X]	[X]	[X]	[X]
<i>Both Parties</i>	<i>Feeder and processing sites</i>	[X]	[X]		

Source: CMA Analysis of Parties' purchasing transaction data, January to August 2017.

Note: These catchment areas are calculated for each site and then volume-weighted averages are taken to produce the summary set out in the Table. [X]

6.65 Taking each potential segmentation in turn:

- (a) While there are some mixed results, non-ferrous catchment areas tend to be somewhat narrower than ferrous catchment areas;

- (b) On collection versus delivery, EMR sites, in general, tend to have wider collection catchment areas compared to delivery;¹²⁷
- (c) Looking at site type, feeder sites have narrower catchment areas than processing sites, which is most clear for ferrous metals and for deliveries, but for EMR sites these differences are not large¹²⁸ nor wholly consistent;¹²⁹ and
- (d) Looking at shredder sites, these tend to have wider catchment areas, at least for ferrous metals, with MWR's Hitchin site having a 115-km catchment area for ferrous metals, while EMR's shredder sites had somewhat smaller catchment areas – in the region of 50-70km for ferrous grades.

6.66 As set out at paragraph 6.54 (c), above, the Parties have argued that MWR's Edmonton site has an 80% catchment area of [REDACTED]km and so demonstrates that processing sites have a wider reach.¹³⁰ In response, we make two points:

- (a) First, EMR's processing sites have somewhat smaller catchment areas than this, eg [REDACTED]km for ferrous metals in London and the South East, and [REDACTED]km for ferrous metals at its processing sites in the West Midlands.¹³¹ This is relevant to the geographic market we define here, as we are assessing the competitive constraints on the Parties' sites in overlap regions, not just the competition that MWR faces at its Edmonton site;
- (b) Second, as is likely to often be the case in calculating catchment areas in this sector, the catchment area of the Edmonton site is sensitive to the inclusion of one large supplier that is located [REDACTED]km from the site. When this supplier is removed, the catchment area drops to [REDACTED]km (for ferrous metals).¹³²

6.67 We have also considered possible segmentation by supplier type and did not find that metal recyclers displayed a substantially higher willingness to travel than other types of suppliers, although catchment areas did vary quite widely for supplier types - see Table G.5 in Appendix G. This sets out the Parties' analysis of their sites' catchment areas in the overlap regions, and shows that:

¹²⁷ [REDACTED].

¹²⁸ Looking at EMR's sites in London and the South East, feeder sites have catchment areas of [REDACTED]km (for ferrous) and [REDACTED]km (for non-ferrous), whereas for processing sites the equivalent distances are [REDACTED]km and [REDACTED]km, respectively.

¹²⁹ Looking again at EMR's sites in London and the South East, for collection its feeder sites ([REDACTED]km) have wider catchment areas than its processing sites ([REDACTED]km).

¹³⁰ [REDACTED]

¹³¹ See Table 6.2, above.

¹³² [REDACTED]

- (a) There is a greater degree of variation across supplier types for MWR sites compared to EMR sites;
- (b) MWR sites have, on average, wider catchment areas than EMR sites for almost all types of suppliers, which is consistent with EMR's larger site network; and
- (c) The overall pattern of distances travelled are not systematically and substantially different between different supplier types, as set out in more detail in Appendix G.

6.68 It is also likely that the relevant catchment areas vary depending on the size of the transaction involved. In particular, it seems reasonable to assume that it would be more worthwhile to transport metals over longer distances to obtain a better price where the total value of the metal involved is larger, and the unit transport costs involved will vary depending on the volumes involved. On the other hand, recyclers also locate sites close to large-volume sources of waste scrap metal.

6.69 While we have not conducted a detailed analysis of transaction sizes and distance, in assessing the extent of supplier segmentation we have calculated catchment areas for suppliers of different sizes in terms of overall volumes supplied. Table G.6 sets out the 80%-volume catchment areas for suppliers of different sizes for the Parties' London, South East and West Midlands sites. This breakdown indicates that, in general, suppliers with low overall volumes are likely to be located closer to the Parties' sites, but the pattern is only clear for the smallest suppliers, with those supplying under 5 tonnes a year tending to have smaller catchment areas.

6.70 In response to the Parties' points on the scope of the geographic market set out in paragraph 6.54 above:

- (a) On the appropriateness of calculating catchment areas that account for 80% - as opposed to 90 or 100% - of supplier volume, we note that this approach has been used by the CMA and its predecessors (the OFT and the Competition Commission) in many merger cases in this and other sectors, and is generally considered as being a reasonable approximation for the area within which competition is likely to take place. In any case, our competitive assessment takes account of constraints from metal recyclers located outside the catchment areas we have defined where suppliers or competitors have identified these as being relevant. We also note that the 95 and 100% catchment areas for some sites include very extreme distances, which are likely to overstate the area over which competition is likely to take place, given the transport costs involved, eg

MWR Edmonton's 99% catchment area is in excess of [redacted]km for both ferrous and non-ferrous suppliers.¹³³

- (b) On the issue of 'marginal' suppliers at the edges of these catchment areas that may have additional competing sites to choose from, our view is that the fact that some suppliers have more options than others is not likely to constrain the Parties in any price negotiations with suppliers that are located closer to the Parties' sites. This is because, given that many (especially larger) suppliers negotiate their prices and terms bilaterally with the Parties, the fact that some suppliers may have more options does nothing to affect the prices and terms offered to those suppliers with fewer or worse options.
- (c) We accept that catchment areas may vary over time, as contracts are won and lost, and suppliers switch to different sites and competitors, but this is why we look at an overall average across all sites in order to avoid placing undue weight on one year's data from one site. In addition, as set out in Table 6.1, above, the Parties analysis of catchment areas over a three-year period yields overall average catchment areas of between [redacted]km (based on an unweighted average) and [redacted]km (based on a weighted average) across all of their sites in the overlap regions, which is very similar to our view.
- (d) On processing sites having wider catchment areas than feeder sites, this is consistent with our own analysis, above, but for most sites (bearing in mind that EMR has many more sites than MWR) 50km remains a reasonable estimate. The Parties' own calculations demonstrate this, with the average EMR processing site having a (weighted) average catchment area of [redacted]km.¹³⁴
- (e) On the Parties' argument that wider catchment areas for demolition and industrial customers mean that these suppliers have a wider selection of competitors to choose from, we note that the Parties' estimates of these catchment areas are [redacted]km for demolition suppliers, which is only slightly higher than our general approach of 50km, although the catchment area for industrial suppliers is [redacted]km, suggesting that industrial suppliers may have somewhat wider catchment areas.¹³⁵ In our assessment of competition for purchasing under tendered contracts, we have looked at those competitors that have bid against the Parties for contracts in the

¹³³ [redacted].

¹³⁴ [redacted].

¹³⁵ See Appendix G, Table G.5, last row.

overlap regions, so our use of a consistent 50-km catchment area has not excluded any relevant competitor in those markets in any case.

6.71 In response to the points made by the Parties in relation to shredding set out in paragraph 6.55, above:

- (a) On the point that there is over-capacity in shredding and that waste scrap metal travels significantly more than the 115km catchment area that we have defined, we note that 80% catchment areas will inevitably exclude those suppliers that travel furthest. As set out above, given the prevalence of negotiated prices for larger suppliers in this sector and, as set out below, given the transport costs of moving shredder feed over long distances, we do not consider that widening the catchment area would necessarily better reflect the relevant competitive constraints on a particular site.
- (b) The Parties submitted estimates of transport costs for a range of vehicle sizes and argued that transport costs were low. Their lowest estimates pointed to £[redacted]-£[redacted] per tonne based on a vehicle carrying 28 tonnes making four 50-mile trips per day with no empty or partially-full loads. These estimates are considerably lower than the estimate of £[redacted] per tonne that the Parties previously provided for transporting ferrous scrap from Salford to Liverpool (55km) and £[redacted] per tonne from Sheffield to Liverpool (128km). This may be due to the assumptions made, with longer distances or smaller loads producing higher costs per tonne.¹³⁶ In the context of shredder feed purchase prices in the region of £100-£125 per tonne, these transport costs are likely to limit the geographic scope of the relevant market.
- (c) Third-party evidence on transport costs for shredder feed also pointed towards a regional market, with [redacted], arguing that transport costs mean that suppliers in the South East have no realistic option other than EMR and MWR, which depresses shredder feed prices in the region.¹³⁷ [redacted], a metal recycler that operates a shredder in [redacted], arguing that:

¹³⁶ For example, assuming two 100-mile trips per day, rather than four 50-mile trips, gives a higher cost per tonne of £[redacted]-£[redacted] per tonne. If the material were less dense and therefore not transportable in a 28-tonne load, the costs would also rise: transporting a load of 12 or 16 tonnes over a distance of 100 miles would cost £[redacted]-£[redacted] per tonne, based on the Parties' figures. The Parties have also assumed no empty or partial loads.

¹³⁷ [redacted]

- (i) Prices for light iron are already up to £30 per tonne lower in the South East than they are [redacted] because the market is less competitive in the South East; and
 - (ii) Shredder operators pay higher prices in other regions, eg Sims in Nottingham pay more but the transport costs would be £[redacted] or £[redacted] per tonne. Its own costs for transporting shredder feed from [redacted] to its shredder in [redacted] are £[redacted] per load or £[redacted] per tonne, which makes transporting shredder feed to other regions uneconomic.¹³⁸
- (d) On the Parties' argument that we should follow the *EMR/SITA* decision and use a 140km catchment area around shredder sites, we note that this was the distance between the shredders in that case, rather than being of wider significance as a guide to competition between shredder sites.

Geographic market for tendered contracts

- 6.72 As we have identified a separate product market for tendered contracts, we have also considered whether the geographic scope of this market should be different from that for other purchases.
- 6.73 The analysis above shows that catchment areas for industrial suppliers tend to be wider than for most other types of suppliers (see Table G.5) and those for customers that have their waste metal collected tend to be wider than those for customers that deliver (see Table G.6). However, the pattern for large customers is less clear. At some sites the catchment areas for the larger customers are much wider whereas for others they are significantly narrower than 50km.¹³⁹
- 6.74 Our assessment of competition for purchases under tendered contracts focusses on those contracts for which the Parties have bid in each region where MWR and EMR overlap, and on those metal recyclers that have bid against the Parties in relation to these contracts. Our assessment therefore captures those suppliers for which the Parties compete (and in relation to which the merger may lead to a weakening in that competition) and it captures those metal recyclers that are likely to constrain the Parties post-merger, regardless of where they are located.¹⁴⁰

¹³⁸ [redacted]

¹³⁹ See Table G.6. For example, looking at EMR's West Midlands sites, its largest suppliers to its Birmingham, Darlaston and Kingsbury sites have catchment areas of [redacted]km, while for EMR's other West Midlands sites (Coventry and Smethwick) the catchment areas for the largest suppliers are [redacted].

¹⁴⁰ As set out in Chapter 10, we have sought evidence from other metal recyclers and from industrial suppliers in relation to other tenders for which the Parties had not bid. However, there may still be contracts that are tendered

6.75 We have taken as our starting point competition for suppliers within the 50km catchment areas around sites, as for other purchases of waste scrap metal (excluding shredder feed), but have, in effect, treated these as identifying the relevant regions rather than rigidly following the areas enclosed by these catchment areas. We note that some suppliers have requirements for sites located close by where, for example, this enables the recycler to better handle any large and fluctuating volumes or meet the particular service requirements of the supplier.

Conclusion on the geographic market for the purchase of waste scrap metal

6.76 Our analysis points towards the 50km catchment areas around each site as being a reasonable starting point for assessment of competition for supplies of scrap metal to feeder and processing sites without shredders – including for suppliers that tender their contracts. This is based on:

(a) The Parties' data on the average 80%-volume catchment areas across all their sites, which was [redacted]km, as set out in Table 6.1, above,¹⁴¹ and similar results when averaged across supplier types (Table G.5 in Appendix G),¹⁴² and

(b) Our analysis of catchment areas for the Parties' feeder and processing sites in London, the South East and the West Midlands (Table 6.2) which shows a wide range of distances across regions and between the Parties, but the overall average for ferrous volumes is [redacted]km and [redacted]km for non-ferrous supplies to these types of sites.¹⁴³

6.77 Having assessed a number of possible ways to segment suppliers, we did not find systematic and substantial differences between ferrous and non-ferrous suppliers, although we note that EMR's collection areas tended to be wider. We did find that smaller suppliers tend to travel less far and that feeder sites tended to have smaller catchment areas than those with processing equipment (shears and/or balers), but these results varied somewhat across the Parties and across regions. In conclusion, we have not defined separate markets based on these differences.

6.78 In relation to shredder sites, a wider geographic market is appropriate. Taking account of the 80%-volume catchment area of MWR's Hitchin site, the

by suppliers within 50 km of the Parties' sites, but which we may not be capturing. To the extent that these are contracts where the loss of competition between the Parties is irrelevant, the omission of these from our assessment is unlikely to alter our conclusion.

¹⁴¹ Table 6.1, last two rows.

¹⁴² Appendix G, Table G.5, first column.

¹⁴³ Table 6.2, last row.

somewhat narrower catchment areas of EMR's shredder sites, and also noting the Parties' arguments in relation to the area over which shredder sites attract volumes, defining a catchment area of 115km in relation to shredder sites is a reasonable approach in this case.

- 6.79 In our competitive assessment, we take account of constraints from metal recyclers located outside these catchment areas, where appropriate, as well as taking account of variations in competitive locations within these catchment areas.

Geographic market for the sale of processed scrap metal

- 6.80 A key feature of this sector is that there are international markets for scrap metal. UK supply exceeds demand and the majority of UK arising scrap is exported, including by the merging Parties. Approximately 70% of UK ferrous processed scrap metal is exported and EMR has estimated that 57-68% of UK non-ferrous processed scrap metal is also exported.¹⁴⁴ EMR itself exports [redacted] [80-90%] of the scrap metal that it sells in the UK.¹⁴⁵
- 6.81 At Phase 1, the geographic market for the sale of processed scrap was defined as being national. The market was considered not to be international because imports were negligible and did not impose a constraint on sales by UK metal recyclers to UK customers. Also, despite the significant share of processed scrap metal that is exported, many (mostly smaller) recyclers did not have export facilities. The CMA, at Phase 1, also considered regional markets within the UK, but rejected this on the basis that many recyclers stated that they supplied customers all over the UK. We note the OFT's decision in the *Sims/Dunn* merger considered the trade of ferrous and non-ferrous scrap metals in the UK, but also pointed to evidence that the market for trade in scrap metal was international in scope.¹⁴⁶
- 6.82 The Parties argued that the geographic market for the supply of processed scrap metal is global, with neither the UK nor specific regions of the UK forming separate markets for the sale of scrap metal. They argued, in particular, that it is easy for metal recyclers of all sizes to access export markets using containers, making export markets no more difficult to serve than domestic customers. Given the importance of exports, in EMR's view, the market should be defined as global and, at the very least, significantly wider than the UK.¹⁴⁷

¹⁴⁴ [redacted].

¹⁴⁵ Calculated by dividing total exports from all EMR depots by total sales from all EMR depots.

¹⁴⁶ *Sims/Dunn decision*, paragraphs 35 and 36.

¹⁴⁷ [redacted].

- 6.83 EMR pointed out that our definition of a UK-wide frame of reference for the sale of processed scrap metal at Phase 1 appeared to be more conservative than the approach 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.¹⁴⁸
- 6.84 In assessing the competition for supply of processed scrap metal in the UK, our focus is on the options available to UK customers, ie steel mills, foundries, etc. and where these sources are based. We set out below a summary of the evidence that we have on:
- (a) The constraint from imports, which is relevant to whether the market should be national or international; and
 - (b) Metal recyclers' catchment areas within the UK, transport costs and customer segmentation, which is relevant to whether the market should be regional or national.

Constraint from imports

- 6.85 In principle, imports could be a source of constraint, but, given that the UK generates a surplus of most scrap metals far above UK domestic requirements, there is no reason for imports and we understand that these are negligible, with almost none of the customers responding that they import scrap metal from overseas.¹⁴⁹
- 6.86 On the cost of importing scrap metal, [X] told us that there is a significant price premium for importing scrap metal into the UK compared to domestic supply. [X] estimates the price premium is approximately £40 - £45 per tonne for NPS. The additional costs of importing scrap metal from abroad include:¹⁵⁰
- (a) [X];
 - (b) [X];
 - (c) [X];
 - (d) [X]; and

¹⁴⁸ See [EMR/SITA](#) decision, paragraph 45.

¹⁴⁹ [X] told us that the UK generates significantly more scrap metal than is required for domestic use. As such, it is very uncommon for end-users of scrap metal in the UK to import scrap from abroad. In this regard, in the last five years, [X] has not imported any scrap metal into the UK. [X].

¹⁵⁰ [X].

(e) [REDACTED].

6.87 [REDACTED] believes that even in response to a 5-10 per cent increase in the price of domestic scrap, UK customers would be unlikely to import scrap metal from abroad. [REDACTED] made the same point, that even if, in principle, it was possible to import, the transport and port costs (at £10-15 per tonne) made this unattractive, in the context of prices of £200 to £230 per tonne.¹⁵¹

6.88 Since the publication of our provisional findings, the Parties brought to our attention that GFG Alliance, the parent company of Liberty House (of which Liberty Steel is a part), has acquired the freehold and cargo-handling services of Bird Port in Newport in July 2018, which the Parties argued is evidence of a constraint from imports. The Parties referred us to an online article stating the following:¹⁵²

(a) Bird Port mainly handles exports for neighbouring steelmakers Celsa Steel and Tata Steel, along with shipments from Liberty Steel in Newport.

(b) Aside from serving as an export terminal, Bird Port could also serve as a destination for any ferrous scrap imports required by the new Liberty EAF.

6.89 However, Liberty Steel told us that the acquisition of Bird Port does not impact the attractiveness and/or profitability of importing ferrous scrap metal or NPS scrap into the UK as discussed, above.¹⁵³

6.90 Furthermore, the GFG Alliance already owns port and cargo handling facilities in the UK.¹⁵⁴ In Liberty Steel's view, if it were economical to import ferrous scrap and NPS scrap into the UK, the GFG Alliance already had the ability to do so prior to the Bird Port acquisition.¹⁵⁵

6.91 These views were consistent with a number of other third-party comments on the limited constraint from imports, as well as with the fact that imports at present are negligible.

6.92 In light of the limited constraint from imports on the sale of NPS to UK customers, we do not consider it appropriate in this case to consider the geographic scope to be wider than the UK.

¹⁵¹ This related to HMS 1 and 2 - a grade of ferrous metal that is commonly sheared and exported from the UK. [REDACTED].

¹⁵² EMR submission, 9 July 2018 – referencing an article on the [Argus Media website](#), titled 'GFG Alliance buys south Wales port operations', dated 6 July 2018.

¹⁵³ [REDACTED].

¹⁵⁴ Another port on the Usk at Newport, and the Blyth port at Newcastle.

¹⁵⁵ [REDACTED].

- 6.93 In relation to the EMR's submissions about the importance of exports, whilst we acknowledge that export sales are significant, this does not mean that they constrain the prices charged to UK customers. We take account of the potential constraint provided by materials arising in the UK which are currently exported in our competitive assessment in Chapter 11.
- 6.94 In relation to EMR's submissions that our geographic market definition is not consistent with the OFT's comments in its Phase I merger decision in *EMR/SITA*, we note that the OFT's assessment was concerned with the sale of processed ferrous and non-ferrous scrap metal as a whole, not specifically with the sale of NPS. In any event, the OFT merely noted in that case that the market *may* be international in scope. It also found (consistent with the evidence in this case) that importing of scrap metal occurred only rarely.

Regional differences within the UK

- 6.95 In assessing whether a national market may be too wide, we have considered evidence and views on:
- (a) Catchment areas within the UK;
 - (b) Transport costs within the UK, especially when compared to export costs; and
 - (c) Customer segmentation.

Sales catchment areas within the UK

- 6.96 As part of the Phase 1 process, EMR submitted catchment areas for the Parties' sales from each site, covering the area over which 80% of their sales to UK customers were made. These are summarised in Table 6.3 below. This shows that, in comparison to the purchase of scrap metal, catchment areas are larger for the supply of scrap metal, averaging [X]km for MWR and [X]km for EMR non-shredder sites.

Table 6.3: Parties' catchment areas for 80% of supplied material based on distance (km)

	Average catchment areas (80% sales to UK customers)	
	Ferrous metal	Non-ferrous metal
<i>MWR sites</i>		
Site	[REDACTED]	[REDACTED]
Shredder	[REDACTED]	[REDACTED]
<i>EMR sites</i>		
Site	[REDACTED]	[REDACTED]
Shredder	[REDACTED]	[REDACTED]
<i>EMR and MWR</i>		
Site	[REDACTED]	[REDACTED]
Shredder	[REDACTED]	[REDACTED]

Source: CMA calculations based on CRA's analysis of Parties' transaction data for 2016

6.97 The Parties argued that they serve customers all across the UK. In Phase 1, a number of customers (including ones that collected and ones that had supply delivered) described the average distances to their processed scrap metal suppliers. Table 6.4 summarises their responses. Most customers stated that their suppliers are located over 120km away, with some stating their suppliers are located all over the UK and even (for 2 of the 13 customers) internationally.

Table 6.4: Average distance (km) to customers' supplier(s)

Delivery method	Distance	Number of customers
Collection	160-320km	2
	UK-wide	1
Delivery	30km	1
	65km	1
	130-150km	3
	UK-wide	1
	International	2
Both	120km	1
	UK-wide	1

[REDACTED]

6.98 Metal recyclers also indicated that their customers were often located significant distances away from their sites. When asked to estimate the 'average distance within which 80% of your customers are located', larger metal recyclers typically gave distances of between 100 and 200km for ferrous metal sales. These responses are set out in table 6.5 below.

Table 6.5: Metal recyclers' estimates of their 80% catchment areas for sales (km)

Metal recycler	(Km)	
	Ferrous catchment area	Non-ferrous catchment area
[REDACTED] Amphill Metals	[REDACTED] 100-200	[REDACTED] 50-100
[REDACTED] Sackers Recycling	[REDACTED] 100	[REDACTED] 50
[REDACTED]	[REDACTED] 200	[REDACTED] 200
[REDACTED]	[REDACTED] 400	[REDACTED] 200

Source: Third-party submissions to the CMA.

Transport costs within the UK, especially when compared to export costs

6.99 Although customers purchase processed scrap metal over long distances, the costs of transporting metal within the UK can be similar to international transport costs. This can affect the willingness of recyclers to supply UK customers rather than exporting their scrap.

6.100 On the costs of exporting relative to the costs of transport within the UK, EMR put forward a number of relevant cost estimates:¹⁵⁶

(a) International shipping: \$15-20 per metric tonne for ferrous metal;

(b) Example costs of transporting ferrous scrap to dock facilities by road: £[REDACTED] per tonne for Salford to Liverpool; £[REDACTED] per tonne from Sheffield to Liverpool; and

(c) Example costs of transporting by rail: £[REDACTED] per tonne from Sheffield to Liverpool

6.101 [REDACTED] set out indicative costs of exporting from the UK to US customers of NPS. [REDACTED]¹⁵⁷

6.102 [REDACTED]

6.103 [REDACTED] [A metal recycler's] view was that scrap metal arising in London did not travel outside the London area, due to traffic congestion and the lack of any customers for processed scrap metal within 'a few hours of London'. In its view, the only 'route to market' for scrap metal arising in London is export.¹⁵⁸ However, it considered that, apart from the London area, processed scrap metal could be supplied from anywhere in the UK as the market was an international one.¹⁵⁹ It gave a number of examples of UK customers that it

¹⁵⁶ [REDACTED]

¹⁵⁷ [REDACTED]

¹⁵⁸ [REDACTED]

¹⁵⁹ [REDACTED]

supplied in various regions, typically within a 125-mile (200-km) radius of its sites.¹⁶⁰

Customer segmentation

- 6.104 On customer segmentation, we have considered whether it is appropriate to define a separate geographic market for customers of NPS, while also considering specific issues raised by other customers. In relation to both these NPS customers and a number of customers of other specific grades, the issues raised related to the services that needed to be offered alongside the supply of metal. These requirements have implications for the proximity of metal recyclers' sites and the extent to which this limited the set of metal recyclers that could effectively compete to supply these customers.
- 6.105 We received some evidence that suggested that the services and logistical arrangements associated with supplying processed scrap metal to some customers means that competition does not take place nationally. For example, [REDACTED] stated that having a metal recycler's site nearby was an important factor in deciding which recycler to source from [REDACTED]¹⁶¹ [REDACTED]¹⁶²
- 6.106 Given that these issues only arose in relation to a very small number of customers and in relation to very specific grades or circumstances, we took the view that defining different geographic markets for specific customers types was not necessary.

Conclusion on the geographic market for the sale of processed scrap metal

- 6.107 Overall, while it seems reasonable to assess competition for the sale of processed scrap metal on the basis of a national market, there are likely to be important regional variations and issues around the needs of specific customers that need to be considered when assessing the closeness of competition between metal recyclers. In particular, scrap metal arising in London and scrap metal that has been supplied to metal recyclers' sites located close to docks may be more likely to be exported and thus less likely to be supplied to UK final customers. In addition, certain customers may have specific requirements (such as proximity of metal recyclers' sites) which limit the range of metal recyclers from which they can purchase.

¹⁶⁰ [REDACTED]

¹⁶¹ [REDACTED]

¹⁶² [REDACTED]

Conclusions on market definition

6.108 Our conclusion on the scope of the relevant product and geographic markets are set out below.

6.109 On the product market for purchasing scrap metal, we conclude that:

- (a) The purchase of ferrous and non-ferrous waste scrap metal (excluding purchases under tendered contracts, including of NPS, and shredder feed) forms a relevant market;
- (b) The purchase of shredder feed forms a separate market; and
- (c) The purchase of waste scrap metal under tendered contracts forms a separate market.

6.110 On the product market for sales of processed scrap metal, we conclude that there are separate markets for:

- (a) The sale of ferrous scrap metal (excluding NPS);
- (b) The sale of non-ferrous scrap metal; and
- (c) The sale of NPS.

6.111 On the geographic scope of the market for purchasing, we conclude that:

- (a) A 50km catchment area around each feeder or processing (but not shredder) site is an appropriate starting point for the assessment of competition in purchases of non-shredder feed, including under tendered contracts; and
- (b) For purchases of shredder feed at shredder sites, a catchment area of 115km around each shredder site is appropriate.

6.112 On the geographic scope of the market for sales, we conclude that this is national, but we take into account transport costs when assessing the closeness of competition between metal recyclers, eg material arising close to ports or in London may be a weak constraint on metal recyclers in other parts of the UK.

7. Framework for the assessment of competitive effects

7.1 The UK metal recycling industry provides the activities and commercial arrangements necessary to link UK suppliers that have waste scrap metal they need to get rid of with customers of processed scrap metal located either in or outside the UK. The large bulk of scrap metal processed in the UK is exported. However, given the substantive test that we are required to answer (paragraph 1.3) we have focussed our inquiry on the effects of the merger on suppliers and customers in the UK.

7.2 In light of the relevant markets defined in chapter 6, above, our competitive assessment considers in detail 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 metal (excluding shredder feed) in the London region (chapter 9);
- (c) purchases of ferrous and non-ferrous metals under tendered contracts in the West Midlands, the North East, and Wales (chapter 10);
- (d) Sales of NPS to UK customers (chapter 11); and
- (e) Sales of other ferrous and non-ferrous metals to UK customers (chapter 12).

7.3 We do not set out a detailed assessment of the following markets where we were able to rule out concerns at an early stage:

- (a) Purchases of ferrous and non-ferrous metals under tendered contracts in London, where we ruled out concerns on the basis that there are very few tendered contracts in the region and suppliers commented that they have several alternatives to the Parties.¹⁶³
- (b) Purchases of ferrous and non-ferrous metals (other than under tendered contracts) in the North East, West Midlands, or Wales, where we ruled out concerns on the basis that MWR in these regions is specialised in purchasing scrap metal from manufacturing, while for more general suppliers it is the fifth or sixth largest metal recycler in these regions,¹⁶⁴ and because there is a larger number of credible competitors for these

¹⁶³ [REDACTED]

¹⁶⁴ For example, MWR does not serve 'door trade' customers at its sites in the West Midlands and North East.

more general suppliers in each region than is the case for tendered contracts.

(c) Purchases of shredder feed in the North East, West Midlands, or Wales, where we ruled out concerns on the basis that MWR does not operate a shredder site in these regions.

7.4 This chapter first sets out the theories of harm that we are considering in this merger. It then describes the various ‘routes to market’ that scrap metal can take from supplier to customer, and highlights how these influence competition in the industry. It then sets out the key data sources and evidence that we have used in considering the effects of the merger on competition. Finally, it discusses some of the overarching evidence on the nature of competition in purchasing across all markets, and how it varies between small suppliers and large suppliers.

Theories of harm

7.5 The theories of harm that apply in these markets fall into two categories:

- (a) Horizontal unilateral effects in purchasing markets; and
- (b) Horizontal unilateral effects in sales markets.

7.6 In each case the theory of harm is that the merged firm will have an incentive to increase its margins by worsening the terms that it offers. This would be because suppliers and customers that one of the Parties, had it attempted to worsen terms before the merger, would previously have lost to the other Party will be retained by the merged entity post-merger. In the case of the sales markets, the possible detriment is that prices will rise and customers pay more for their scrap metal. In the case of the purchase markets, the possible detriment is that the amount paid to suppliers for waste scrap metal will fall. In both cases, there may also be a worsening in the quality of service as a result of the merger.

7.7 In considering the harm likely to arise from the merger, we note that prices are, in general, bilaterally negotiated with both suppliers and customers. The implication of this for our assessment is that where individual suppliers or customers have good alternative choices of metal recyclers (or other sources of countervailing power), this is unlikely to provide a constraint on the prices charged to other customers or paid to other suppliers that do not have such good options.

7.8 In addition to the customers to whom the Parties sell processed scrap, suppliers of waste scrap metal are also, in a sense, the Parties’ customers,

with the Parties offering them a waste disposal and recycling service. Since the waste scrap metal has value, metal recyclers are not only willing to provide the recycling service but are willing to pay for the scrap, so the payment flows in the opposite direction to what we would normally expect from firms providing a service. Our concern in this case is that, as a result of the merger, the implicit price of the recycling service goes up, resulting in lower payments to the supplier. This is consistent with the way that the suppliers and recyclers think about the market: suppliers of waste scrap metal describe themselves as customers, and are referred to as such by the metal recyclers.

7.9 The Parties have argued that the potential harm to suppliers in the purchasing market should be weighed against a benefit to customers on the downstream sales market, saying that if the Parties were to decrease prices to suppliers then effective competition downstream in sales of scrap metal would lead to the lower prices being passed on to customers.¹⁶⁵ They argued that, if our theory of harm is that input prices may be reduced, then we must weigh the loss of rivalry in the purchasing market against the expected increase in competition on the downstream (sales) side. However, we note that:

- (a) 'Pass-through' of input costs savings to savings for final customers is rarely expected to be 100%, meaning that any loss to suppliers would be greater than the gain experienced by customers; and
- (b) The Parties have not submitted any evidence on pass-through, whilst EMR's estimates of synergies from the merger¹⁶⁶ did not foresee that this reduction in costs would be passed through to customers in the form of lower prices.¹⁶⁷

7.10 We therefore do not consider that any customer benefits are likely to arise from the merger.

7.11 A number of metal recyclers expressed concern that the merger will allow EMR to pay higher prices to suppliers to the disadvantage of competing metal recyclers, due to its greater scale and efficiency in the processing, transport and/or onward sale of waste scrap metal. Where the concern relates to the difficulty competitors would have in matching prices that the Parties would be able to pay for waste scrap metal, rather than a concern that a loss of

¹⁶⁵ [REDACTED]

¹⁶⁶ Synergies would involve reduction in marginal costs, ie a directionally similar effect to a reduction in the price at which EMR purchases scrap metal,

¹⁶⁷ [REDACTED]

competition would result in lower prices being paid to suppliers, there is less immediate concern about detriment arising from the merger.¹⁶⁸

Routes to market

7.12 The route from supplier to customer taken by a quantity of scrap metal can vary in respect of:

- (a) The type of supplier from which it is sourced (eg door trade, demolition contractor, industrial supplier, or another metal recycler) and whether it is bought on a contract or 'spot' basis;
- (b) The location at which it arises;
- (c) Whether it requires processing or can pass through a feeder or other site with minimal processing;
- (d) The type of processing (and therefore equipment) it needs to go through;
- (e) Whether it is sold to a UK or export customer;¹⁶⁹ and
- (f) In the case of export, whether it is exported in a container, via a short-sea dock or via a deep-sea dock, and whether it is sold via a trader or directly to a customer outside the UK.

7.13 The route to customers will also vary according to metal type. Broadly speaking:

- (a) Non-ferrous metals come from varied sources and often require little processing before being sold to UK customers or exported. When they are exported, this usually occurs using containers, often via traders.
- (b) Shredder feed comes from varied sources. There are certain types of scrap which must usually 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, processed shredder feed is often substitutable for other non-shredded grades, and is almost all exported, usually in bulk.

¹⁶⁸ However, we note that concerns could arise in the long term if competition were sufficiently weakened such that the Parties no longer had an incentive to pay higher prices in order to attract purchases of waste scrap metal.

¹⁶⁹ [REDACTED] of EMR's sales go to UK customers as do [REDACTED] of MWR's sales [REDACTED].

- (c) NPS usually comes from factories, requires limited processing other than baling, and is exported in containers or bulk, as well as being sold to UK customers (ie steel mills and metal foundries).
- (d) Other ferrous materials from varied sources can require shearing, and are mostly exported in bulk, as well as being sold to UK customers.

7.14 There are many paths that scrap metal can take through the supply chain. An individual metal recycler may purchase from an initial source, from another metal recycler (who may not have undertaken any processing or may have done some initial processing such as baling), or from a metal recycler that has fully processed the metal. The same metal recycler, to reach a customer, may either export via its own bulk export facility, sell to another metal recycler that has access to bulk export, to a trader for container export, or to a UK customer (or indeed to another metal recycler that sells to a UK customer). In some cases, the metal recycler that provides the necessary transport or processing does not take ownership of the scrap involved, but is instead paid for the services provided, under a tolling arrangement. In other cases, the recycler may take ownership but immediately sell the metal on, without the material ever passing through the recycler's own site ('truck trade').

7.15 We heard that metal recyclers may sell to other recyclers for one of several reasons including:

- (a) for processing, where the recycler does not have the relevant processing facilities (eg a shredder), or does not have the relevant facilities nearby;
- (b) for export, in cases where the recycler does not have dock facilities that allow it to access whichever export market is most lucrative at the time, and/or where the recycler does not have sufficient volumes available to fill a bulk cargo;
- (c) for onward sale to UK customers in cases where the metal recycler finds it difficult to meet the UK mills' quality or service requirements, or is unable or unwilling to accept the associated requirements such as delayed payment terms, and the credit risk associated with UK mills; and
- (a) to balance supply and demand by selling on to other recyclers in cases where the recycler does not have an option for quickly getting the scrap to a final customer or by buying metal where it has an identified customer but does not have sufficient volumes of its own.

7.16 We consider that it is not essential for each competitor to offer every stage in each route to market, because if metal recyclers find it more profitable (or

feasible) they can and do sell to other recyclers rather than themselves doing the required processing, or making UK or export sales.

- 7.17 The Parties submitted that for a metal recycler to exert a strong competitive constraint, it is not necessary for it to offer all stages of all routes to market, since once waste scrap metal is received at a site, it can be moved in bulk at low cost, enabling the selling metal recycler to seek the best price from other metal recyclers over large geographic areas.¹⁷⁰
- 7.18 However, competitive purchase and sale prices (and service) for any given scrap or processed metal depend on there being sufficient competitors at each stage of the chain that applies to each metal type. Also, 'vertically-integrated' firms that can participate in multiple or all the stages involved may have an advantage over rivals that are present in only one stage,¹⁷¹ meaning that it is particularly important to maintain rivalry between such firms as they are less strongly constrained by other firms.
- 7.19 Given the different processing requirements of different metals, we consider that:
- (a) Competitors with no or limited processing equipment may exert some constraint on the purchasing and sales side of the market, particularly in relation to metals that can be shipped without processing (such as many non-ferrous metals); and
 - (b) A competitor will exert a stronger constraint on the purchasing and sale sides of the market if it also has the relevant processing equipment (such as a shear, baler or shredder depending on the type of scrap metal).
- 7.20 In relation to exporting, the Parties submitted that all metal recyclers are readily able to access the global export market via a number of options and it is not necessary for a metal recycler to have its own export facilities. Specifically, they submitted that:¹⁷²
- (a) container export is easily accessible to all metal recyclers, and particularly useful for exporting non-ferrous metals, and NPS, as well as being suitable for processed shredder feed.

¹⁷⁰ [REDACTED]

¹⁷¹ Because of the elimination of double marginalisation. This may arise when 'firms supplying the input and producing the final product set their prices independently and both charge a mark-up, resulting in prices to customers for the final product being higher than would suit the joint interests of both firms.' [Merger Assessment Guidelines paragraph 5.7.10](#)

¹⁷² [REDACTED]

- (b) there are multiple short-sea exporters.
- (c) a number of companies operate without deep-sea dock facilities and owning a deep-sea dock facility is not necessary in order to access deep-sea export markets.¹⁷³
- (d) deep-sea ports in the UK are readily accessible. In addition to UK deep-sea ports¹⁷⁴ recyclers can access deep-sea export through ‘trans-shipment’ (transferring from short- to deep-sea vessels at a port outside the UK, for example Rotterdam). The Parties submitted that it is also possible to rent dock facilities for a single cargo.¹⁷⁵
- (e) docks have wide catchment areas: across EMR’s 10 dock sites the catchment areas from which 80% of volumes are purchased vary from [redacted] to [redacted] km based on 2017 transactions (and between [redacted] to [redacted] km based on transactions for the three-year period 2015 to 2017). The Parties submitted that the true catchment area of docks is also significantly expanded by the use of feeder sites.¹⁷⁶

7.21 From third parties, we heard that:

- (a) Where a recycler does not have direct access to a bulk export facility, it can sell to other metal recyclers that do have such access.¹⁷⁷ Even in circumstances where a recycler does have its own bulk facilities it may sometimes sell to other recyclers, for example where it has scrap arising close to the other recycler’s facility, or where it does not itself have sufficient volumes for a full cargo and would rather sell volumes on promptly than wait for a full cargo to accumulate.¹⁷⁸
- (b) Many recyclers use container export, and it is relatively easy to access via traders,¹⁷⁹ although we have been told that demand from traders is subject to large fluctuations.¹⁸⁰
- (c) Although traders may commission bulk cargoes, they will do so via a recycler that owns or rents dock facilities, so a recycler that wishes to

173 [redacted].
174 [redacted].
175 [redacted].
176 [redacted].
177 [redacted].
178 [redacted].
179 [redacted].
180 [redacted].

access bulk export markets must do so through its own facilities or another recycler.

- 7.22 We were also told that a metal recycler can offer better prices to suppliers if it has good routes to market – ie the necessary processing facilities and the ability to export by multiple routes, and to sell to UK customers.¹⁸¹
- 7.23 In light of these comments, we consider that many recyclers are likely to exert some constraint in purchasing, as a result of their ability to export via containers, but that a recycler will exert a stronger constraint if it also has access to bulk export through a short-sea dock (as MWR does in London¹⁸² and EMR does at multiple locations), and even more so if it has a deep-sea dock facility (as EMR does at multiple locations, including close to London, and MWR does at Seaham in the North East).
- 7.24 Throughout our assessment, we have considered whether, even if there are seemingly many metal recyclers competing to purchase scrap metal, the level of competition may not be as strong as it first appears, or may not be maintained throughout the supply chain, if those recyclers cannot process scrap or sell it to customers. For example, we estimate that around two-thirds ([REDACTED]) of UK metal exports are currently made by only four firms, as set out in Table 7.1.¹⁸³
- 7.25 In doing so, we have taken account of the equipment and dock facilities that each competitor has available, but also note that where a metal recycler considers that rivals have better routes to market than it does, it can sell material on to them. The extent to which a recycler sells to others (and buys from them) may, therefore, be informative of its overall strength – the more it sells to others, the worse are its own routes to market likely to be; the more it buys, the more it is used as a route to market by others.
- 7.26 We have also taken into account the Parties' role as a route to market for other recyclers, and how the merger may affect competition in the provision of this route. However, MWR does not itself currently export large volumes directly – in our regional assessments where relevant we take account of MWR's relative strength at providing a route to export.

¹⁸¹ [REDACTED].

¹⁸² Although MWR's licence to use this facility will expire in late 2018.

¹⁸³ [REDACTED].

Table 7.1: Share of exports of ferrous and non-ferrous scrap metals

	<i>Total Exports (Ferrous and Non-Ferrous)</i>	<i>Share of Exports</i>
EMR	[REDACTED]	[40-50%]
MWR	[REDACTED]	[0-5%]
<i>Parties Combined</i>	[REDACTED]	<i>[40-50%]</i>
Sims	[REDACTED]	[10-20%]
S Norton	[REDACTED]	[10-20%]
Other competitors	[REDACTED]	[30-40%]
Total	8,983,000	100%

Source: Parties, Sims, S Norton. Parties' estimate of total exports, based on ISSB data. [REDACTED].

Information sources

- 7.27 This section discusses the information sources used in our analysis. The main sources used are data on purchase and sales volumes, which we have used to generate market shares; bidding data; third-party responses to information requests; and a survey of suppliers of scrap metal to the Parties' sites.
- 7.28 Our assessment has not included any detailed analysis of pricing (eg how UK pricing relates to international pricing, or how regional prices may be affected by local competition) given that most prices are set on a spot basis and so vary widely over time, specific metal grade, and volume/customer, making it difficult to isolate the effects of interest.

Market shares and other data

- 7.29 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 and verified by a large number of market participants. We are confident in the overall picture presented by the evidence, but have interpreted each piece carefully.
- 7.30 Market shares based on metal recyclers purchase volumes, in particular, have been interpreted with caution, in part because it is common for metal recyclers to make sales between one another. This 'inter-merchant trade' leads to some double counting of purchase volumes. It means that the same scrap metal volumes are likely to be counted in the 'market share' of multiple recyclers, and a recycler that buys 10,000 tonnes and sells it on to another recycler without processing it will appear to have the same market share as a recycler that buys 10,000 tonnes, processes it, and delivers it to a final customer in the UK or through its own export facilities.
- 7.31 Our market share estimates are explained in more detail in Appendix D. The data sources that we have used in these calculations are a combination of:

- (a) Data submitted by the Parties and the relevant third parties on their own purchases; and
 - (b) Environment Agency data on volumes handled at licensed sites, where responses from the metal recyclers in question were not received.
- 7.32 As the Parties have noted, there is also a substantial tail of smaller sites that do not appear in the Environment Agency data and whose volumes are therefore only captured in our volume shares calculations to the extent that their waste scrap metal is sold on to larger recyclers. We do not think this is a major weakness in our estimates given that these small sites are likely to compete only for the smallest suppliers (see paragraph 7.46 for discussion of this point).
- 7.33 We consider that the volumes captured in our purchasing figures reflect a metal recycler's overall position in the market: where a large metal recycler has high volumes that include scrap purchased from smaller recyclers, this is likely to reflect the fact that it has the necessary processing facilities or good routes to market or both. These put it in a strong position to purchase this material and makes this an attractive option for the recycler that purchased it from the original source. The 'double-counting' reflects this strong position and the fact that any loss in competition between those recyclers with processing facilities or good routes to market, or both, also affects competition for purchases from the original supplier of the scrap. In this way, the larger, and/or more vertically-integrated, recyclers impose both a direct constraint on smaller recyclers (ie they compete for scrap from suppliers) and an indirect constraint (ie they buy scrap from the smaller recyclers and therefore provide an upper limit to what the smaller recyclers can pay for the scrap). We acknowledge that the overall purchase volumes combine metal recyclers' positions at different levels of the supply chain, but we nevertheless consider that this still provides a useful indication of their relative strengths in the market as a whole.
- 7.34 Overall, we think that while market shares might overstate EMR's significance in instances where its only role is in exporting materials that have been processed by other recyclers, they may also overstate the strength of smaller recyclers whose only role is in purchasing from original sources. We therefore:
 - (a) Use market shares to understand, in broad terms, the relative strength of competing recyclers; and
 - (b) Where possible interpret these alongside information on the proportion of each recycler's sales which are made to other recyclers (and for some

competitors, the proportion bought from other recyclers), to help us understand their dependence on other recyclers for processing and export or sale to UK mills and foundries.

Third-party evidence

- 7.35 We have taken into account submissions from the Parties and third parties which are specific to each geographic and product market in question. In the course of the inquiry, we received evidence from 65 suppliers of waste scrap metal, 38 metal recyclers, and 25 customers of processed scrap metal. With some third parties, we held in-depth hearings. A summary of these hearings is available on the CMA website.¹⁸⁴
- 7.36 We note that some of these third parties may have more than one relationship with the Parties, as supplier, competitor, and customer, and in some cases they were also rival bidders or potential bidders in the sales process in which EMR bought MWR. In deciding what weight to place on third party comments, we have taken into account the nature of their relationship with the Parties and their commercial incentives. We were told that, following publication of our provisional findings, EMR had been visiting various third parties encouraging them to make submissions to the CMA.¹⁸⁵ We have taken this into account in deciding what weight to give to unsolicited third-party submissions received following our provisional findings, in particular where such submissions were inconsistent with evidence received from the same party at an earlier stage in the inquiry.

Survey evidence

- 7.37 As part of the evidence gathering for the case, we commissioned a telephone survey of the Parties' suppliers in London, the South East and the West Midlands.¹⁸⁶ The survey company conducted 800 interviews.
- 7.38 The interpretation of the survey results, and the inferences that can be drawn from them about the population of the Parties' suppliers are particularly difficult for this survey for the following reasons:

¹⁸⁴ [CMA case page](#)

¹⁸⁵ [REDACTED].

¹⁸⁶ The survey covered suppliers of the following sites: EMR South East – Bedford, Boreham, Brentford, Canning Town, East Tilbury, Erith, Mitcham, Rochester, Tilbury Dock, Wandsworth, Willesden; MWR South East – Edmonton, Hitchin, Neasden; West Midlands EMR – Coventry, Darlestone, Kingsbury, Landor, Smethwick; West Midlands MWR – Cradley, Hockley, Telford. The survey was conducted by DJS Research Ltd. A copy of DJS's survey report has been published on the [CMA case page](#).

- (a) The sampling frame (ie the list of suppliers provided to the survey company) included only those suppliers for which the Parties were able to provide contact details (a low proportion of the total).¹⁸⁷ This is likely to have resulted in a sampling frame that was unrepresentative of the population of suppliers.
- (b) The number of completed interviews was small at most sites and very small at some. The target set for the market research agency of 120 completed interviews per site was only achieved at three sites (all EMR sites) – Bedford, Coventry and Kingsbury. Over 100 interviews were completed at one other site, MWR Hitchin.¹⁸⁸ At all other sites the number of completed interviews was considerably lower because of a combination of small populations and limited available contact details, and robust population inference at these sites in particular is not possible. This was a particular problem at both of MWR’s London sites and at EMR’s shredder sites in the South East. In most cases, we have aggregated responses across sites and presented results separately for Hitchin, London,¹⁸⁹ and the West Midlands.
- (c) A high proportion of survey respondents supply only small amounts of metal.
- (d) Supplier businesses are heterogeneous, from sole tradespeople to large manufacturing businesses and other metal recyclers. This variation makes it harder to draw statistical conclusions across the supplier population.

7.39 In light of the above, we have primarily used the survey to inform our conclusions on how the merger may affect small suppliers, and for large suppliers used evidence that we collected from them directly.

Evidence on competition for purchases from suppliers of different sizes

7.40 This section considers some overarching evidence on the nature of competition in purchasing, and how it varies between small suppliers, large suppliers, and metal recyclers. This informs our later assessments of

¹⁸⁷ [X] The two largest suppliers to each of the Parties’ sites were also removed from the sample; information was gathered from them in other ways. The survey also excluded those who had supplied scrap metal accounting for less than 10 metric tonnes or a total value of less than £100 over the previous year. It therefore did not cover the very largest and very smallest suppliers.

¹⁸⁸ See Table 1 of DJS’s survey report for a full breakdown.

¹⁸⁹ This excludes EMR’s Bedford site - for which we received 120 responses. Although the site competes to an extent with MWR Hitchin, it does not have a shredder and is outside the 50-km catchment areas for the MWR non-shredder sites in London.

competition, particularly in purchases of shredder feed in the South East and of ferrous and non-ferrous metals in London. Below we discuss the various sources of scrap metal from which the Parties and other metal recyclers purchase.

Small suppliers ('door trade')

- 7.41 'Door trade' suppliers include the general public, building trade contractors, and small licensed waste collectors. These are typically very small suppliers – although they make up more than [80-90%] of the Parties' suppliers, they provide less than [10-20%] of volumes.¹⁹⁰ The vast majority of volumes from these suppliers are delivered by them to the Parties' sites.¹⁹¹
- 7.42 The majority of the sample that responded to the survey were small suppliers that drop off their metal to the Parties' sites. Around 70% of respondents¹⁹² listed location among their reasons for choosing the site they use.¹⁹³ This compares with around 20% that mentioned price and 10% that mentioned service. Over two thirds responded that they would not be willing to travel further than ten miles to deliver metal.¹⁹⁴
- 7.43 The Parties submitted that for small suppliers who drop off waste scrap metal (eg plumbers, builders, electricians, the general public),¹⁹⁵ there are more competitors for these suppliers than the 'top' effective competitors that the CMA identified at phase 1.¹⁹⁶ As well as other licensed operators, these include large numbers of metal recyclers with environmental ('T9') exemptions.¹⁹⁷ The Parties argued that the volumes used to calculate market shares should include purchases made by these operators. They also argued that for suppliers that travel to the scrap metal merchant, convenience, price and service are important, and the share of sites represents a better measure of competition than share of volumes as it reflects the number of alternatives that suppliers can obtain a price quotation from.

¹⁹⁰ The Parties' transaction data

¹⁹¹ For example, [REDACTED] of EMR's volumes received from door trade suppliers is delivered

¹⁹² [REDACTED].

¹⁹³ [CMA Survey Report](#), Figure 14. Q11a Why did you choose to use the EMR/ MWR site rather than any other waste recycler? Base: All respondents, Multi Code, n=680

¹⁹⁴ Q25: How far would you have been willing to travel to deliver the metal?

Base: All respondents who deliver metal, Single Code, n=709

¹⁹⁵ [REDACTED].

¹⁹⁶ The Parties submitted that this includes scrap metal merchants operating under a licence and utilising the same type of equipment as the Parties but who have not been included in the CMA's list, as well as scrap metal merchants with a T9 exemption (which can handle up to 1000 tonnes at a time), of which in any region there are a very large number and who are particularly a constraint for drop-off suppliers. [REDACTED].

¹⁹⁷ T9 exemptions permit the processing or storage of up to 1,000 tonnes of waste scrap metal at any one time. There are typically a large number of these operators within a region.

7.44 The above evidence suggests that in competing for the business of small suppliers, site location is the most important factor. Our competitive assessment therefore includes data on the number of sites that the Parties and competitors have in each region and the distance of these sites from those of the Parties. This includes small sites that may have no processing equipment. As set out in the section on market shares data, above, the market shares we present do not include the smallest recyclers that operate under T9 exemptions. We consider that the exclusion of such sites from the shares does not represent a substantial weakness in the data because while we acknowledge that these small recyclers will compete for the custom of the smallest suppliers, such suppliers make up a small proportion of the total volumes handled by the Parties, and such recyclers are dependent for onward routes to market on larger recyclers whose volumes are included in our shares estimates.

Large suppliers

7.45 The supply of waste scrap metal is heavily skewed to large suppliers. The Parties purchase over 80% of their volumes from less than 10% of suppliers.¹⁹⁸ These include:

- (a) Demolition companies – which provided approximately [X]% of EMR’s volumes and [X]% of MWR’s in 2017.¹⁹⁹ As well as having higher average volumes, demolition companies are somewhat more likely to have their material to be collected.²⁰⁰
- (b) Industrial suppliers – which supplied around [X]% of EMR’s and around [X]% of MWR’s volumes. They also are much more likely to have their material collected.²⁰¹
- (c) Metal recyclers, car breakers, and other waste companies – which provided around half of the Parties’ volumes, with metal recyclers in particular providing very high average volumes.²⁰² A proportion of each of these supplier types have their material collected.²⁰³

¹⁹⁸ [X].

¹⁹⁹ [X].

²⁰⁰ [X] of EMR’s volumes from demolition companies are collected (Parties’ transaction data)

²⁰¹ [X] of EMR’s volumes from industrial suppliers are collected (Parties’ transaction data)

²⁰² For EMR, we estimate that metal recyclers make up [X]% of suppliers but [X]% of volumes; for MWR they make up [X]% of suppliers and [X]% of volumes.

²⁰³ For EMR, we estimate the proportion of volumes that are collected are: [X]% for metal recyclers, [X]% for car breakers, [X]% for waste recycling

- 7.46 The Parties submitted that demolition and industrial suppliers would not use the smallest metal recyclers,²⁰⁴ and that for these supplier types the service elements of the business are more important than for smaller suppliers. For example, for a demolition contractor it is important to be able to clear a site quickly and securely, while for a large industrial contract it can be important that waste does not build up and disrupt the production line. In both cases a proven professional track record is likely to be important in the choice of recycler.²⁰⁵
- 7.47 The Parties submitted that for some metal recyclers, 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 metal recyclers 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. The Parties submitted that in these cases the availability of particular equipment or the volumes that a site can handle is not, therefore, a relevant consideration.²⁰⁶
- 7.48 From third parties, we heard that:
- (a) Some suppliers provide large volumes of metal which can be difficult for small metal recyclers to deal with, particularly when service is required at short notice. For the largest suppliers a metal recycler might need several nearby sites and access to large numbers of vehicles.²⁰⁷
 - (b) There are some suppliers that require a service in multiple regions, for whom recyclers whose sites have wider geographic coverage are in a stronger position to compete,²⁰⁸ although multi-region suppliers are also sometimes served by recyclers based in a single region, or by a combination of recyclers in different regions;²⁰⁹
 - (c) Transport costs are important, particularly for unprocessed metals, meaning that metal recyclers compete more strongly for purchases from suppliers that are located closer to them;²¹⁰

204 [REDACTED].

205 [REDACTED].

206 [REDACTED].

207 [REDACTED].

208 [REDACTED].

209 [REDACTED].

210 [REDACTED].

(d) Metal recyclers often sell to other recyclers for processing, export, or onward sale to UK customers.

7.49 In light of this evidence, we consider that metal recyclers will be stronger competitors in purchasing from large suppliers if they:

(a) Are located close to the supplier in question. This means, for example that competitors at one extreme of the Parties' catchment area are unlikely to be strong competitors for customers located at the opposite geographic extreme. For this reason, our assessment, where relevant, takes account of customer and competitor locations, as well as the number and strength of competitors within each market overall.

(b) Have spare capacity and multiple sites. This allows them both to deal with large volumes of materials from large suppliers, but also to more easily build sufficient volumes to export in bulk, and to provide UK customers with large volumes in order to receive a better price. It also provides the recycler with some flexibility in its vehicle routing.²¹¹

(c) Have a presence in multiple regions, although the responses received from multi-region suppliers suggests that single-region suppliers also provide some constraint.

(d) Have the ability to process materials and to export them and sell them on to UK customers. As set out earlier in this chapter, we have assessed competitors' strength in this regard based on the processing equipment that they have in each region, whether they have access to short-sea or deep-sea docks (with the latter providing a stronger constraint), as well as the proportion of their sales that are made to UK customers or for export, as opposed to being made to other metal recyclers for processing or onward sale.

²¹¹ See the Parties' points made in relation 'multi-region suppliers', set out in chapter 10

8. Purchase of scrap metal for shredding in the South East

- 8.1 This section assesses the likely effect of the merger on competition in the purchase of shredder feed in the South East, including London. This is the only region in which the Parties overlap in the processing of shredder feed, since MWR has only one shredder, based in Hitchin. EMR has several shredders, including two in relatively close proximity to MWR's site at Hitchin.
- 8.2 As set out in chapter 6 (Market Definition):
- (a) the purchase of shredder feed forms a separate market, due to the equipment required to process this material for sale to final customers or for export; and
 - (a) the geographic market we have focused on is based on the 115km catchment areas around the Parties' shredder sites at Hitchin in Hertfordshire, Willesden in London and East Tilbury in Essex – covering a broad area in the South East. However, we have also taken account of the competitive constraints provided by shredders outside this area.²¹²
- 8.3 The theory of harm that we consider in this section is that a loss of competition between EMR and MWR could lead to less choice for suppliers of shredder feed in the South East. This loss of competition could lead to lower prices, worse terms or other worsening of the Parties' offer to shredder feed suppliers.
- 8.4 This chapter first sets out the Parties views on shredding in the South East. It then sets out our assessment of competition for the purchase of shredder feed. This considers market shares, the closeness of competition between the parties, and the competitive constraint provided by other firms operating shredders in the region. The chapter then considers the constraint from entry and expansion, and buyer power, before concluding.

The Parties' views on shredding in the South East

- 8.5 The Parties submitted, in respect of shredding in the South East, that no SLC is likely because:

²¹² See paragraphs 6.49 to 6.79.

- (a) Metal recyclers do not need a shredder to purchase shredder feed (as shown by the fact that the Parties buy a significant proportion of their shredder feed from other recyclers);²¹³
- (b) the Parties' share of purchases of all metals in the area (ie not just shredder feed) is only 25-35% depending on whether a 115km or 140km catchment is used;²¹⁴
- (c) There are a large number of effective competing metal recyclers and significant overcapacity in the industry, which encourages fierce competition. This includes seven shredders within 115km of Hitchin;²¹⁵
- (d) There are additional constraints from outside the 115km geographic markets defined by us,²¹⁶ because the additional cost of travelling 15-20km further to collect materials is low and there are eight further shredders between 115km and 140km of Hitchin, and a total of 44 competitors operating shredders nationwide;²¹⁷
- (e) A substantial proportion of shredder feed volumes comes from other recyclers and car breakers that have an in-depth understanding of pricing in the industry;²¹⁸ and
- (f) There is some additional constraint from the ability of suppliers to shear some material that is usually shredded.²¹⁹

8.6 The Parties also emphasised that our survey showed that only 8% of respondents would switch to EMR if MWR's Hitchin site were closed, and that Ampthill (a competing shredder site near Hitchin) and Nationwide (a competitor without a shredder) were mentioned more often than EMR among suppliers to MWR's Hitchin site.²²⁰ EMR also pointed to the fact that shredder sites outside the region (Ward Recycling, Sackers, Ampthill, and Sims at Avonmouth and Nottingham) were considered viable options by a number of suppliers to MWR's Hitchin site.²²¹

8.7 In our provisional findings report, we presented an analysis of MWR and EMR shredder feed purchases in the region and concluded that EMR's sites gained

²¹³ [REDACTED]

²¹⁴ [REDACTED]

²¹⁵ [REDACTED]

²¹⁶ Based on the catchment area from within which the Parties' shredder sites purchase 80% of their total volumes – see paragraphs 6.49 to 6.79.

²¹⁷ [REDACTED]

²¹⁸ [REDACTED]

²¹⁹ [REDACTED]

²²⁰ [REDACTED]

²²¹ [REDACTED]

a substantial share of lost MWR volumes during a period when MWR's shredder was out of action. In response to this, EMR submitted an analysis of shredder feed purchases over a longer time period, which, in its view, showed that:

- (a) Much of the increase in EMR volumes in the period was the result of an initial transfer of inventory from MWR's site rather than due to suppliers switching;²²²
- (b) Looking at transaction volumes over a longer time period, EMR argued that it did not gain volumes lost by MWR in this period,²²³ and that it did not lose volumes to MWR as MWR increased its purchase volumes after the outage;²²⁴ and
- (c) EMR also submitted evidence that [REDACTED] had sold their shredder feed to [REDACTED] other shredder sites during the outage, none of which were EMR sites, and a number of which were located outside the South East.²²⁵

8.8 The survey results, as well as the views of other third parties, are considered within our assessment below.

Our assessment of shredding in the South East

8.9 This section first considers the market shares of the Parties and competitors in the region. It then considers the competitive constraint that EMR and MWR exercised on each other pre-merger. It then considers the competitive constraint provided by other firms operating in the region.

Market shares for shredding in the South East

8.10 As set out below, the Parties are the two largest purchasers of shredder feed by volume in the South East.²²⁶ Other metal recyclers purchasing shredder feed have low market shares in comparison.

8.11 Table 8.1 sets out estimates of shares of purchases of shredder feed. It also includes total purchase volumes of all waste scrap metal at the site to show the overall scale of the site. Table 8.1 shows that the Parties have a high combined market share and the increment (ie the increase in market share

²²² EMR response to third-party comments, 7 August 2018, Annex 2, pages 2 and 3.

²²³ EMR response to third-party comments, 7 August 2018, Annex 2, page 5.

²²⁴ EMR response to third-party comments, 7 August 2018, Annex 2, pages 6 and 7.

²²⁵ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. [REDACTED]. EMR response to third-party comments, 7 August 2018, Annex 2, pages 6 and 7.

²²⁶ The data presented relates to shredder feed purchases in the South East by recyclers that have shredders sites in the South East.

that results from the merger) is large. We look at the Parties' combined share of shredder volumes at shredder sites that are within 115km of any of the Parties' shredder sites in the region, that is within 115m of Hitchin, Willesden or East Tilbury - hereafter referred to as the Shredder Catchment Area. Their combined share in this area is [60-70%] and the increment is [10-20%]. The next largest purchasers of shredder feed by volume are B W Riddle ([5-10%]) and Sackers Recycling ([5-10%]), followed by a number of smaller purchasers each with shares of 5% or less.

8.12 For most metal recyclers, these estimated shares are based on data we received from them on the volumes of shredder feed that they purchased. For two companies (H Ripley and MDJ Light Bros) we have had to estimate their shredder feed volumes based on data on total volumes at the sites in question (as explained in the notes below the table). Given that these sites' total volumes are relatively small, we are confident that more accurate data on these recyclers' shredder feed volumes would not materially affect our estimates of EMR and MWR's market shares.

Table 8.1: Share of shredder feed purchases at shredder sites within 115km of Hitchin, Willesden or East Tilbury

Site	Total Purchase volumes	Estimated volume of shredder feed purchases	Share of shredder feed purchases at shredder sites within 115km of Hitchin (%)	Share of shredder feed purchases at shredder sites within 115km of Willesden (%)	Share of shredder feed purchases at shredder sites within 115km of East Tilbury (%)	Share of shredder feed purchases within 115km of any of the three Parties' sites (%)
MWR Hitchin	[REDACTED]	[REDACTED]	[20-30%]	[20-30%]	[20-30%]	[10-20%]
EMR Willesden	[REDACTED]	[REDACTED]	[10-20%]	[10-20%]	[10-20%]	[10-20%]
EMR East Tilbury	[REDACTED]	[REDACTED]	[20-30%]	[20-30%]	[20-30%]	[20-30%]
EMR Newhaven	[REDACTED]	[REDACTED]		[0-5%]	[0-5%]	[0-5%]
EMR Portsmouth	[REDACTED]	[REDACTED]		[5-10%]		[5-10%]
Parties Combined	[REDACTED]	[REDACTED]	[60-70%]	[70-80%]	[60-70%]	[60-70%]
B W Riddle	[REDACTED]	[REDACTED]	[10-20%]			[5-10%]
Sackers Recycling	[REDACTED]	[REDACTED]	[5-10%]	[5-10%]	[5-10%]	[5-10%]
Amphill Metals	[REDACTED]	[REDACTED]	[5-10%]	[5-10%]	[5-10%]	[0-5%]
Van Dalen	[REDACTED]	[REDACTED]	[5-10%]	[5-10%]	[5-10%]	[0-5%]
Charles Muddle	[REDACTED]	[REDACTED]	[0-5%]	[5-10%]	[0-5%]	[0-5%]
MDJ Light Bros	[REDACTED]	[REDACTED]		[5-10%]	[0-5%]	[0-5%]
H Ripley	[REDACTED]	[REDACTED]		[5-10%]	[0-5%]	[0-5%]
Total	[REDACTED]	[REDACTED]				

Source: [REDACTED]. Purchase volumes are the 2017 calendar year (when provided by the party) or 2016 Environment Agency data. BW Riddle, Sackers Recyclers, Amphill Metals, Van Dalen and Charles Muddle shredder feed purchase volumes from their questionnaire responses. Shredder feed purchase volumes for the Parties from RFI responses. Shredder feed purchase volumes for H Ripley estimated by assuming [REDACTED]% of their purchase volumes were shredder feed ([REDACTED]). We understand that MDJ Light Bros only has a shredder at its site, so 100% of its volumes were assumed to be shredder feed. Note: The total purchase volumes and volume of shredder feed purchases for the Parties include inter-depot trade. This is for the market shares to reflect the total quantities of shredder feed processed at the shredder sites. As EMR has argued, some of these volumes are likely to come from EMR sites outside the South East. Looking at EMR's purchases transaction data, its four

sites listed above received approximately [REDACTED] tonnes of shredder feed in intra-company trade in 2017. Its ten non-shredder sites in the South East transferred in excess of [REDACTED] tonnes of shredder feed to other EMR sites, which suggests that the large majority ([REDACTED]%) of intra-company flows to EMR shredder sites in the region are from other EMR sites in the South East. The remaining [REDACTED] tonnes that may be shredder feed purchased by EMR in other regions and shredded in the South East would not make a material difference to our conclusions – in the context of the Parties total shredder feed volumes in excess of [REDACTED] tonnes, as set out above. ([REDACTED]).

8.13 The Parties have argued that the geographic area over which competition takes place for the purchase of shredder feed is wider than the 115km catchment area identified by us.²²⁷ The Parties' arguments on this issue are discussed in detail in chapter 6 (Market Definition). In particular, they argue that:

- (a) although the Parties' 80% catchment areas are around 115km, they are willing to travel further to collect materials, as reflected in their 100% catchment areas, and that rivals are prepared to do the same;^{228,229} and
- (b) the costs of transporting a full load of shredder feed are low, encouraging metal recyclers to compete for shredder feed from significant distances away.²³⁰

8.14 The Parties also argued that sites do not need to be located near the source of shredder feed and can be located near export locations, or at intermediate locations instead.²³¹ We note, however, that this would involve higher transport costs, as transporting unprocessed scrap involves moving volumes of waste in addition to the metal that will be obtained from shredding and the material is less dense than when it has been processed and therefore cannot be loaded as efficiently on vehicles.

8.15 This issue is discussed in more detail below, where the location of other shredders is taken into account in the assessment of the competitive constraint provided by other firms in the region. However, as a sensitivity test, we have also considered whether the Parties' shares are significantly different when assessed on the basis of a wider geographic area by also considering shares of overall purchases and of shredder feed purchases at all shredder sites within 140km of Hitchin, Willesden or East Tilbury. These are shown in Table 8.2 below. It shows that the Parties' combined share of shredder feed purchases at all shredder sites within 140km of Hitchin, Willesden or East

²²⁷ [REDACTED].

²²⁸ [REDACTED]. For example, EMR reported that it is regularly told by suppliers that EMR is in competition with metal recyclers whose shredders are located in other regions.

²²⁹ EMR submitted 8 internal emails, 2 of which were dated 2015 and 6 dated 2017, which they argued demonstrated that competitors with shredders were competing to win shredder feed from suppliers located significant distances across regional boundaries. [REDACTED].

²³⁰ [REDACTED].

²³¹ [REDACTED].

Tilbury is [40-50%]%, with an increment of [10-20%]%, and for purchases of all waste scrap metal at shredder sites their share and the increment are marginally lower ([40-50%]%, and [10-20%]%, respectively).²³² Whilst these figures are lower than those for the smaller (115km) catchment area, even on the basis of this larger (140km) area the Parties are the two largest purchasers by volume, have a high market share, and the increment is significant.

Table 8.2: Share of all purchases and shredder feed purchases at shredder sites within 140km of Hitchin, Willesden or East Tilbury

Site	Total Purchase volumes	Share of all shredder site purchase volumes within 140km of Hitchin, Willesden or East Tilbury	Volume of shredder feed purchases	Share of shredder feed volumes within 140km of Hitchin, Willesden or East Tilbury
MWR Hitchin	[REDACTED]	[10-20%]	[REDACTED]	[10-20%]
EMR Willesden	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
EMR East Tilbury	[REDACTED]	[10-20%]	[REDACTED]	[10-20%]
EMR Birmingham	[REDACTED]	[10-20%]	[REDACTED]	[10-20%]
EMR Newhaven	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
EMR Portsmouth	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Parties Combined	[REDACTED]	[40-50%]	[REDACTED]	[40-50%]
Ward Recycling	[REDACTED]	[5-10%]	[REDACTED]	[10-20%]
Sims Nottingham	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
Sims Birmingham	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
B W Riddle	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
Sackers Recycling	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Amphill Metals	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
H Ripley	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Chris Allsop	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Van Dalen	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Hawkeswood	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Charles Muddle	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
MDJ Light Bros	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Briggs Metals	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]

Source: [REDACTED]. [REDACTED]. [REDACTED].

Notes:

1. Only Party and competitor sites within 140km of Hitchin, Willesden or East Tilbury are included.
2. Total purchase volumes include inter-depot trade for the Parties. This is for the market shares to reflect the total quantities of shredder feed processed at the shredder sites. The purchase volumes for competitors have also not been adjusted to remove inter-depot trade.
3. Distances are based on straight-line, rather than road, distances.

²³² This is due to the proportion of the Parties' purchases which are shredder feed being approximately [REDACTED]% higher than their competitors within 140km of Hitchin, Willesden or East Tilbury.

- 8.16 The Parties have calculated that their combined share of purchases from suppliers and metal recyclers on a wider catchment area of 140km is [30-35%].²³³ Our understanding is that this represents the share of all volumes (including all grades rather than just shredder feed) from all sites (including those that do not have shredders) operated by competitors that have a shredder within 140km of MWR Hitchin, so is not particularly informative of the Parties' position in the relevant market for our purposes.
- 8.17 In conclusion, the Parties are the two largest purchasers of shredder feed in the South East. They have a high combined market share in the Shredder Catchment Area of [60-70%] and the increment is significant at [10-20%]. In comparison, all the other operators have relatively low shares.

Closeness of competition between the Parties pre-merger

- 8.18 For the reasons set out below, the evidence points to the Parties being close competitors prior to the merger.
- 8.19 In assessing the closeness of competition between the Parties, we considered:
- (a) similarities between the Parties' shredder sites in the Shredder Catchment Area in terms of site locations, the location of suppliers, and the size of the shredders; and
 - (b) how volumes of shredder feed varied at EMR's sites at Willesden and East Tilbury when MWR's shredder at Hitchin was out of action between June 2015 and February 2016.
- 8.20 Supplier and competitor views (collected through a survey, questionnaires, and hearings) and competitor characteristics are discussed later in this chapter. There were very few comments from suppliers and competitors on the closeness of competition between the Parties in this market, although one competitor ([REDACTED]) did note that they were the only operators of large shredders in the area. The survey also provided limited information on the closeness of competition, in particular because the response rate at the EMR shredder sites in the South East (Willesden and East Tilbury) was very low.

Similarities between the Parties' sites

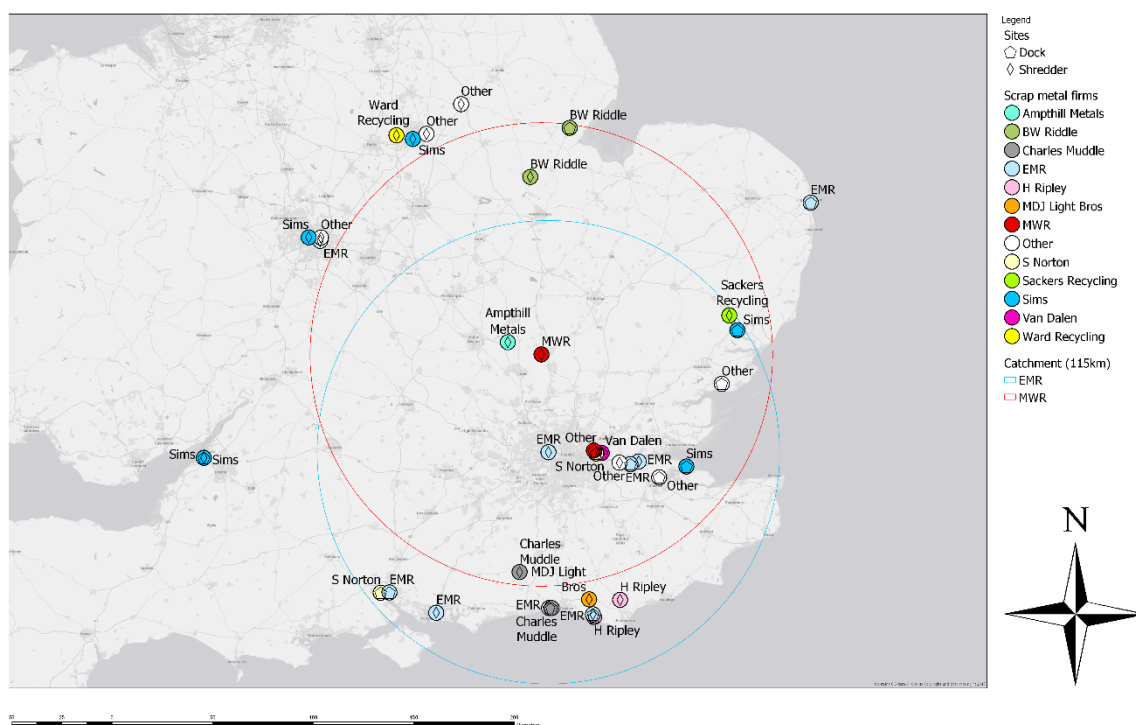
- 8.21 The Parties' sites are geographically close, although they are not the closest to each other, and there is some overlap in the locations of their suppliers.

²³³ [REDACTED].

The Parties' three shredder sites in the region are also similar in terms of the type and capacity of the shredders that they operate. We also note that EMR's Erith site in Kent has a shredder, but that this is not currently operational.²³⁴

8.22 Figure 8.1 below shows the location of shredder sites in the South East. This shows that while MWR's Hitchin site is located relatively close to EMR's Willesden and East Tilbury sites, they are not the most proximate competitors. Ampthill Metals is closest to Hitchin, 18km away compared to 49km to Willesden, and there is a further site, Van Dalen (57km), that is closer than East Tilbury (72km). The closest site to Willesden is Van Dalen (26km) and Ampthill Metals (58km) is not much further away than Hitchin. However, apart from these sites, most alternative shredder sites are a considerable distance from London. Van Dalen is also the closest site to East Tilbury and there are several sites that are a comparable distance to the distance between East Tilbury site and Hitchin. Nevertheless, the proximity of the Parties sites to each other suggests that the Parties are likely to be close competitors.

Figure 8.1: Map of metal recyclers' shredder and dock sites in the South East of England



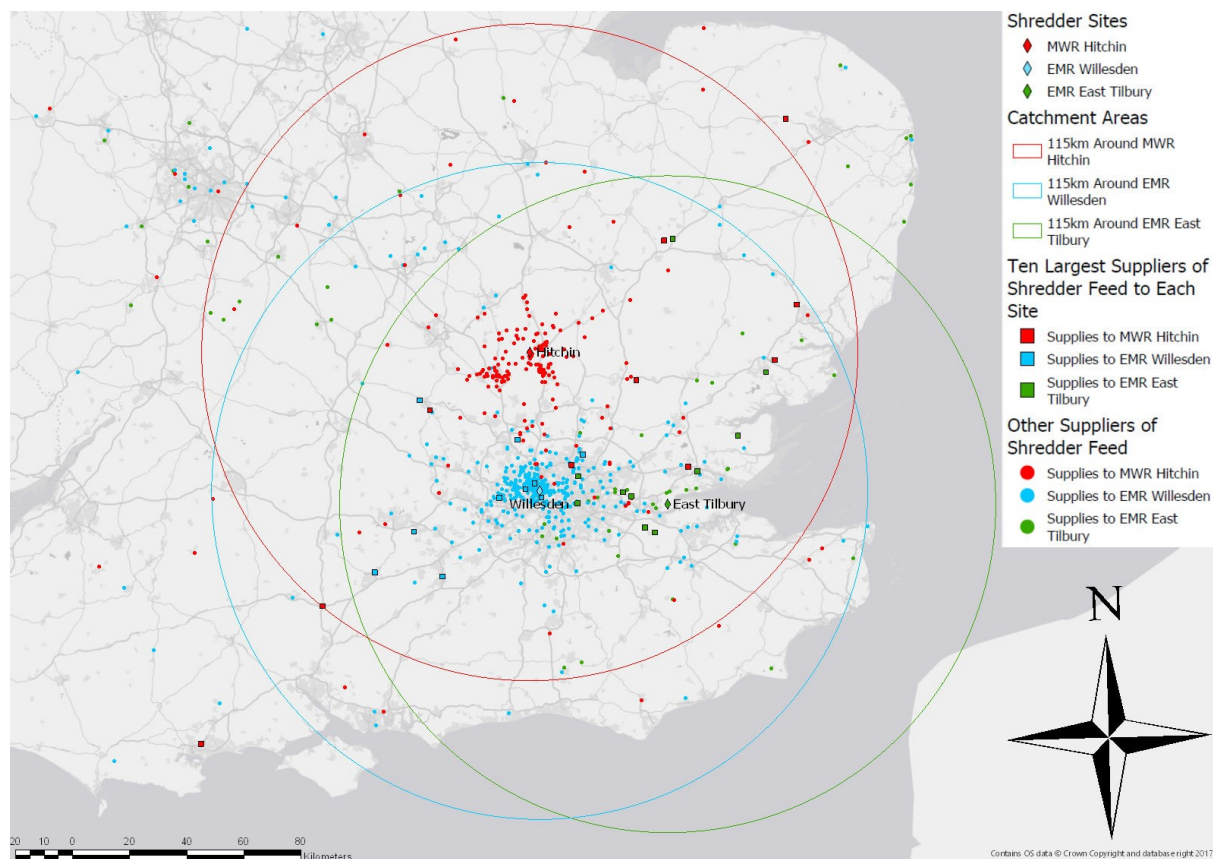
Note: This map is centred on MWR Hitchin and EMR Willesden. We note that there are no additional competitors within 115km of EMR East Tilbury that are not within 115km of MWR Hitchin or EMR Willesden.

8.23 Figure 8.2 shows a map of supplier locations for both EMR and MWR. This shows that there are both pronounced clusters of small suppliers in close proximity to the sites, and that some large suppliers (which account for a large

²³⁴ [redacted].

proportion of the Parties' shredder feed purchases) travel considerable distances to these sites (or have material collected from considerable distances). The map also shows some overlap in terms of supplier locations, including for some of the Parties' largest competitors, in particular in the central and north London area.

Figure 8.2: Map of the Parties' shredder feed suppliers in the South East of England



8.24 A further factor that makes EMR and MWR close competitors is the fact that they both operate large shredders whereas the shredders operated by other metal recyclers in the Shredder Catchment Area are significantly less powerful. This issue is considered further in the section on competitive constraints below.

The impact of MWR's shredder at Hitchin being out of action

8.25 Alongside an assessment of the characteristics and capabilities of the Parties, event studies can give an insight into the competitive dynamic between them. One event that may provide some insight into the extent to which EMR and MWR are close competitors for shredding in the South East is the period between June 2015 and February 2016 when MWR's shredder at Hitchin was out of action.

8.26 Figure 8.3 below shows how volumes varied over time at Hitchin, Willesden and East Tilbury, as well as EMR's Birmingham shredder site (as a control).

Figure 8.3: Volumes at MWR and EMR shredder sites during Hitchin outage (tonnes)

[REDACTED]

Source: [REDACTED].

8.27 Shredder feed volumes at EMR Willesden and East Tilbury increased sharply immediately following the shutdown before falling back, with a significant proportion of this being sales from MWR.²³⁵ Comparing total volumes during the period 1 June to 31 December 2015 with those during the same months in 2016, this suggests that around a quarter of the lost Hitchin shredder feed may have been diverted to Willesden,²³⁶ with a potentially much more significant proportion diverting in the initial few months.²³⁷ At EMR East Tilbury volumes were lower during the Hitchin shutdown than in the equivalent period in 2016, though this may be due to a general rise in volumes at East Tilbury over the period.²³⁸ There was no comparable trend in volumes at EMR's shredder site in Birmingham.²³⁹

8.28 In its response to our Provisional Findings, EMR suggested that the impact of the Hitchin shredder outage on EMR's purchase volumes was driven by a transfer of inventory from MWR to EMR and suggests that it is therefore not reflective of competition between the Parties.²⁴⁰ In a further submission on this issue, EMR presented analysis of shredder feed volumes at MWR's Hitchin site and at its sites at Willesden and East Tilbury over a longer period, which, in EMR's view, 'does not unequivocally support the conclusions' that

²³⁵ At Willesden, volumes rose from around [REDACTED] to [REDACTED] tonnes per month in the period January to May 2015 to around [REDACTED] tonnes per month in July and August 2015. Volumes declined to around [REDACTED] to [REDACTED] tonnes per month between September 2015 and January 2016. At East Tilbury, Volumes rose from around [REDACTED] to [REDACTED] tonnes per month in the period January to May 2015 to around [REDACTED] tonnes per month in June and July 2015. The volume of purchases of shredder feed at East Tilbury that came from MWR increased from [REDACTED] tonnes per month before the shutdown to an average of [REDACTED] tonnes per month, before falling back to an average of [REDACTED] tonnes per month after the shutdown. The volume of purchases of shredder feed at Willesden that came from MWR increased from [REDACTED] tonnes per month before the shutdown to an average of [REDACTED] tonnes per month, before falling back to an average of [REDACTED] tonnes per month after the shutdown.

²³⁶ The total volume at Willesden was around [REDACTED] tonnes higher for this period in 2015 than for the same period in 2016, compared to a reduction in Hitchin volumes comparing the same periods of around [REDACTED] tonnes.

²³⁷ The shredder feed volumes at Willesden in July 2015 were [REDACTED] tonnes higher than in July 2016 whereas the Hitchin volumes were [REDACTED] tonnes lower. Comparing August 2015 with August 2016, the Willesden volumes were [REDACTED] higher and the Hitchin volumes were [REDACTED] tonnes lower.

²³⁸ The monthly volumes during the Hitchin shutdown were all higher than the monthly volumes during the period January to May 2015.

²³⁹ Although volumes increased slightly in mid-2015, the largest increase happened in May 2015 before the Hitchin shutdown, and volumes generally during the shutdown were around the same level as the period before the shutdown and slightly lower than those after the shutdown.

²⁴⁰ [REDACTED].

we had drawn from this evidence in our Provisional Findings report.²⁴¹ The submission presented analysis showing that:

- (a) Once the initial transfer of shredder feed inventory from MWR's site to EMR's shredder sites is accounted for, 'there is only limited increased in EMR purchase volumes' in the early months of the shredder outage.²⁴²
- (b) Looking at transaction volumes over a longer time period, EMR pointed to a trend of reducing MWR shredder feed purchases in the months before the outage. In this context, the CMA's focus on only the outage period is 'arbitrary',²⁴³ as there is 'no discrete change at the time of the outage'.²⁴⁴ Looking over a longer period (from January 2015 to January 2016), EMR points to a large decline in MWR's purchase volumes, but also to a decline in its purchase volumes at Willesden and East Tilbury.²⁴⁵ EMR concludes that it did not gain volumes lost by MWR in this period.²⁴⁶ Its analysis also looked at MWR's significant increase in volumes after the outage and points to data showing that EMR's sites did not lose volumes during this period.²⁴⁷
- (c) EMR also told us that MWR had contacted its suppliers during the outage and EMR listed the alternative shredder sites that six of these suppliers (which EMR noted are [redacted]) had sent their shredder feed to in this period. These suppliers listed [redacted] other shredder sites, none of which were EMR sites, and a number of which were outside the South East.²⁴⁸

8.29 Having sought to clarify the extent to which a transfer of MWR inventory was driving EMR purchase volumes in this period, the information that we received from MWR indicated that this was not the case.²⁴⁹

- (a) MWR told us that when the shredder broke down, it had limited inventory at the site. Stocks began to build up immediately following the shutdown as MWR initially thought that the motor could be fixed quickly, so it continued to purchase shredder feed. Once it became clear that the repair would take time, MWR stopped seeking inventory once it held the maximum amount that could be stored safely at the site (9,000 tonnes).

²⁴¹ EMR response to third-party comments, 7 August 2018, paragraph 4.2.

²⁴² EMR response to third-party comments, 7 August 2018, Annex 2, pages 2 and 3.

²⁴³ EMR response to third-party comments, 7 August 2018, Annex 2, page 3.

²⁴⁴ EMR response to third-party comments, 7 August 2018, Annex 2, page 1.

²⁴⁵ EMR response to third-party comments, 7 August 2018, Annex 2, pages 3 to 5.

²⁴⁶ EMR response to third-party comments, 7 August 2018, Annex 2, page 5.

²⁴⁷ EMR response to third-party comments, 7 August 2018, Annex 2, pages 6 and 7.

²⁴⁸ [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted].

²⁴⁹ [redacted].

(b) MWR did, however, continue to buy small volumes (800 to 1,000 tonnes) of shredder feed from local suppliers in order to ensure that their custom would be retained once the shredder was operational again. MWR sold any volumes that could not be stored safely at the Hitchin site to other shredder operators on the basis of best price, which included EMR's Willesden and East Tilbury sites, but MWR described this as 'small tonnage levels'.

8.30 Taking EMR's other arguments in relation to the shredder outage:

- (a) On the time period, our analysis focussed on the period during which the shredder was out of action, as this appeared to present a good 'natural event' to test the extent of switching between the Parties' suppliers, as MWR's purchase volumes did drop sharply in this period. As EMR has argued, there were wider trends in shredder feed purchases – with declining purchases at Hitchin and at EMR's East Tilbury site in the months before the outage – which make this period less of a clear test than we had thought.
- (b) While EMR has pointed to significant sales from MWR to EMR in the early months of the outage as being driven by inventory transfers:
- (i) This is not consistent with MWR's description of any inventory transfer as involving 'small tonnage levels', as set out above.
 - (ii) To the extent that MWR was still purchasing some volumes of shredder feed from suppliers during the outage – even if this was later sold to EMR for shredding – this makes the outage a less clear test of supplier switching between the Parties in this period. Some of the volumes that were diverted during the outage were the result of MWR selling shredder feed that it could not hold as inventory at Hitchin, in which case EMR was competing against other metal recyclers with shredders in the area.
 - (iii) Even in relation to those volumes that were purely pre-outage inventory that MWR had intended to shred itself, the fact that MWR sold these to EMR, rather than to other shredder operators in the region or in other regions, suggests that MWR itself regards EMR's shredder sites as good substitutes for its own shredder site.
 - (iv) The fact that volumes at Willesden and East Tilbury that were purchased from suppliers other than MWR also increased during the

Hitchin shutdown, albeit that this trend is less clear for East Tilbury,²⁵⁰ is consistent with third parties also diverting from MWR to EMR during the shutdown.

- 8.31 Taken as a whole, we consider that the analysis of purchase volumes at EMR's site at Willesden and East Tilbury does point towards these having absorbed a substantial proportion of MWR's volumes during the outage at Hitchin, but we note EMR's additional analysis which points to some relevant points of context, in particular, the longer-term decline in MWR purchase volumes in the months before the outage and on the trends in EMR purchases post-outage. EMR argued that our analysis 'does not unequivocally' point to strong competition between the Parties in this period.²⁵¹ In our provisional findings, the trends identified in our analysis provided additional evidence in support of our conclusion that the Parties are close competitors in the Shredder Catchment Area, but this evidence is less clear-cut than we had believed and we now place less weight on it in our assessment.
- 8.32 Additionally, as discussed earlier, the Parties stated that the merger could potentially provide a relocation option for EMR's [REDACTED] operations. This opportunity was also referred to in MWR's assessment of potential synergies with various purchasers, referring to Hitchin as offering 'a great opportunity to rationalise with their site [REDACTED]'.²⁵² [REDACTED] suggests that this would also be the case from the perspective of suppliers. The MWR assessment of synergies also referred to EMR adding 'great value to the Hitchin output' by 'reducing competition for feed' as well as improving yield and reducing waste cost and providing access to deep-sea markets at higher prices.
- 8.33 Overall, we consider that the Parties are close competitors in the purchase of shredder feed in the South East. They are located in close proximity to each other, there is substantial overlap in the area from which their suppliers are drawn, and as discussed below,²⁵³ they both operate large shredders. Moreover, it appears that EMR's sites absorbed a substantial proportion of MWR's volumes during the outage at Hitchin. These findings are consistent with what we heard from competitors and from large suppliers of the Parties,

²⁵⁰ Considering just purchases from suppliers other than MWR, the volumes at EMR Willesden increased from an average of [REDACTED] tonnes per month before the shutdown to [REDACTED] tonnes per month, before decreasing back to [REDACTED] tonnes per month after the shutdown. At EMR East Tilbury, volumes increased from an average of [REDACTED] tonnes per month to [REDACTED] tonnes per month during the shutdown, and then increasing to [REDACTED] tonnes per month after the shutdown.

²⁵¹ EMR response to third-party comments, 7 August 2018, paragraph 4.2.

²⁵² [REDACTED].

²⁵³ See Table 8.4 below.

which is set out in the subsequent section along with what third parties said about the constraint from other competitors.

Competitive constraints from other operators of shredders in the South East

8.34 This section considers the competitive constraint provided by other operators of shredder sites (including sites located outside the relevant catchment area). For the reasons set out below, we conclude that other shredder sites are unlikely to pose a sufficiently strong constraint on the Parties post-merger to prevent an SLC. In making this assessment we have focused on the following criteria:

- (a) Purchase volumes;
- (b) Locations, in particular the extent to which these are likely to be attractive options for those suppliers most affected by the loss of competition between EMR and MWR in the north/central London area;
- (c) Processing capabilities at competitor sites, in particular the power of the shredders as this affects the capacity of the site and, to some extent, the type of material that can be processed;
- (d) Spare capacity at competitor sites, to gain a broad understanding of whether, and where, there is a material amount of spare capacity among competitors in the region;
- (e) Survey evidence on whether those suppliers that responded considered these competitors to be close substitutes or viable alternatives to the Parties' sites; and
- (f) Third party comments - whether the competing metal recyclers were considered a strong constraint based on their own views, those of other recyclers or those of large suppliers that we spoke to.

8.35 In discussing the relevant competitors, we have focused on the seven sites that are within 115km of Hitchin, Willesden or East Tilbury but we have also taken account of the constraint from the six further sites that are within 140km of Hitchin, Willesden and East Tilbury.

8.36 Below we consider information in each of the categories listed above, before setting out our view on the overall constraint provided by each competitor.

Purchase volumes

8.37 The strong market position of EMR and MWR, and relatively weak market position of competitors, in terms of purchases of shredder feed was discussed above. Table 8.1 above shows that the Parties together account for a very high share of purchases within the Shredder Catchment Area; [60-70%] [%]. In contrast, all the other companies with shredders in this area have low shares of purchases. The next largest purchasers of shredder feed by volume are B W Riddle ([5-10%]) and Sackers Recycling ([5-10%]), followed by a number of smaller purchasers each with shares of 5% or less.

Locations

8.38 Table 8.3 below sets out the distances between MWR's shredder at Hitchin and EMR's shredders at Willesden and East Tilbury, and those of other companies that own shredders within 140km of at least one of the Parties' sites. It also includes the total waste scrap metal purchase volumes and volumes of shredder feed purchased at the site for ease of reference regarding the scale of the site.

Table 8.3: Distances of sites from Hitchin, Willesden and East Tilbury

Site	Distance from Hitchin (km)	Distance from EMR Willesden (km)	Distance from EMR East Tilbury (km)	Total Purchase volumes (MTs)	Volume of shredder feed purchases (MTs)
<i>Sites within the Shredder catchment area</i>					
MWR Hitchin	0	49	72	[REDACTED]	[REDACTED]
EMR Willesden	49	0	45	[REDACTED]	[REDACTED]
EMR East Tilbury	72	45	0	[REDACTED]	[REDACTED]
EMR Newhaven	132	83	79	[REDACTED]	[REDACTED]
EMR Portsmouth	139	97	125	[REDACTED]	[REDACTED]
B W Riddle	88	137	151	[REDACTED]	[REDACTED]
Sackers Recycling	95	113	85	[REDACTED]	[REDACTED]
Amphill Metals	18	58	88	[REDACTED]	[REDACTED]
H Ripley	128	81	69	[REDACTED]	[REDACTED]
Van Dalen	57	26	19	[REDACTED]	[REDACTED]
Charles Muddle	109	61	81	[REDACTED]	[REDACTED]
MDJ Light Bros	124	76	73	[REDACTED]	[REDACTED]
<i>Sites within 140km of the Parties sites but not within the Shredder Catchment Area</i>					
EMR Birmingham	123	154	192	[REDACTED]	[REDACTED]
Ward Recycling	130	175	202	[REDACTED]	[REDACTED]
Sims Nottingham	125	170	196	[REDACTED]	[REDACTED]
Sims Birmingham	129	160	198	[REDACTED]	[REDACTED]
Chris Allsop	123	169	194	[REDACTED]	[REDACTED]
Hawkeswood	124	155	193	[REDACTED]	[REDACTED]
Briggs Metals	131	178	198	[REDACTED]	[REDACTED]

Source: [REDACTED].

Notes:

1. Only Party and competitor sites within 140km of Hitchin, Willesden or East Tilbury are included.
2. Total purchase volumes include inter-depot trade for the Parties.
3. Distances are based on straight-line, rather than road, distances.

8.39 Table 8.3 shows that several of the sites that are within 140km of Hitchin are considerably more than 140km from Willesden. In particular, the large shredder sites in the West Midlands are in excess of 150km from Willesden. This is significantly more than the 80% catchment areas as discussed in chapter 6. Similarly, B W Riddle's site in Peterborough, which purchases significant volumes, is also more than twice the distance from Willesden that Hitchin is, and the sites that are around 20-30km further from Willesden than Hitchin all handle relatively small volumes of shredder feed.

8.40 The Parties have argued that transport costs for moving shredder feed are low and therefore more distant competitors represent suitable alternatives for suppliers. The Parties have estimated that it would cost around £4-6 per tonne to move shredder feed around 80km, based on a vehicle completing 4

trips per day with a full load and no empty trips.²⁵⁴ However, we note that this is considerably less than an estimate of £8.33 per tonne that they previously provided for transporting ferrous scrap from Salford to Liverpool (55km) and £12.70 per tonne from Sheffield to Liverpool (128km).²⁵⁵ Transport costs of such a level would not be trivial in comparison with shredder feed purchase prices in the region of £100-£125 per tonne and would suggest that more distant shredders do not impose a strong constraint on the Parties. We recognise that once the material is on a truck, the additional costs of transporting it a further few miles will be smaller. However, we consider that it remains the case that transport costs are likely to make purchases outside the catchment area uneconomic when competing with rivals that have closer shredders.

8.41 The impact of transport costs discussed above is consistent with comments from third parties on the distances over which they are able to compete. For example, [X] stated that it is more difficult to compete on price for the purchase of light iron more than [X] miles ([X]km) from its shredder site at [X] because of road transport costs.²⁵⁶ On the South East region, it argued that transport costs mean that suppliers there have no realistic option other than EMR and MWR, which depresses shredder feed prices in the region.²⁵⁷ [X] similarly told us that ‘car bales and other material suitable for shredding is not economically viable to transport relative to heavier metal grades due to its bulky nature and lighter composition. For this reason, ... location is key to ensure maximum margin.’²⁵⁸

8.42 This suggests that suppliers in the north/central London area may be particularly impacted by a loss of competition between EMR Willesden and MWR Hitchin. Whereas currently these suppliers have a choice between large shredders at Hitchin and Willesden, post-merger they would have limited options as the distances to alternative shredders, in particular large shredders, are much longer. Although these more distant shredders may be feasible alternatives for more distant suppliers, the fact that prices are individually negotiated (and that EMR knows suppliers’ locations and hence what nearby competitors they can use) means that this competition does not constrain the prices offered to suppliers for which more distant shredder sites are poor alternatives.

²⁵⁴ [X].

²⁵⁵ [X].

²⁵⁶ [X].

²⁵⁷ [X].

²⁵⁸ [X].

Processing capability and spare capacity

- 8.43 We have examined the processing capability of competing shredding sites and the level of spare capacity. For the reasons set out below, this supports our view that other competing shredding sites, whilst providing some constraint, are unlikely to provide a strong competitive constraint.
- 8.44 As noted above, the size of the shredders in terms of horsepower varies considerably between competitors. This is important as the power of the shredder determines the volumes of material it can process and also impacts on what can be processed at the site.
- 8.45 Table 8.4 below gives the horsepower of all shredders in the London area. Ampthill Metals and Van Dalen, together with some of the more distant shredders (Sackers Recycling in Ipswich, [REDACTED], MDJ Light Brothers and [REDACTED], [REDACTED] and [REDACTED]) all have shredders that are 1,250hp or less. More powerful shredders are at [REDACTED] in Peterborough and [REDACTED] and [a metal recycler] which both have 4,000hp shredders. [A metal recycler] is the only site listed below which has a 6,000hp shredder.

Table 8.4: Power of shredders within 140km of Hitchin, Willesden or East Tilbury

Shredder site	Shredder Power (hp)
EMR Willesden	5,000
EMR East Tilbury	6,000
MWR Hitchin	6,000
Sims Birmingham	[REDACTED]
Hawkeswood	[REDACTED]
Sims Nottingham	[REDACTED]
BW Riddle	[REDACTED]
Ward Recycling	[REDACTED]
Ampthill Metals	1,250
Van Dalen	[REDACTED]
Sackers Recycling	1,250
Charles Muddle	[REDACTED]
Briggs Metals	[REDACTED]
H Ripley	[REDACTED]
Chris Allsop	[REDACTED]
MDJ Light Brothers	800

Source: [REDACTED].

- 8.46 The power of the shredder primarily affects its throughput. EMR provided details of the capacity of each of its shredders, which vary in size between 1,250hp and 10,000hp.²⁵⁹ While Willesden and East Tilbury are capable of handling a maximum of [REDACTED] and [REDACTED] tonnes per hour, respectively, its small shredders at Newhaven and Portsmouth (1,250 and 1,400 hp, respectively) are only capable of handling [REDACTED] tonnes per hour. Similarly, [a metal recycler] estimated that a 1,250hp shredder could process around 4,000 to 5,000

²⁵⁹ [REDACTED].

tonnes per month whereas a site operating a 6,000hp shredder is able to process in the region of 50,000 tonnes per month.²⁶⁰

- 8.47 The power of the shredder also affects what metal can be shredded in it. We understand that baled cars need to be processed in a shredder of 4,000 horsepower or greater.²⁶¹ Less powerful shredders can process ‘logged’ cars (ie cars that have been crushed lengthways, but not the other way), but this affects transport costs as when cars have been logged only 13 tonnes can be transported in a vehicle compared to 18 to 20 tonnes when they have been baled.^{262 263}
- 8.48 When firms provide similar products or services, capacity may be a significant determinant of a firm’s competitive strength.²⁶⁴ The reasoning for this is that where firms do not have spare capacity, it can be more costly for them to expand than is the case for competitors that have spare capacity. If firms provide an identical service in all other respects, capacity can then be an important determinant of competitive strength. In this case, we note that metal recyclers do provide similar products and services to some degree, although we also note that they are differentiated by location (which is important to suppliers) and by other factors (such as access to docks or the type of processing functions that they can perform). We have also (as discussed below) checked whether any competitors’ strength may be constrained by a lack of spare capacity.
- 8.49 The Parties indicated that a number of metal recyclers have spare capacity in their shredding operations and would therefore be in a position to win volumes from affected suppliers should the Parties seek to lower purchase prices for shredder feed. Most of the competitors that responded indicated that they had some spare capacity at their shredding sites although it was not always clear whether that related to capacity to process shredder feed or other processing capacity. Based on an approximate comparison of current purchases, their likely capacity given the size of their shredders, and their own estimates of their spare capacities, we estimated that the total spare capacity across the four sites of [X], [X], [X] and [X] is likely to be in the region of 80,000 to 105,000 tonnes.²⁶⁵ This compares with current purchases of shredder feed at

²⁶⁰ [X].

²⁶¹ [X].

²⁶² [X].

²⁶³ The Parties also identified LKM Metals as a competitor, but its shredder is a low-powered (420hp) aluminium shredder so we have not included this in our analysis.

²⁶⁴ [Merger Assessment Guidelines](#), paragraph 5.3.3.

²⁶⁵ The estimates of spare capacity for [X], [X], [X] and [X] were calculated based on estimates of spare capacity provided by these firms (which in some cases were at a site level rather than for shredder feed)

Hitchin of [REDACTED] tonnes, purchases at Willesden of [REDACTED] tonnes and at East Tilbury of [REDACTED] tonnes. The information regarding [REDACTED] suggested that it has [REDACTED] capacity.²⁶⁶

- 8.50 The above evidence therefore indicates that the geographically closest metal recyclers to the Parties in London do have some spare capacity, and that capacity alone is unlikely to impose a significant limit on the extent to which they exercise a competitive constraint. Our assessment therefore considers each competitor as a potential constraint on the Parties, and takes into account other evidence of their relative strength.
- 8.51 During our inquiry we received evidence suggesting that certain export markets which had previously accepted certain types of sheared metal were no longer doing so and would now require that this metal be shredded.²⁶⁷ This trend was confirmed by EMR²⁶⁸ and MWR,²⁶⁹ although EMR also noted other ‘impending market changes’ which it considers have the potential to drive a reduction in the demand for shredding. MWR noted that its shredding volumes had increased by 20% (in June 2018),²⁷⁰ although part of this was due to its shear at Edmonton being out of operation, but EMR said that, to date, market developments had had no effect on the volume of shredder feed it purchased. In general, we would expect this development to increase the demand for shredding, and to weaken the extent to which spare capacity may enable rivals to provide an effective competitive constraint.

Evidence from the survey

- 8.52 The survey evidence does not clearly suggest that the merger raises significant competition concerns, although there are limitations on what reliance we can place on the survey in this context given the number and nature of the respondents. In relation to shredding, very low numbers of responses were received from suppliers to Willesden and East Tilbury (two and four, respectively), and while there was a good response rate at Hitchin (108 responses), not all of these supplied shredder feed.
- 8.53 Twenty of the Hitchin respondents, two of the East Tilbury respondents and none of the Willesden respondents had supplied ELV vehicles, washing

specifically), taking into account estimates of likely capacity of the size of shredder at the site and their current shredder feed purchase volumes, with our estimates being: [REDACTED].

²⁶⁶ [REDACTED].

²⁶⁷ [REDACTED].

²⁶⁸ [REDACTED].

²⁶⁹ [REDACTED].

²⁷⁰ We understand that the relevant market change occurred in late May and MWR made this submission in late June (without specifying a precise time period)

machines and/or light iron, which we used as a proxy for shredder feed in the context of the survey. Around half of these were small suppliers (11 had supplied less than five tonnes in the past year) and slightly less than half were large suppliers (eight had supplied more than 10 tonnes in the past year).²⁷¹ Of the 22 respondents:

- (a) When asked which competitor sites they had used,²⁷² only one said that they had used Willesden and none mentioned other sites at which there is a shredder. There were four other respondents that mentioned using other sites which do not have a shredder.²⁷³
- (b) When asked which sites they would divert to in response to closure of the EMR or MWR site they currently use,²⁷⁴ one respondent mentioned Ampthill. Two other respondents mentioned sites which do not have a shredder.²⁷⁵

8.54 The survey also asked respondents for their views on whether they could have used certain specific competitor sites within the Shredder Catchment Area.²⁷⁶

- (a) When the Hitchin respondents were asked about EMR, 10 said they could use it and six said they could not,²⁷⁷ of which five gave the reason 'Never heard of/don't know much about' and one said 'too far away/difficult to get to'.
- (b) When the East Tilbury respondents were asked about MWR, one said it could use it; the other said it could not.
- (c) When asked about Ampthill Metals, eight of the 20 Hitchin respondents and one of the two East Tilbury respondents said it could use it and 12 of the Hitchin respondents and the other East Tilbury respondent said they could not. The main reasons given for not being able to use Ampthill

²⁷¹ One respondent had supplied between 5 and 10 tonnes and two respondents didn't know how much they had supplied.

²⁷² Question S01: Since the start of 2017, who have you sold waste metal to?

²⁷³ The sites mentioned were Nationwide (three mentions), and EMR Mitcham and Williams (one mention each).

²⁷⁴ Respondents were first asked Question 19: Now, I would like you to think of the last time you used the <<EMR/MWR>> site to recycle metal. If the <<EMR/ MWR>> site has closed down, what would you have done instead? All respondents who would use a combination of sites and recyclers were then asked Q20b: And which site(s) or recycler(s) would you have used?. Respondents who indicated that they would use alternative EMR/ MWR site(s) were also asked Q21: And, again, thinking about the last occasion, what would you have done instead if ALL <<EMR/ MWR>> sites had closed down?

²⁷⁵ The sites mentioned were Simply Recycling Solutions and E & S Metals (Hitchin).

²⁷⁶ Question 23b: Several other competitors work in this area. Could you have used <<insert site >> instead? If the respondent had already indicated that they would divert to the site, or had mentioned it unprompted in question 23a, then they were not asked the prompted question as they had already indicated they could use it. The analysis of the prompted question takes these unprompted responses into account.

²⁷⁷ Four respondents who should have been asked about EMR were not. This seems to be due to a routing error in the survey.

Metals were 'Never heard of/don't know much about' (eight Hitchin respondents) and 'too far away/difficult to get to' (three Hitchin responses).

- (d) When asked about Sackers, two of the Hitchin respondents said they could use it and 18 said they could not, of which 10 gave the reason 'Never heard of/don't know much about' and seven said 'too far away/difficult to get to'. Both the East Tilbury respondents said that Sackers could be used.
- (e) When the East Tilbury respondents were asked about Van Dalen, one said it could use it and the other said it could not giving the reason 'Never heard of/don't know much about'.

8.55 The survey also asked respondents for their views on whether they could have used certain sites that were located outside the Shredder Catchment Area.

- (a) When asked about Ward Recycling, one of the Hitchin respondents and both the East Tilbury respondents said they could use it and 16 of the Hitchin respondents said they could not. The main reasons given for not being able to use Ward Recycling were 'Never heard of/don't know much about' (10 respondents) and 'too far away/difficult to get to' (six responses).
- (b) When asked about Sims Avonmouth, three of the Hitchin respondents and both the East Tilbury respondents said they could use it and 17 of the Hitchin respondents said they could not. The main reasons given for not being able to use Sims Avonmouth were 'Never heard of/don't know much about' (11 respondents) and 'too far away/difficult to get to' (six responses).
- (c) When the Hitchin respondents were asked about Sims Nottingham, two said they could use it and 18 said they could not, of which 10 gave the reason 'Never heard of/don't know much about' and eight said 'too far away/difficult to get to'.

8.56 While it is difficult to draw conclusion from a small number of responses, we note that respondents were more likely to consider EMR and Ampthill Metals to be viable alternatives to MWR's Hitchin site than was the case for alternative metal recyclers' sites located further away - contrary to the Parties'

argument at paragraph 8.6, above, that shredder sites outside the region are considered viable options.²⁷⁸

- 8.57 Of the 22 respondents that supplied shredder feed, only one thought the merger would be bad for its business, compared with nine who thought it would be good for their business and 10 who thought the effect would be neutral. There were no clear trends as to why respondents thought the effect on their business would be neutral or positive, although there were several respondents that indicated that they only recycled a limited amount of material or that they valued the close proximity of the site, and only one stated that they were not concerned as there were other sites that they could use.

Third-party comments

- 8.58 In addition to the survey, which primarily received responses from small shredder feed suppliers, we also contacted large suppliers, and competitors, directly. This section considers the comments we received from these suppliers and competitors about the impact of the merger and the competitive constraint provided by other operators of shredders in the Shredder Catchment Area.

- 8.59 The evidence from suppliers is mixed. We note that a number changed their minds after we published our provisional findings, and some suppliers were prompted by EMR to respond (which may have affected the balance of evidence received). Several suppliers raised concerns about the merger, the focus of which was on the EMR's already strong position becoming even stronger post-merger:

(a) [redacted] said that the merger limited the options of shredders to which it could deliver,²⁷⁹ although, following the publication of our revised Provisional Findings on London, it commented that it was 'generally unconcerned about the merger'.²⁸⁰

(b) [redacted] said that it believed the purchase of the MWR shredder will give EMR a monopoly over shredder feed in the South of England. It said that [redacted] is the only other outlet for it in the area, and noted that it only has a small shredder. It said that if it wanted to supply baled shredder feed then the nearest outlet would be [redacted] which is approximately 200 miles away in [redacted].²⁸¹ However, following the publication of our revised Provisional

²⁷⁸ Appendix I, Table I.6.

²⁷⁹ [redacted].

²⁸⁰ [redacted].

²⁸¹ [redacted].

Findings on London, [REDACTED] also said it had never sold material to MWR Hitchin so it would not be affected by the merger.²⁸²

- (c) [REDACTED] (which primarily supplies shredder feed to the Parties) described EMR as ‘by far the most dominant player in the UK scrap market’. It noted that it had been selling to MWR, but had experienced a significant drop in prices immediately following the merger.²⁸³
- (d) [REDACTED] initially commented that it was concerned about the merger as [REDACTED].²⁸⁴ However, it commented in response to our Provisional Findings that it has [REDACTED].²⁸⁵
- (e) London City Metals also pointed to the strong position of MWR and EMR in shredding in the region, pointing to the high capacity of their shredders relative to others in the region. This supplier commented that Van Dalen’s shredder was small, did not have spare capacity and could not shred baled ELV, while Ampthill was also a small shredder with limited spare capacity. Its view was that shredders in Sussex did not have a lot of spare capacity, while Sackers at Ipswich was too far away to be an attractive option for London arisings and Sims’ shredders in Avonmouth and Nottingham were also too far away to be viable options.²⁸⁶

8.60 Prior to the publication of our Provisional Findings, two suppliers of shredder feed, [REDACTED] and [REDACTED], both metal recyclers, said they had no concerns. [REDACTED] initially said this was because it does not sell in the same markets²⁸⁷ and it later added that it gets prices from Van Dalen, Muddle, Ripley, Sackers, Sims, Riddle and Norton as well as EMR and Metal and Waste and does not see a lessening of competition from the merger.²⁸⁸ [REDACTED] initially did not provide a reason for its view but it later told us that it has several other options for selling shredder feed, including Sims (Avonmouth and Nottingham), S Norton (Liverpool and Southampton), Sackers, B W Riddle, Ampthill and H Ripley and is confident that it achieves highly competitive pricing from all these companies.²⁸⁹ Three other suppliers of shredder feed wrote to us following the publication of our revised Provisional Findings on London saying that they did not understand why we had found an SLC in relation to shredding in the

282 [REDACTED].
283 [REDACTED].
284 [REDACTED].
285 [REDACTED].
286 [REDACTED].
287 [REDACTED].
288 [REDACTED].
289 [REDACTED].

region, typically citing some additional sites that they sell to or obtain prices from.²⁹⁰

8.61 Some competitors also raised concerns about the merger. Some of these specifically referred to concerns about a loss of competition between EMR and MWR post-merger:

(a) [redacted] said that only EMR would have access to large shredding capabilities as other operators in the area only have very small shredders. It described EMR as having a very strong position in London, and more so following the merger because MWR had been the only competitor with a large shredder.²⁹¹

(b) [redacted] said that MWR had ‘ensured positive competition’ in the South East because it was an independent processor that could sell via the deep-sea container market. It also said that ‘faced with minimal competition, EMR [and] Sims will lower prices to maximise profit whereas independent shredders are forced to offer consistently higher prices to secure required volumes of feed.’²⁹²

(c) Ampthill Metals said in its Phase 1 response that ‘EMR has taken a competitor out of the market which is good for us’. However, ‘the producers of scrap have less choice of where to sell to.’²⁹³ However, in its Phase 2 response it said that it did not have concerns about the impact of the merger on competition, noting that [redacted].²⁹⁴

8.62 In some cases, the concerns from competitors related to the competitive strength of EMR and how this will increase with a further increase in EMR’s scale, rather than commenting specifically on the loss of competition from MWR. For example, [redacted] referred to an ‘increase of already dominant players’, and said that jointly the Parties ‘are dominant in the UK due to the network of sites’ and the merger will ‘strengthen EMR’s ability to control the marketplace’.²⁹⁵

8.63 In other cases, the concern from competitors that have shredders was explicitly focused on the ability of the competitor to compete with the Parties post-merger rather than the impact that the loss of competition would have on suppliers of scrap. For example, [redacted] raised concerns that the Parties ‘will

290 [redacted]
291 [redacted]
292 [redacted]
293 [redacted]
294 [redacted]
295 [redacted]

become uber dominant in the scrap recycling industry and have the ability to cut the margins to near extinction to wipe out the competition'. It referred to the stronger balance sheets and greater cash reserves of EMR enabling it to operate on lower margins and offer better payment terms, and said that the merger would make EMR 'stronger and leaner and hungrier for volume' which would make the market 'very tight and marginal'.²⁹⁶ However, in its response to the Phase 2 Competitor Questionnaire, it said that it had no concerns about the impact of the merger on competition as it will 'help small independent shredders like [REDACTED]. Where the concern relates to the difficulty competitors would have in matching prices that the Parties would be able to pay for shredder feed, rather than a concern that a loss of competition would result in lower prices being paid to suppliers, there is less immediate concern about detriment arising from the merger.²⁹⁷

8.64 Some competitors also commented on the extent to which they and other companies provide strong competition to EMR and MWR. In particular:

(a) [REDACTED] because of the size of its shredder, the size of its yard, and the fact that it only has facilities for [REDACTED].²⁹⁸

(b) [REDACTED] said that most of the tonnage it purchases came from south of its site whereas 'EMR has strong presence in/around London' and that it did not attempt to compete with EMR.²⁹⁹

8.65 Following the publication of our Provisional Findings, we also heard from [REDACTED], a metal recycler that operates a shredder in [REDACTED].³⁰⁰ It made a number of points:

(a) It argued that the merger would reduce the bargaining power of suppliers, stating that prices for light iron are already up to £30 per tonne lower in the South East than they are [REDACTED] because the market is less competitive in the South East.

(b) It expressed the view that suppliers of baled cars had few options in the South East, especially for shredders with high capacity (15,000 tonnes per month). It stated that MDJ Light Bros operated a relatively small

²⁹⁶ [REDACTED]

²⁹⁷ However, we note that concerns could arise in the long term if competition were sufficiently weakened such that the Parties no longer had an incentive to pay higher prices in order attract the shredder feed and instead had an ability to lower prices to below pre-merger levels.

²⁹⁸ [REDACTED]

²⁹⁹ [REDACTED]

³⁰⁰ [REDACTED]

shredder and was not buying material, with MWR being the only ones capable of processing this material in the South East apart from EMR.

- (c) It pointed to shredders paying higher prices in other regions, eg Sims in Nottingham, but said that transport costs would be £[redacted] or £[redacted] per tonne, so it did not pay to transport baled cars from the South East to other regions. Its own costs for transporting shredder feed from [redacted] to its shredder in [redacted] was £[redacted] per load or £[redacted] per tonne, which makes this uneconomic.
- (d) It also suggested that the merger would make it difficult for new shredders to be established in the region.

8.66 Overall, there were mixed views from both large suppliers and competitors on the likely competitive impact of the merger in shredder feed. Several large suppliers and competitors supported the view that the merger would result in a loss of competition and a strengthening of EMR's already strong market position, but others were either not concerned or their concerns were more about the Parties' ability to compete more strongly post-merger.

Assessment of individual competitors

8.67 For each of the seven competitors with shredder sites within the Shredder Catchment Area, we have considered below the extent to which they impose a competitive constraint on the Parties, having regard in particular to their market share, the capacity of their shredder, their location, and third-party views. Overall, this assessment supports our view that other shredder sites do not impose a strong competitive constraint:

- (a) BW Riddle – This is the largest competitor in the Shredder Catchment Area with a market share of [5-10]% (Table 8.1) and purchase volumes of [redacted] tonnes of shredder feed. It also has [redacted] relative to most other competitors in the region ([redacted]). However, while its location in Peterborough is reasonably close to Hitchin (88km), it is a long way from Willesden (137km) and East Tilbury (151km). It is therefore not clear that it represents a strong competitor for suppliers in London and the south of the Shredder Catchment Area although it may be a strong competitor for other suppliers in the north of the Shredder Catchment Area.
- (b) Sackers Recycling – It has a market share of 5-10% (Table 8.1), with [redacted] tonnes of shredder feed purchases. Like [redacted], its location in Ipswich is within the 115km catchment areas (95km from Hitchin, 113km from Willesden and 85km from East Tilbury) but it only operates a small shredder (1,250hp). It also noted that the stronger balance sheets and

greater cash reserves of EMR enabled it to operate on lower margins and offer better payment terms. It was mentioned as a site that could be used by two of the 22 respondents in the survey that were suppliers of shredder feed to Hitchin, Willesden or East Tilbury. It does not appear therefore to be a strong competitor for suppliers in the Shredder Catchment Area.

- (c) Amptill Metals – It has a market share of [0-5]% (Table 8.1), with [] tonnes of shredder feed purchases. It only operates a small shredder (1,250hp) but is located very close to Hitchin (18km) and well within the 115km catchment area (58km from Willesden and 88km from East Tilbury). It was the most frequently mentioned site that could be used in the survey (seven mentions), and was the only site with a shredder that was mentioned as a site that would be diverted to (but only by one respondent). It is not clear that Amptill Metals is a strong competitor for suppliers generally within the Shredder Catchment Area, although it may represent a strong competitor for smaller suppliers in the Hitchin area.
- (d) Van Dalen – It has a market share of [0-5]% (Table 8.1) ([] tonnes of shredder feed purchased). It is located close to Hitchin, Willesden and East Tilbury (57km, 26km and 19km respectively), but it [] shredder. Van Dalen also said it is at a disadvantage because of the size of its yard and the fact that it only has facilities for []. It does not appear therefore to be a strong competitor for suppliers in the Shredder Catchment Area.
- (e) Charles Muddle – It has a market share of [0-5]%, with [] tonnes of shredder feed purchases. Like [], it operates [] ([]) shredder. Its site in West Sussex is within the 115km catchment areas (109km from Hitchin, 61km from Willesden and 81km from East Tilbury) but the firm stated that most of its purchases come from [] of its site and that it did not attempt to compete with EMR. It does not appear therefore to be a strong competitor for suppliers in London and the north of the Shredder Catchment Area although it may be a strong competitor for other suppliers in the [] of the Shredder Catchment Area.
- (f) MDJ Light Bros – market share [0-5]% (Table 8.1) ([] tonnes of shredder feed purchased). It is located in East Sussex, within the 115km catchment area for Willesden (76km) and East Tilbury (73km) but it is further away from Hitchin (124km). Its shredder is the smallest of all these competitors (800hp). It does not appear therefore to be a strong competitor, in particular for suppliers in the north of the Shredder Catchment Area.
- (g) H Ripley – It has a market share of [0-5]% (Table 8.1) ([] tonnes of shredder feed purchased). Like MDJ Light Bros, its location in East

Sussex is within the 115km catchment area for Willesden (81km) and East Tilbury (69km) but it is further away from Hitchin (128km). It also has a [REDACTED] shredder ([REDACTED]). It does not appear therefore to be a strong competitor for suppliers in the north of the Shredder Catchment Area.

8.68 In conclusion, we do not consider that the other shredder sites within the Shredder Catchment Area will exercise a strong competitive constraint on the Parties post-merger, having regard in particular to their location and the power of their shredder. While BW Riddle and (at least for some smaller suppliers) Ampthill may be strong competitors in the north of the Shredder Catchment Area, they are unlikely to be so for suppliers in the south of the Shredder Catchment Area and (in the case of BW Riddle) in London.³⁰¹ Conversely, [REDACTED] and H Ripley are unlikely to be strong competitors for suppliers in the north of the Shredder Catchment Area. In particular, the Parties are unlikely to face strong competition in London given that [REDACTED] has a small shredder and faces other limitations on the strength of competition it provides, and the nearest 4,000hp shredders (needed to process baled cars) are located in the West Midlands, over 150km from EMR's Willesden site.

Partial constraint from shearing

8.69 The Parties have argued that there is some substitutability between shredding and shearing with respect to light iron and therefore it is necessary to take into account the partial constraint exercised by metal recyclers who use shears as an alternative to shredding.³⁰² They argue that, whilst whole cars and domestic appliances must be shredded, metal recyclers can and do strip them manually in order to process as much metal as possible via shearing with limited amounts remaining for shredding.³⁰³

8.70 As discussed in chapter 6, there is a significant volume which must be shredded and so could not be processed using a shear. We heard that the grades which must be shredded include 'frag feed' and ELV which make up around [80-90%] of EMR's shredder feed purchases.³⁰⁴ Whilst some metal recyclers may process scrap in the way described above (in paragraph 8.66), we do not consider this to be a close enough substitute such that it would provide a constraint on the ability of the Parties to lower the price that they pay for shredder feed. The implication of our finding that shredder feed is a separate product market is that, in response to a worsening of terms by all

³⁰¹ Since prices are negotiated individually, the ability of some suppliers to use an alternative metal recycler will not protect other suppliers for whom it is not an option from a price rise.

³⁰² [REDACTED].

³⁰³ [REDACTED].

³⁰⁴ The definition of shredder feed used in this calculation is as provided by EMR. When asked what grades could be sheared, neither 'frag feed' nor ELV were included in EMR's response.

recyclers with shredders, switching to other processing methods would be insufficient to make such a worsening unprofitable. Similarly, we consider that in response to a worsening of terms by the merged firm only, the volume that would divert to shearing is likely to be small. The extent of any substitution from shredding to shearing is also likely to be reduced by the recent development, discussed in paragraph 8.51, that certain export markets which had previously accepted certain types of sheared metal were no longer doing so and would now require that this metal be shredded.

- 8.71 Overall, we consider that the Parties face weak competition in the purchase of shredder feed in the South East. Compared to the Parties, most competitors process relatively low volumes and have less powerful shredders which limits their capacity and the grades that they can process. Some of the competitors are likely to compete only for a subset of the Parties' suppliers, located as they are at the edges of the catchment areas of the Parties' shredder sites.

Entry and expansion

- 8.72 We have considered whether entry by new rivals, or expansion in activities by existing rivals, would prevent an SLC from arising in the purchase of shredder feed in the South East. In assessing whether entry or expansion might prevent an SLC we consider whether such entry or expansion would be timely, likely and sufficient.³⁰⁵ Detailed evidence is included in Appendix E.

Parties' submissions

- 8.73 The Parties have argued that actual or potential competitors would not encounter barriers that would affect the timeliness, likelihood and sufficiency of their ability to enter and expand thereby mitigating the effect of any SLC. In particular, the Parties refer to the availability of small shredders, some of which are mobile, and argue that sites are available in areas from which it is possible to access London.³⁰⁶ The Parties said that there are no particular technical or regulatory barriers and that the basic equipment is simple and leasing options are open to metal recyclers without sufficient capital to invest.
- 8.74 The Parties submitted a list of entry and expansion at site level across the UK over the last five years by region. The list included details of any processing equipment³⁰⁷ installed on site as part of the entry or expansion.

³⁰⁵ [Merger Assessment Guidelines](#), paragraph 5.8.3.

³⁰⁶ [REDACTED].

³⁰⁷ Balers, shears or shredders.

Third-party submissions

- 8.75 Some third parties submitted that barriers to entry and expansion in metal recycling generally are high, particularly in London and the South East, given the difficulties of finding available and appropriate sites. Both [X] and [X].

Our assessment

Timeliness

- 8.76 In determining whether entry or expansion into the purchase of scrap metal for shredding in the South East of England would be timely, we have considered licensing, planning permission and the time required to set up a new site.
- 8.77 We have found that licensing, in the form of an environmental permit,³⁰⁸ could be obtained in a timely manner. A permit is typically granted within three months from the submission of the application.
- 8.78 Planning permission is required for both the site and any fixed processing equipment, eg balers, shears and shredders.³⁰⁹ Planning permission is granted by Local Authorities, which take account of objections, such as noise and disturbance, and the use of hazardous materials. These objections may make planning permissions more difficult to obtain, for example, in densely-populated areas. The granting of planning permission can also be challenged by way of judicial review, which can make the process longer and more uncertain. Having sent questionnaires to a large number of competitors, we are not aware of any site in the South East of England awaiting planning approval for shredding.
- 8.79 We understand that it could take up to three years (from the point at which an available plot of land is identified) to set up a shredding site. Given the difficulties in finding available and appropriate sites (see paragraph 8.80 below), the lead time could in fact be longer than three years.
- 8.80 We think that the difficulties of obtaining planning permission, the time required to set up a new site and the absence of any sites currently awaiting

³⁰⁸ In England and Wales, scrap metal recyclers are required to obtain a licence from the Environment Agency. This is a standardised permit that sets out how to conduct an activity lawfully and without risk of pollution. Operations that pose greater environmental risks (eg they are next to a sensitive ecological area) require a bespoke permit. To obtain such a permit, the party is required to submit a formal application to the Environment Agency (England) or Natural Resources Wales (Wales). Scrap yards that pose a lower risk to the environment and process under 1,000 metric tonnes at any one time can apply for a T9 metal recycling exemption.

³⁰⁹ Balers and Shears can be mobile as well as fixed. Shredders are fixed.

planning approval for shredding suggests that entry or expansion into the market is unlikely to occur in a timely manner.

Likelihood

- 8.81 In determining whether entry or expansion into the purchase of scrap metal for shredding in the South East of England would be likely, we have considered recent and potential entry or expansion.
- 8.82 We have found little evidence of recent entry or expansion into the market. The list of entry and expansion in the UK over the last five years provided to us by the Parties indicates that there were no new sites with shredders established nor new shredders installed on existing sites in London or the South East in the last five years.³¹⁰
- 8.83 In respect of prospective entry and expansion, third parties told us that they were severely constrained by the availability of land and the required planning permission for larger processing sites in London. Both [X] and [X].
- 8.84 We think that the lack of recent or potential entry and expansion into the market over the last five years suggests that entry or expansion is not likely.

Sufficiency

- 8.85 Given we have found that entry or expansion is neither timely or likely, we do not consider that it is necessary for us to assess whether any such entry or expansion would be sufficient to prevent an SLC from arising in the purchase of scrap metal for shredding in the South East of England.

Countervailing buyer power

- 8.86 The Parties suggested that shredder sites generally deal with other metal recyclers, car breakers and sophisticated suppliers of scrap metal, and that these suppliers are generally well informed about prices, as well as willing to travel to obtain the best price. As a result, they suggest that the Parties will be constrained by the buyer power of their suppliers.³¹¹
- 8.87 We have found that suppliers that require shredding will suffer from a reduction of choice as a result of the Transaction and many of these suppliers will not be able to easily switch their scrap metal volumes to other metal

³¹⁰ See Appendix E

³¹¹ Response to the CMA's phase 1 decision, paragraph 5.3.3.5.

recyclers. Suppliers, even very large suppliers, will therefore find it difficult to exercise any countervailing buyer power.³¹² Even if some suppliers did have some degree of negotiating power, eg due to their large volumes or proximity to a competing shredder site, this countervailing power, given that prices are individually negotiated, would not prevent other suppliers with smaller volumes or fewer alternatives from suffering detriment as a result of the merger.

- 8.88 We have not seen any evidence of suppliers exercising countervailing buyer power in the supply of scrap metal for shredding in the South East nor are we aware of any evidence of suppliers sponsoring entry for shredding.
- 8.89 We therefore conclude that countervailing buyer power will not prevent an SLC from arising in the purchase of scrap metal for shredding in the South East.

Conclusion on shredding in the South East

- 8.90 Our 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 a SLC. This is based on:
- (a) 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 of shredder feed in the region. Even if competitors from a wider geographic area are taken into account, the Parties have a high market share, together accounting for [40-50%] of shredder feed volumes within 140km of Hitchin, Willesden or East Tilbury;
 - (b) Evidence indicating that the Parties are close competitors, including the views of competitors and suppliers, as well as some evidence of diversion during the Hitchin shredder outage, which is likely to be as a result of their shredder sites being located in close proximity and both having powerful shredders (which means both can process all types of shredder feed);
 - (c) The much smaller capacity and weaker capability of other shredders in the catchment area. Whilst there are competing shredder sites and some of these appear to have some spare capacity, these operate much less

³¹² [Merger Assessment Guidelines](#), paragraphs 5.9.3-5.9.4.

powerful shredders than the Parties which limits their capacity and the grades that they can process;

- (d) 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 are 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
- (e) 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.

9. Purchase of waste scrap metal in the London region

Introduction

- 9.1 This chapter sets out our assessment of the likely effect of the merger on competition in the purchase of waste scrap metal in the London region. MWR has two sites in the London region (in Neasden and Edmonton) and EMR has 10 sites that are within 50km of these MWR sites, including a number of EMR sites in surrounding areas of Kent and Essex, as well as EMR's shredder sites at Tilbury and Willesden, which purchase non-shredder feed as well as shredder feed.
- 9.2 As set out in chapter 6 (Market Definition):
- (a) the product market is the purchase of ferrous and non-ferrous metal other than shredder feed; and
 - (b) the geographic market is based on the 50km catchment areas around the Parties' London sites ('the London region'). We have considered competition across the whole region, calculating market shares by summing across all of the site-level catchment areas, but where relevant, we have also looked separately at the competitors around individual sites belonging to the Parties.
- 9.3 The theory of harm that we consider in this chapter is that the loss of competition between EMR and MWR could lead to less choice for suppliers of waste scrap metal in the London region. This loss of competition in purchasing could lead to a worsening in terms offered to suppliers in London including in the form of lower prices or other worsening in the Parties' quality of service offer.
- 9.4 In our provisional findings report, we provisionally concluded that the Transaction had resulted, or may be expected to result, in an SLC in the purchase of ferrous and non-ferrous metals (other than shredder feed) in the London region.³¹³ We stated that our provisional SLC finding was 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) in a region where other metal recyclers handle much smaller volumes;

³¹³ [Provisional Findings report](#), 4 June 2018.

- (b) Evidence that both Parties were important in providing an onward route to market for smaller recyclers who themselves lack necessary processing equipment or export capabilities – we considered that this indicated both that the Parties are close competitors and that smaller recyclers are a weaker constraint;
- (c) Weak constraints from other recyclers - our detailed assessment of the other competitors in the region pointed towards some level of constraint from competitors, but all purchased lower volumes than the parties, and many were distant from the areas where the Parties' catchments overlap, or relied on EMR and MWR as an important route to market rather than having their own direct routes. The remaining competition therefore appeared to us unlikely to be sufficient to constrain the Parties post-merger, especially given the Parties' significant role as a route to market for smaller recyclers; and
- (d) 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.³¹⁴

9.5 We also said in our provisional findings report that not all of the evidence on the closeness of competition between the Parties pre-merger pointed towards a strong constraint from MWR on EMR. In particular, the supplier survey results suggested limited diversion between the Parties and that the level of concern among (non-shredder feed) suppliers was quite low, with the latter also reflected in responses that we received directly from large suppliers. However, we were of the view that the evidence that EMR is the strongest metal recycler in the region by far is clear, so the loss of even a limited constraint from MWR, the second largest recycler in the region, caused concern.³¹⁵

9.6 Following the publication of the provisional findings report, additional evidence from the Parties and from third parties caused us to reconsider our findings. As set out in more detail in our Supplementary Provisional Findings report,³¹⁶ this focussed on three areas:

- (a) First, purchase volume data in relation to two additional metal recyclers and an additional competitor site in the region resulted in our estimate of

³¹⁴ [Provisional Findings Report](#), paragraph 9.106.

³¹⁵ [Provisional Findings Report](#), paragraph 9.107.

³¹⁶ [Supplementary Provisional Findings Report](#), 19 July 2018.

the Parties' combined share falling to [30-40%], with an increment of [5-10%].

- (b) Second, EMR argued that our assessment of individual competitors had not given sufficient weight to those whose processing capabilities and site locations made them as strong as competitors as MWR had been. We identified six metal recyclers in the region with annual total purchase volumes between [X] and [X] tonnes, of which five had annual non-shredder feed purchases in excess of [X] tonnes - compared to MWR's pre-merger purchases in the region of [X] tonnes per year.
- (c) Third, in relation to our analysis of routes to market for other metal recyclers, EMR pointed to the fact that MWR had sold the majority of its volumes to EMR and to other metal recyclers pre-merger, and, as such, did not have a significant advantage over smaller metal recyclers in the constraint that it provided to EMR, nor had MWR provided a route to export or final UK customers for a significant number of other metal recyclers pre-merger. This led us to reassess our provisional findings in relation to the constraints imposed by MWR and by those metal recyclers that supplied some of their volumes to the Parties.

9.7 Further responses to these updated provisional findings are set out in this chapter, with three metal recyclers in the region ([X], [X] and [X]) expressing particular concern that the merger would significantly weaken competition in the London region and setting out a number of arguments in support of their views.³¹⁷

9.8 This chapter first sets out the Parties views on competition in the London region. It then sets out our assessment. This considers the market shares of the Parties and other metal recyclers in the London region, the closeness of competition between the Parties, and the competitive constraint provided by other metal recyclers in the London region. Finally, it sets out our conclusion on the effect of the merger on competition in the London region.

Parties' views on the purchase of waste scrap metal in the London region

9.9 The Parties – in submissions made before and after the publication of our provisional findings - put forward five main arguments in relation to the competition that they face in the London region, as set out below.

³¹⁷ [X]; [X]; [X].

- 9.10 First, they argued that they face a large number of competitors in London – 18 in total in the Greater London area and nine significant competitors even on a narrower basis, including BFA, S Norton and Van Dalen.³¹⁸ The Parties also listed those competitors that they considered to be ‘at least as effective a competitor as MWR in terms of capabilities and who have additional spare capacity’, as being Sims, S Norton, BFA, ASM, Benfleet and H Ripley.³¹⁹ In support of their argument that they face a high degree of competition, the Parties submitted evidence from a log of telephone calls made by commercial staff that deal with buying from suppliers which they said indicated that suppliers used competitors to negotiate better prices.³²⁰
- 9.11 Second, they argued that the market shares that we had calculated were overstated, with a number of competitor sites excluded.³²¹ In particular, the Parties pointed out that our market share calculations did not reflect volumes purchased at sites where the relevant volumes were not captured in the Environment Agency data set.³²² As a result, in their view, our estimate was likely to understate the size of the market by around [40-50%].³²³
- 9.12 Third, the Parties’ submitted analysis of spare capacity at competitor sites in the London region, which they argued was significant and was sufficient to constrain them from decreasing the prices paid for waste scrap metal post-merger.³²⁴
- 9.13 Fourth, while they acknowledge that large sites suitable for processing waste scrap metal may not be readily available in central London, they argued that opening a feeder site and transporting waste scrap metal to a processing site outside central London was a viable mode of entry. They submitted that EMR’s modelling of its own transport costs pointed to the ‘very low cost’ of transporting waste scrap metal over significant distances.³²⁵ They argued that their view that entry is easy is supported by Environment Agency data showing that 381 new site permits or exemptions were granted in the last three years,³²⁶ and pointed to recent examples of rapid expansion by a number of competitors.³²⁷

318 [REDACTED]

319 [REDACTED]

320 [REDACTED].

321 [REDACTED]

322 As set out in Appendix D, the Environment Agency collect data on volumes at licensed metal recycling sites, but not all sites require a licence, with some smaller sites operating under a T9 exemption

323 [REDACTED]

324 [REDACTED]

325 [REDACTED]

326 [REDACTED]

327 The examples cited included Sims’s entry into London using a new dock site at Sheerness and S Norton’s expansion at its Barking dock site. They also cited examples of smaller operators (such as Scrap Co, London

- 9.14 Fifth, the Parties argued that, even if they were to decrease prices to suppliers below a competitive level, this would have a pro-competitive impact, as effective competition downstream in sales of scrap metal would lead to the lower prices being passed on to customers.³²⁸ They argued that, if our theory of harm is that input prices may be reduced, then it must weigh the loss of rivalry in the purchasing market against the expected increase in competition on the downstream (sales) side. The Parties also argued that it was unclear the extent to which reduced scrap prices and the consequent loss of revenue for suppliers of waste scrap metal would result in increased costs for the supplier and submitted that this ‘cannot feasibly be the subject of this merger assessment’.³²⁹ This point is dealt with in chapter 7, above.
- 9.15 In response to our Provisional Findings report, EMR provided further arguments on the points it had raised regarding the strength of the competitive constraint from MWR and other recyclers and on the market shares that we had calculated, and it responded to our provisional conclusion that competitors are reliant on MWR for a route to market. EMR also argued that we had failed to take account of evidence that indicates that the level of concern among suppliers regarding the merger is low, did not give due weight to the efficiencies that it considers can be expected to arise from the merger, and provided new evidence in relation to barriers to entry.
- 9.16 First, EMR argued that we had overstated the competitive constraint that MWR provided and understated the competitive constraint provided by other metal recyclers. It argued that based on site locations, processing capabilities, dock facilities and routes to market, MWR did not represent a ‘strong competitive force relative to other competitors’.³³⁰ It also noted that the shear at Edmonton suffered a technical disruption and, at the time of its response, had not been operational since 30 April 2018 and argued that this had not resulted in a noticeable impact on volumes at EMR’s sites in the way that would be expected if EMR were providing a strong constraint on MWR Edmonton.³³¹
- 9.17 In relation to other competitors, EMR argued that we had dismissed competitors either without providing a clear and compelling rationale for doing so or when suppliers had indicated that they are strong or viable.³³² Its

City Metals, Bryan Hirst, Total Waste Management and London Metal Recycling) expanding in London in recent years, including through acquisitions of existing sites. [REDACTED].

³²⁸ [REDACTED].

³²⁹ [REDACTED].

³³⁰ EMR response to provisional findings report, paragraph 2.12.

³³¹ EMR response to provisional findings report, paragraphs 2.8 to 2.10 and Appendix 2.

³³² EMR response to provisional findings report, paragraph 2.3.

response set out detailed comments on the characteristics that we had described as being required to compete with EMR and on individual competitors³³³ and these are discussed in the relevant sections below. EMR also pointed to four competitors (Southwark Metals, Nationwide, Scrap Co, and Ampthill) that actively compete with the Parties, in addition to the seven that we had assessed in detail in our provisional findings report.³³⁴ EMR's view was based on these recyclers' site locations, processing equipment, survey evidence and some evidence of their purchase volumes.³³⁵ EMR further submitted that we had not sufficiently taken the significant amount of spare capacity at competitor sites into account when assessing the strength of competitors.³³⁶

9.18 Second, EMR reiterated that it considered that the market shares that we had calculated in our provisional findings were overstated. In particular, it argued that, given our focus on the purchase of ferrous and non-ferrous grades other than shredder feed, the relevant market shares should exclude shredder feed, which (based on shares presented in our provisional findings report) results in the Parties' combined share falling from [40-50]% to [40-50]%.³³⁷ It also highlighted the arguments it had previously made regarding sites for which we did not have volume data.³³⁸ It said that taking account of these factors gave a combined market share of [40-50]% and an increment of [5-10]%, and argued that these shares would not give rise to prima facie competition concerns.³³⁹

9.19 Third, EMR disagreed with our provisional conclusion that competitors are reliant on MWR for onward sales or a route to market. It pointed out that MWR did not have 'a unique route to market in the London region' with over three quarters of its volumes being sold to EMR and other metal recyclers.³⁴⁰ EMR argued that MWR was not in a stronger position than other metal recyclers in this regard and that MWR was 'simply an intermediary' rather than a route to market, with [%] of its sales going through routes that other metal recyclers could also readily access, ie selling to EMR or to other metal recyclers, to UK traders that export, or to UK final customers.³⁴¹

³³³ EMR response to provisional findings report, paragraphs 2.17 to 2.42.

³³⁴ Provisional findings report, paragraphs 9.72 to 9.96.

³³⁵ EMR response to provisional findings report, paragraph 2.42 and Annex 2.

³³⁶ EMR response to provisional findings report, paragraphs 2.50 to 2.53.

³³⁷ EMR response to provisional findings report, paragraph 2.5.

³³⁸ EMR response to provisional findings report, paragraph 2.6 – subsequently amended in [%].

³³⁹ EMR response to provisional findings report, paragraph 2.7 – subsequently amended in [%].

³⁴⁰ EMR response to provisional findings report, paragraph 2.12.4.

³⁴¹ EMR response to provisional findings report, paragraphs 2.13 to 2.14.

- 9.20 Fourth, the Parties also argued that the survey evidence on supplier views had not been given appropriate weight. In particular, EMR argued that the reasons for exercising caution in interpreting the survey that we had set out in relation to tendered contracts in the West Midlands were far less valid, if at all, in relation to the Parties' suppliers in London³⁴² and we had not explained or shown how EMR could feasibly identify and discriminate between small suppliers (which the survey showed were unaffected by the merger) and large suppliers (which we believed had fewer alternatives).³⁴³ EMR highlighted that the 'vast majority of the respondents to the survey [were] either pro-merger or neutral' about it and that respondents had pointed to a 'wide range of competing alternatives many of which are explicitly identified by suppliers as equally close or closer competitors to EMR than MWR.'³⁴⁴
- 9.21 Finally, EMR highlighted that Southwark Metals has recently opened a new site in London and indicates on its website that it aims to have three sites strategically placed around south London within the next 18 months, which, EMR argued, indicates that new sites can be opened in the London region.³⁴⁵

Our assessment

- 9.22 This section considers the evidence in relation to:
- (a) The market shares of the Parties and other metal recyclers in the London region;
 - (b) Closeness of competition between the Parties pre-merger; and
 - (c) Competition from other metal recyclers in the London region.

Market shares

- 9.23 In our provisional findings report we presented market share figures for metal recyclers based on their overall purchase volumes across all grades of ferrous and non-ferrous metals. These indicated that EMR's market share was [40-50%]%, MWR had [5-10%]% and the Parties' combined share was [40-50%]%. As EMR has argued, market shares based on volume data that excludes shredder feed would more closely reflect the product market that we have defined, so the market share data presented below reflects non-shredder purchases only, to the extent that third-party responses have allowed us to calculate these for all competitors. We also note, however, that

³⁴² EMR response to provisional findings report, paragraphs 2.57.

³⁴³ EMR response to provisional findings report, paragraphs 2.56

³⁴⁴ EMR response to provisional findings report, paragraphs 2.54 and 2.55.

³⁴⁵ EMR response to provisional findings report, paragraphs 2.61 and 2.62.

there are likely to be economies of scope that arise from purchasing a range of different grades of waste scrap metal, so our analysis below also takes account of metal recyclers' overall volumes.

9.24 As set out in our Supplementary Provisional Findings, our provisional market shares for the London region changed for three reasons:³⁴⁶

- (a) First, we calculated market shares that exclude shredder feed purchased by metal recyclers that operate shredders in the region;³⁴⁷
- (b) Second, we also excluded shredder feed purchases from the market shares presented for other metal recyclers, even those that do not operate a shredder;³⁴⁸ and
- (c) Third, we received volume data in relation to two additional metal recyclers (London City Metals and Southwark Metals), accounting for additional competitor volumes of approximately [redacted] tonnes per year in the London region, as well as data on purchase volumes at an additional site for an existing metal recycler (Sims' dock site at Sheerness), which accounts for [redacted] tonnes.³⁴⁹

9.25 Our estimates of market shares based on purchasing volumes for non-shredder feed grades are set out in Table 9.1, below. EMR has a [30-40%] share and MWR has [5-10%], giving a combined share of purchases of [30-40%].

³⁴⁶ Supplementary Provisional Findings, paragraph 1.26.

³⁴⁷ These adjustments affect: EMR, as it operates two shredder sites in the region and purchases shredder feed at its other sites too; MWR, as it purchases some shredder feed at its London sites; Van Dalen, as it operates a shredder site at Dagenham, and Charles Muddle, as it operates a shredder site in West Sussex.

³⁴⁸ For some metal recyclers, this has been possible based on their responses, eg [redacted] and [redacted] do not operate shredder in the region and purchase minimal or no shredder feed in the London region. For others, this has been based on their sales of shredder feed to the Parties, eg [redacted], [redacted].

³⁴⁹ We were aware of this site when we made our provisional findings, but we did not have data on the volume of purchases being made by Sims at that site.

Table 9.1: Volume shares of waste scrap metal purchases in the London region, 2017

	<i>Number of sites in the London region</i>	<i>Total Volume Purchased (MTs)</i>	<i>Share of Purchases (%)</i>	<i>Volumes excluding shredder feed (MTs)</i>	<i>Share of non-shredder feed purchases (%)</i>
EMR	10	[REDACTED]	[40-50%]	[REDACTED]	[30-40%]
MWR	3	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
Parties Combined	13	[REDACTED]	[40-50%]	[REDACTED]	[30-40%]
Sims	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
S Norton	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[5-10]%
Benfleet	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
London City Metals	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
ASM	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Total Waste Management	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
LKM Metals	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
The Remet Company	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
BFA Recycling	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Scrap Co	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
H Ripley & Co	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
[REDACTED]	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
ELG Haniel Metals	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Nationwide	[REDACTED]	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Other sites	46	496,397	19%	358,263	17%
Total	83	2,682,244	100%	2,082,845	100%

Source: Parties, competitors, and Environment Agency data [REDACTED]

Notes:

1. Total volumes purchased exclude inter-depot purchases for the Parties.
2. Number of sites for MWR includes MWR Edmonton, MWR Neasden and MWR Pinns Wharf. [REDACTED]
3. "Volumes excluding shredder feed" exclude shredder feed for the Parties and all competitors – both those that operate shredders and those that do not.
4. Number of sites in the London region includes competitor sites that are within 50km of one of the Parties' London region sites based on straight-line distances.

9.26 Any loss of competition that results from this merger is between the two largest metal recyclers in the London region. They both operate sites with a range of processing equipment, both purchase substantial volumes from other metal recyclers and both export directly from the London region, although we note that MWR directly exports a far lower share of its purchases ([REDACTED]) than EMR does ([REDACTED]). As such, our focus is on competition between recyclers with substantial processing capabilities and a range of routes to market, as any loss of competition at this level of the supply chain also feeds through to weaker competition between recyclers operating feeder sites. This is because many of these smaller recyclers sell on to the larger recyclers for further processing and in order to access export markets or UK final customers.

9.27 The Parties submitted that their estimated shares are overstated because there are many sites identified by us for which we do not have volume data. They argued that sites that fall outside the EA data submission requirements (T9 exempt sites) do not necessarily handle small volumes and their exclusion

is likely to overstate the Parties' position.³⁵⁰ As set out in detail below, our competitive assessment covers a large number of competitors, including those that the Parties have referred to as being similar to MWR. As we noted in our provisional findings report, we accept that there is likely to be a long tail of small metal recyclers and merchants that will account, in aggregate, for non-trivial purchase volumes, but the scale, lack of processing capabilities and the less attractive routes to market open to these firms mean that they are unlikely to impose a material constraint on EMR post-merger.³⁵¹

9.28 Two other metal recyclers also commented on our market share calculations for the London region. In particular:

(a) [REDACTED] took the view that our estimate of the Parties' combined market share was not consistent with its own experience of the London region, arguing that:³⁵²

- (i) The fact that scrap metal tends to pass through a number of different recyclers before being exported or sold to UK final customers means that double-counting is likely and that this would lead to an over-estimate of the market size and an under-estimate of the Parties' market shares;
- (ii) A number of the competitors listed as competing with the Parties in shearing material operated much smaller, lower capacity shears than the Parties and so the capacity of these competitors may have been overstated; and
- (iii) A number of the competitors identified were, in [REDACTED]'s view, 'not really direct competitors with EMR', as they sold most of their scrap to the Parties (ASM), concentrated on stainless steel and non-ferrous (ELG Haniel) or operated civic amenity sites and supplied most of its scrap to MWR (Nationwide).

(b) [REDACTED] made a number of points:

- (i) As a general argument, [REDACTED] reiterated its view that our assessment of competition in the London region should be restricted to those sites that are within the M25, with sites located outside that area providing a 'very limited' constraint.³⁵³

³⁵⁰ [REDACTED]

³⁵¹ [Provisional Findings report](#), paragraph 9.24.

³⁵² [REDACTED].

³⁵³ [REDACTED].

- (ii) [X] argued that the size of the market is ‘artificially inflated’ by the double or triple counting of the same volumes as they are traded between metal recyclers, but that EMR’s deep-sea dock and the lack of other outlets for scrap metal in London means that EMR ultimately handles a high share of scrap metal arisings from within the M25. [X] estimated that 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.³⁵⁴

9.29 In response to these points, we note that:

- (a) Our market shares are (for the most part) based on actual purchase volumes, so no assumptions have been made about competitors’ capacities in calculating these market shares;
- (b) The issue of double-counting scrap metal volumes, combining data from different levels of the supply chain, and our interpretation of volume shares in this sector is set out in chapter 7, above; and
- (c) In terms of which metal recyclers are direct competitors to the Parties, the issue of shearing capabilities is discussed at paragraphs 9.73 and in Appendix F, while the section assessing individual metal recyclers sets out any relevant evidence in relation to competitors’ processing capabilities and other factors that are likely to determine the strength of the constraints that they impose on the Parties post-merger.

Conclusions on market shares

9.30 We found that the Parties have a combined market share of [30-40%], with the merger resulting in an increment of ([5-10%]) to EMR’s market share. Our estimate of the Parties’ combined market share has decreased by [5-10] percentage points compared to the figures presented in our provisional findings report. This was driven by the exclusion of additional shredder feed purchases from our calculations as well as the inclusion of two additional competitors (London City Metals and Southwark Metals) and an additional site for another competitor (Sims). While these figures need to be interpreted with a degree of caution,³⁵⁵ it remains the case that the Parties are the two largest purchasers of scrap metal in the London region, with EMR being by far the

³⁵⁴ [X].

³⁵⁵ See paragraphs 7.29 to 7.34, above.

largest, while the next largest players have somewhat lower volumes than MWR.

Closeness of competition between the Parties pre-merger

Characteristics of the Parties' site networks in the London region

- 9.31 As set out below, the evidence indicates that EMR and MWR were close competitors pre-merger, based on them being the two largest purchasers in the London region, the proximity of their site locations in north London and their processing capabilities. In relation to their routes to market, as set out below, while both exported directly from the London region (or had the capacity to do so)³⁵⁶ and provided a route to market for smaller recyclers, MWR was in a much weaker position than EMR in this regard and made the majority of its sales to other metal recyclers for sale or export.
- 9.32 In assessing the closeness of competition between the Parties, we first note that there is no other competitor of comparable size to EMR operating in the region (Table 9.1, above). While still somewhat smaller than MWR, there are six metal recyclers with annual total purchase volumes in the regions of 85,000 to 140,000 tonnes present in the London region – five of which have non-shredder feed purchases in excess of 70,000 tonnes per year. Table 9.2, below, compares the characteristics of the Parties' site networks in the London region – setting out site-level purchase volumes and values, processing and dock facilities, site surface areas, and the distances between EMR and MWR sites.

³⁵⁶ [REDACTED]. EMR response to provisional findings report, paragraph 2.12.3, footnote 13.

Table 9.2: Parties' sites in the London region

Parties' sites	Export facilities	Processing equipment	Purchases at site		Total value (£)	Surface area of site (acres)	Distance from MWR sites (km)	
			Total Volume (MTs) (Shredder Feed)	Total Volume (MTs) (Non-Shredder Feed)			Edmonton	Neasden
EMR sites								
Boreham			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	44	60
	Container (Non-Fe Only)		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
Brentford Canning Town	Container	Shear, Shear, baler	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	23	9
		Shredder (Fe Only)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	11	18
East Tilbury			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	35	47
Erith		Shear	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	23	32
Mitcham		Shear	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	26	19
Rochester			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	46	56
	Deep-sea dock (Fe Only)		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
Tilbury Dock			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	32	43
Wandsworth		Shears	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	17	12
Willesden	Container	Shredder	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	16	3
MWR sites								
Edmonton	Container	Shear, Granulator	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	0	15
Neasden			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	15	0
Pinns Wharf	Short-sea dock		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	14	24
Parties combined			[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	-	-

Sources: [REDACTED]

Notes:

1. Volumes and values exclude inter-depot trade.
2. Distances are straight-line, rather than road distances.
3. Total Value includes purchases of shredder and non-shredder metals.

9.33 Based on the site-level information set out in Table 9.2, above, we found that:

- (a) First, while EMR clearly has very large overall purchase volumes and an extensive site network (with six of its ten sites accounting for substantial purchase volumes of non-shredder feed - above [REDACTED] tonnes per year), MWR's Edmonton site also attracts a high volume of purchases;
- (b) Second, there is a high degree of overlap between the Parties' sites, with all of EMR's sites within 50km of MWR's Edmonton site, while three EMR sites are located within 20km of the Edmonton site;
- (c) Third, as set out in chapters 6 and 7, processing capabilities are an important determinant of a metal recyclers' ability to compete for purchase

volumes and we note that MWR's Edmonton site has a shear, as do five of EMR's sites in the region;

- (d) Fourth, we note the large surface area of MWR's Edmonton site (6 acres), as well as the large surface areas at a number of EMR sites, which is relevant to current capacity and scope for expansion, given the barriers to entry for a large processing site in the London region;³⁵⁷ and
- (e) Finally, given that having direct routes to market, especially for exports, is also an important determinant of a metal recyclers' ability to compete, we note that the Parties both operate docks in the region, although EMR's deep-sea dock puts it in a much stronger position than MWR and other operators of short-sea docks. MWR had made relatively little use of its Pinns Wharf dock in 2017 (with only [REDACTED] shipments, totalling just over [REDACTED] tonnes, being shipped from the site in 2017)³⁵⁸ and intends to allow the licence to use the facility to expire in late 2018. MWR stated that this was due to the fact that it no longer exports to the markets that were served from Pinns Wharf in the past.³⁵⁹ MWR stated that it 'had not reached any concrete plans in respect of Pinns Wharf prior to the Merger it is not a particularly useful site for the business at present.'³⁶⁰ MWR also commented that getting access to short-sea docks would 'not be a major issue'.³⁶¹

9.34 As set out in our assessment of the competing metal recyclers in the London region, below, for a number of these characteristics, MWR is not uniquely similar to EMR. For example, a number of other metal recyclers operate sites close to EMR's sites, several competitor sites have comparable processing capabilities, and a number of other recyclers operate short-sea docks in the London region.

9.35 In assessing where we expect the merger to be most likely to have an impact, we found that:

- (a) Although we use 50km volume catchment areas to derive market share estimates, we also recognise the challenges of transport in London, which means that competitive constraints may not be uniform across the whole catchment area. Where some suppliers within these catchment areas have high numbers of competitors to choose from, any bargaining power these suppliers have as a result does not constrain the Parties in relation

³⁵⁷ See [provisional findings report](#), paragraphs 9.97 to 9.105, and Appendix D.

³⁵⁸ [REDACTED]

³⁵⁹ [REDACTED]

³⁶⁰ [REDACTED]

³⁶¹ [REDACTED]

to individual price negotiations with other suppliers, eg those that are located in a part of the catchment area with fewer competing recyclers, or that would incur higher transport costs in switching to alternative sites;

- (b) Survey results indicated that location is the most important factor for suppliers in choosing a site in London,³⁶² while the second most common reason for a supplier ruling out a particular competitor site is distance;³⁶³ and
- (c) Some third-party views on the distances over which competition takes place in the London region indicated that waste scrap metal arising within the M25 tends not to travel to sites outside the M25. This was due to traffic congestion in the London area and due to a lack of metal recyclers with processing sites and a lack of final customers located within a reasonable distance of London.³⁶⁴

9.36 Based on these factors - and taking into account the volumes, equipment and locations of the Parties' sites - we would expect the loss of competition to have the greatest impact on suppliers to the Parties' sites in north and east London, in particular the MWR site at Edmonton and the EMR sites located closest to this.

9.37 EMR has argued that our assessment should focus on the loss of constraint from MWR and, from that point of view, there are a number of other metal recyclers in the London region that provide a constraint on EMR that is an equivalent or stronger constraint than that provided by MWR pre-merger.³⁶⁵ The Parties' views on particular competitors are set out below, as are their arguments in relation to routes to market, but in relation to the characteristics discussed in this section, EMR argued that:³⁶⁶

- (a) On site locations, there are six metal recyclers in London with an equivalent or greater number of sites than MWR, all of which are within 17km of an EMR site, with three located closer to EMR sites than the MWR sites are;
- (b) On processing capabilities, EMR argued that there are seven competitors in the London region with processing capabilities equivalent to or greater than MWR's one shear and one baler; and

³⁶² CMA Survey Report, Figure 14. Question 11a.

³⁶³ CMA Survey Report, Table 9.

³⁶⁴ [REDACTED].

³⁶⁵ EMR response to provisional findings report, paragraphs 2.11 to 2.16.

³⁶⁶ EMR response to provisional findings report, paragraph 2.12.

- (c) On dock facilities, EMR pointed out that MWR's Pinns Wharf short-sea dock was only used on [REDACTED] occasions in 2017, which accounted for export volumes of [REDACTED].^{367,368} The Parties submitted that at least seven competitors in London have access to dock facilities.³⁶⁹

Direct evidence on the closeness of competition between the Parties

- 9.38 The Parties submitted two pieces of evidence that, they argued, pointed towards the lack of constraint from MWR on EMR, and the importance of competition from other metal recyclers.
- 9.39 First, in support of their argument that they face a high degree of competition, the Parties submitted evidence from a log of telephone calls made by commercial staff that deal with buying from suppliers at a number of EMR sites, including in London, in February to April 2018.³⁷⁰ They argued that these approximately 1,200 telephone calls captured evidence of the high degree of competitive pressure that EMR faces. The call logs showed that EMR competed against 92 competitors for waste scrap metal across the country and that "competitive pressure" was identified as a common reason for EMR increasing its price offer to suppliers, and for business lost. The Parties submitted that in [REDACTED] % of calls, suppliers use competitors to apply competitive pressure (named competitors in [REDACTED] % of cases), with EMR losing the supply in about half of these cases. The logs also showed that although EMR won the supply in [REDACTED] % of cases, it was forced to raise prices in [REDACTED] % of cases.
- 9.40 Second, in response to our provisional findings report, EMR submitted data on daily purchase volumes at a number of its sites in the London region.³⁷¹ EMR explained that the shear at MWR's Edmonton site had suffered a technical disruption from late April 2018 onwards and that, if EMR's sites provided a strong constraint on MWR Edmonton, then we would expect to observe an increase in EMR's purchase volumes at its nearby sites that also operated shears.³⁷² Based on data on EMR purchase volumes at its sites at Canning Town, Wandsworth and Erith (the three closest EMR sites excluding its shredder site at Willesden), EMR concluded that there had been no

³⁶⁷ [REDACTED]

³⁶⁸ Data submitted by MWR indicated that it shipped just over [REDACTED] tonnes of scrap metal from Pinns Wharf in [REDACTED] shipments between January and October 2017, but it also noted that not all shipments from Pinns Wharf were for export, with some going, eg, to steelwork in the UK. [REDACTED].

³⁶⁹ EMR Response to provisional findings, [REDACTED].

³⁷⁰ [REDACTED]

³⁷¹ EMR response to provisional findings report, paragraphs 2.8 to 2.10 [REDACTED]

³⁷² EMR response to provisional findings report, paragraph 2.9.

noticeable impact on its volumes at these sites in the six weeks following the start of the disruption.

9.41 In relation to the call logs, we note that the calls:

- (a) Took place post-merger, so we may expect that they would underestimate (to an extent) the constraint from MWR, if suppliers perceived little benefit in comparing prices from sites under the same ownership;
- (b) These calls related to purchases at nine EMR sites in the London region, but that for five of these sites the number of calls was less than 5;
- (c) The competitors identified more than once are Crow Metals, H Ripley & Co, Sims, Remet, Benfleet, S Norton and LKM, which are included in our market share calculations; and
- (d) These calls also confirm the extent to which prices and terms are set on the basis of bilateral negotiation, allowing EMR to adapt its offer in response to different levels of competition relating to different suppliers.

9.42 In relation to the Edmonton shear outage:

- (a) MWR initially told us that the shear outage lasted approximately three months from late April to late July 2018.^{373,374} MWR also initially told us that it was still buying material for shearing from suppliers that it had previously purchased from. in order to keep their business. It was then selling this on (without a margin) to other metal recyclers, including S Norton and EMR;³⁷⁵
- (b) In a follow-up response, MWR stated that, in addition to the shear outage, the entire site was concreted and while the site was not fully functional its suppliers 'will have sold their materials to one or more of MWR's competitors, and this volume of purchases has been lost to MWR [...] MWR has no knowledge of who it is being sent to';³⁷⁶
- (c) Our own analysis of EMR's transaction data sought to isolate EMR purchases of grades that need to be sheared and did not detect a discernible change in purchase volumes for these grades at EMR's sites at Canning Town, Erith, Wandsworth or Brentford.

373 [REDACTED]
374 [REDACTED].
375 [REDACTED].
376 [REDACTED]

(d) [REDACTED] pointed out that shearing material from outside London that had previously been delivered to MWR at Edmonton³⁷⁷ could easily have been diverted to EMR sites in those areas, rather than to EMR's London sites.³⁷⁸

9.43 While we have not conducted a detailed assessment of shearing volumes at the Parties' sites, EMR's evidence appears to support its view that there is limited competition between the Parties in the purchase of material for shearing.

Third-party views

9.44 We have summarised below the comments received from third parties relevant to an assessment of the impact of the merger on competition in the purchasing of scrap metal in the London region. These include comments from both suppliers of scrap metal and other metal recyclers, as well as respondents to the supplier survey.³⁷⁹ As set out below, third parties' views are mixed, with some suppliers and competitors expressing concerns, whilst others were unconcerned.

Suppliers' views

9.45 The responses we received from suppliers fell into two categories:

- (a) those that were unconcerned, due to the lack of perceived constraint from MWR pre-merger or the availability of alternative recyclers; and
- (b) those that were concerned about the effect of the merger in reducing competition, including explicit mention of purchase prices falling.

9.46 Among those suppliers that were unconcerned, two main reasons were given:

- (a) The availability of a number of alternative suppliers: For example:
 - (i) FCC Environment, a large waste management firm, was unconcerned, as EMR accounted for a small proportion of its scrap sales and it used a number of other metal recyclers already: [REDACTED], [REDACTED], [REDACTED], [REDACTED].

³⁷⁷ [REDACTED] identified areas 'west of the M25 and down the M4 corridor', as well as Hertfordshire, Bedfordshire and Essex, as being areas from which material had 'traditionally' been delivered to MWR's Edmonton site.

³⁷⁸ [REDACTED].

³⁷⁹ Summaries of third party representations and the supplier survey can be found on [the case page](#) of our website.

(ii) [REDACTED], listed a number of alternatives – S Norton, Sims, Total Waste Management, Southwark Metals, BFA Recycling, Benfleet – but noted that these were not used at present as to do so would incur higher haulage costs.

(iii) Similarly, [REDACTED], another [REDACTED], was unconcerned and stated that it had ASM and Capital Metals as options.³⁸⁰

(iv) The Erith Group was unconcerned about the merger, noting that its large national demolition business has good trading relationships with a range of metal recyclers from small independents through to Sims, S Norton and the Parties.³⁸¹

(b) The view that MWR could not provide the national coverage that they needed and so had not constrained EMR in competing for their supplies pre-merger. A number of large national suppliers – [REDACTED] and [REDACTED] - were unconcerned as a result.

9.47 A number of suppliers that were concerned pointed to EMR's strong position in the market and explicitly referred to the risk that the merger would lead to lower prices for suppliers,³⁸² including a number of respondents to the supplier survey,³⁸³ although we note that only a small minority of respondents expressed concern about the merger.³⁸⁴

Other metal recyclers' views

9.48 Comments from other metal recyclers, on competition between the Parties and the likely effect of the merger, fell into three groups.

9.49 First, a number of metal recyclers expressed concern at the lack of choice that they would have for selling on their scrap metal, with suppliers of shredder feed being particularly concerned,³⁸⁵ although these are less relevant to our assessment of competition for the purchase of non-shredder feed.³⁸⁶ [REDACTED] and [REDACTED] took the view that the merger would reduce competition, while, in their survey responses, [REDACTED] and [REDACTED] explicitly expressed the concern

³⁸⁰ We note a response from one additional London-based supplier ([REDACTED]) in response to our Supplementary Provisional Findings which expressed the view that the merger would not weaken competition in the London region, but this is a supplier of shredder feed, so these views are reflected in Chapter 8, above. [REDACTED].

³⁸¹ [REDACTED].

³⁸² See also a number of metal recyclers that expressed this concern, below, including [REDACTED] and [REDACTED].

³⁸³ See, eg survey responses from [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

³⁸⁴ Among respondents at EMR sites, 4% expected a negative impact of their business, while 19% thought it would be positive (with 63% neutral and 15% 'Don't know'), while for MWR sites 10% were negative about the merger compared to 25% positive (53% neutral and 13% 'Don't know'). CMA Survey Report, Figure 29.

³⁸⁵ [REDACTED].

³⁸⁶ [REDACTED].

that prices would be forced down, as did [REDACTED], noting that MWR used to compete against EMR, but since the acquisition the price had been affected.³⁸⁷

9.50 Second, a number of other metal recyclers raised the concern that the increase in the size of EMR would result in smaller metal recyclers finding it increasingly difficult to compete, as EMR would be able to offer higher prices, eg:

(a) [REDACTED] made this point [REDACTED];³⁸⁸

(b) [REDACTED] was concerned that, even though it did not think it had been in direct competition with MWR (due to its location), the growth of EMR would make EMR an even more aggressive competitor - targeting the smaller recyclers that supplied [REDACTED] and paying above-market prices to attract those volumes and limit the size of [REDACTED].³⁸⁹

(c) [REDACTED] was concerned that the merger would have a negative effect by creating a 'dangerous monopoly' where medium-sized recyclers were unable to compete on price due to EMR's lower transport costs.³⁹⁰

(d) [REDACTED].³⁹¹

9.51 Third, concerns were expressed that EMR and MWR enjoyed particular advantages in the London region - site network; large, efficient processing facilities; and the lack of competition from other large metal recyclers - which gave them a strong position. [REDACTED] expressed concern that the Parties' strong position in shredding in the broader region, as well as EMR's deep-sea docks, meant that they faced little effective competition in the London region, with a high proportion of scrap metal arisings in London passing through the Parties' docks for export.³⁹² [REDACTED] was concerned that the merger puts EMR in a 'dominant' market position and sees another independent supplier being taken over by EMR.³⁹³ [REDACTED] (which operates two sites in [REDACTED] and [REDACTED]) was

³⁸⁷ We note that evidence of an actual merger effect generally represents strong evidence of a loss of competition from the merger. As set out throughout our assessment of competition in the London region, the evidence base is mixed with much of the survey evidence and supplier views pointing towards little impact from the merger, while other evidence, eg., market shares, points towards an SLC. We have assessed this evidence in this context.

³⁸⁸ [REDACTED]

³⁸⁹ [REDACTED]

³⁹⁰ [REDACTED]

³⁹¹ [REDACTED]

³⁹² [REDACTED]

³⁹³ [REDACTED]

concerned that the acquisition of MWR, as well as any other expansion by EMR, could give it a 'stranglehold' in the area.³⁹⁴

9.52 In assessing what weight to put on third-party views, two issues arise:

- (a) The Parties have argued that where the views of suppliers that are also metal recyclers are sought we should exercise caution in interpreting these, as many of these firms are also the Parties' competitors.³⁹⁵ We have borne this in mind and note that a number of the metal recyclers' concerns related to an expectation that the merged firm could pay more (rather than less) for waste scrap purchases post-merger. As set out in chapter 7, where the concern relates to the difficulty competitors would have in matching prices that the Parties would be able to pay for waste scrap metal (or from their inability to do so prior to the merger), rather than a concern that a loss of competition would result in lower prices being paid to suppliers, there is less immediate concern about detriment arising from the merger.³⁹⁶
- (b) We were told by several third parties that following publication of our provisional findings EMR had been visiting various third parties encouraging them to make submissions to the CMA; this may have increased the relative number of response received that were favourable to the merger. Irrespective of any contact from EMR, it was suggested that EMR's position in the sector may have influenced the views that were expressed, with [redacted] ascribing the lack of concern about the merger among many suppliers to EMR's 'dominance ... and an unwillingness among suppliers to fall out with them'.³⁹⁷

9.53 We note that not all of the views expressed by metal recyclers were necessarily specific to purchasing in the London region, with a number of national players (eg [redacted]) expressing views about EMR's position nationally and across different levels of the supply chain.

9.54 We also note that a minority of the metal recyclers that replied to our supplier survey in the London region (and Hitchin) were concerned about the merger, with nine out of 33 expressing concern. Among those metal recyclers that we spoke to directly that were unconcerned about the effect of the merger in the London region, a number of these were shredder feed suppliers and/or the

³⁹⁴ [redacted]

³⁹⁵ [redacted]

³⁹⁶ However, we note that concerns could arise in the long term if competition were sufficiently weakened such that the Parties no longer had an incentive to pay higher prices in order attract purchases of waste scrap metal.

³⁹⁷ [redacted]

focus of their responses were on competition between shredder operators.³⁹⁸ Their views are reflected in chapter 8, above.

9.55 Various metal recyclers named specific competitors to the Parties, but with differing views as to the effectiveness of these competitors as a constraint on the Parties:

(a) [redacted] stated that EMR's nationwide coverage put it in 'an extremely strong position' in purchasing across all grades, with 'probably only Sims' having comparable coverage. However, it added that national coverage was not necessarily required to be competitive, with 'many strong independent companies still operat[ing] on a regional basis who would be able to handle the volumes of scrap that the Parties currently handle';³⁹⁹

(b) [redacted] listed Van Dalen and S Norton as viable competitors [redacted];⁴⁰⁰

(c) [redacted] did not consider itself to be a 'realistic competitor' to the Parties in the London region,⁴⁰¹ and argued that the Parties' combination of deep-sea docks, shredders and their network of feeder sites mean that they 'dominate' the area within the M25, as the cost of transporting scrap out of London makes other recyclers uncompetitive;⁴⁰²

(d) [redacted].⁴⁰³ [redacted].⁴⁰⁴ [redacted].⁴⁰⁵

Supplier survey

9.56 Based on our commissioned survey, responses from suppliers to EMR sites in the London region did not point towards a strong constraint from MWR. When asked about which alternative site suppliers would divert to if the EMR site they had used were to close⁴⁰⁶ two respondents that named an alternative gave an MWR site as that next best alternative, while 79 mentioned another known third party.⁴⁰⁷ When asked explicitly whether an MWR site was a viable alternative,⁴⁰⁸ 28 of the 173 EMR suppliers (ie 16%) that were asked this question responded that an MWR site was a viable alternative.

398 [redacted]

399 [redacted]

400 [redacted]

401 [redacted]

402 [redacted]

403 [redacted]

404 [redacted]

405 [redacted]

406 [CMA Survey Report](#), Questions 20b and 22b.

407 [CMA Survey Report](#), Table 6.

408 [CMA Survey Report](#), Question 23b.

- 9.57 As set out below, many of the other metal recyclers received a similarly weak response in our survey. S Norton, which, based on purchase volumes appears to be a very relevant competitor, was also not mentioned as an alternative when suppliers were asked where they would divert to if the EMR site in question were to close. Prompted responses for S Norton were also not very substantial, with only 24 out of 165 respondents at EMR sites considering it a viable option. Other recyclers that appeared, based on other evidence, to be likely to be viable alternatives to EMR also received relatively weak survey responses: when prompted, Benfleet was seen as a viable option by 14 out of 87 respondents, LKM by 12 out of 81 and Sims' Aldershot site by six out of 47. We note the high level of responses where suppliers indicated that they did not know what their next best option was or had not heard of what appear (based on volume data and the Parties' views) to be key competitors in the London region.
- 9.58 Looking at the constraint from EMR on MWR – also relevant to our merger assessment – we note that there were only 28 survey respondents who supplied waste metal to the MWR sites in Edmonton and Neasden.⁴⁰⁹ When asked about which alternative site suppliers would divert to if their MWR site were to close, 3 (out of 28) of these chose an EMR site without prompting, while once prompted 14 (out of 26) responded that an EMR site was a viable option.⁴¹⁰ Sims (three respondents) and ASM (two) were also considered as alternatives in the event of the MWR site being closed. When suppliers to MWR were prompted, after EMR (which just over half considered a viable option), the strongest responses were for London City Metals (8 out of 22), Remet (7 out of 22), with Benfleet, S Norton (Barking), Sims (Sheerness) and Van Dalen all being considered viable alternatives to MWR Edmonton by 6 out of the 22 suppliers that responded, although we note that only EMR had a net positive response to this question (ie more said 'yes' than said 'no') among MWR suppliers.⁴¹¹
- 9.59 As set out in more detail in chapter 7, we have exercised caution in interpreting the results of the survey for a number of reasons including the small sample sizes at many sites, and concerns about the sample not being representative of the population of interest. In relation to the London region responses, we note that:

⁴⁰⁹ CMA Survey Report, Table 1.

⁴¹⁰ See Appendix I, Tables I.2 and I.4.

⁴¹¹ See Appendix I, Tables I.2 and I.4.

- (a) Many (although not all) of the respondents to the survey were very small suppliers, that were infrequent users of metal recycling sites, and were primarily interested in convenience;
- (b) To the extent that there are many small feeder sites that could serve such small, infrequent suppliers, it is not surprising that these suppliers tended not to be concerned about the merger;
- (c) The small sample of respondents achieved at many sites makes it difficult to draw robust inferences from the results;
- (d) While the responses from EMR suppliers on the viability of MWR sites as an option indicated a weak constraint from MWR on EMR, the constraint from other competing metal recyclers that was detected in the survey was also weak. This may suggest that these suppliers' responses are not informative of the competitive constraints in the sector in general;
- (e) The survey suggests that EMR provides a stronger competitive constraint on MWR than MWR does on EMR; and
- (f) The generally low level of awareness of competitor sites is consistent both with many respondents being small and infrequent users of these sites, and also with a low level of 'brand' awareness among these suppliers.

9.60 On the other hand, the survey did include some larger suppliers, including other metal recyclers, so the fact that none of these considered MWR as the closest alternative to EMR, is informative and has to be weighed against other evidence on competition between the Parties.

Parties' view on closeness of competition

9.61 The Parties argued that EMR faces a large number of competitors in the London region,^{412,413} many of which are 'at least as effective a competitor' as MWR in terms of capabilities.⁴¹⁴ In arguing that MWR was not a uniquely close competitor to EMR, they pointed out that:

- (a) Based on site locations, processing capabilities, dock facilities and routes to market, MWR did not represent a 'strong competitive force relative to other competitors',⁴¹⁵ with a number of competitors in the London regions

⁴¹² [REDACTED].

⁴¹³ EMR response to provisional findings report, paragraph 2.12.

⁴¹⁴ [REDACTED].

⁴¹⁵ EMR response to provisional findings report, paragraph 2.12.

being 'at least as effective as MWR', including Sims, S Norton, BFA, ASM, Benfleet and H Ripley;⁴¹⁶

- (b) EMR pointed out that MWR did not have 'a unique route to market in the London region' with over three quarters of its volumes being sold to EMR and other metal recyclers,⁴¹⁷ arguing that it was not in a stronger position than other metal recyclers in this regard and that MWR was 'simply an intermediary' rather than a route to market, with [X] % of MWR's sales going through routes that other metal recyclers could also readily access,⁴¹⁸
- (c) In responding to the assessment of individual competitors that had been set out in the provisional findings report, EMR argued that we had dismissed as ineffective a number of competitors that were as strong or stronger competitors to EMR as MWR was, and pointed to a number of reasons why it disagreed with this assessment, as set out in more detail in the relevant section of this consultation document, below.⁴¹⁹

Conclusion on closeness of competition

- 9.62 Based on the Parties' common characteristics in terms of site locations, processing capabilities, and the close proximity of their sites in the London region (Table 9.2), we found that they were close competitors pre-merger, but that the constraint that MWR imposed is not especially strong or substantially more effective than that imposed by a number of other metal recyclers. Although EMR is considerably larger than MWR in terms of purchase volumes and site network, MWR is one of a number of competing metal recyclers in the London region that has the characteristics required to compete directly with EMR. Evidence from a recent shutdown at an MWR site did not suggest that a large proportion of its customers switched to EMR in response. We note that its importance as an independent route to market for smaller recyclers was limited by its reliance on other recyclers (including EMR) for deep-sea exports.
- 9.63 As set out above, third-party views on the impact of the merger were mixed, although a number of competing metal recycler have emphasised the Parties' strong position in the London region. While a number of third parties in the London region expressed concerns about the merger, many of these related to the Parties' purchase of material for shredding rather than the purchase of

⁴¹⁶ [X].

⁴¹⁷ EMR response to provisional findings report, paragraph 2.12.4.

⁴¹⁸ EMR response to provisional findings report, paragraphs 2.13 to 2.14.

⁴¹⁹ EMR response to provisional findings report, paragraphs 2.17 to 2.25.

other grades, while other suppliers were not concerned. The survey results did not suggest that MWR imposes a strong constraint on EMR currently, although EMR is a constraint on MWR. Only a minority of respondents to the survey expressed concern about the merger.

- 9.64 Overall, we conclude that much of the evidence points towards the Parties being close competitors, but some the evidence – from the survey, supplier views, and MWR’s reliance on others for deep-sea exports – indicates that the constraint from MWR was not particularly strong.

Competition from other metal recyclers

- 9.65 This section sets out the criteria against which we have assessed the Parties’ main competitors in the London region, before focussing in detail on seven metal recyclers. As set out below, the evidence demonstrates that the Parties face competition from a number of other metal recyclers, which is likely to be sufficient, in aggregate, to replace the competitive constraint lost by EMR’s acquisition of MWR.

Criteria for assessing competitive constraint from other metal recyclers

- 9.66 In order to assess the constraint from the Parties’ main competitors in the London region, we first present information on competitors in relation to the following criteria, based on the evidence on the competitive dynamics in this industry summarised in chapter 7, above:
- (a) Purchase volumes;
 - (b) Site locations and their proximity to the Parties’ sites, and processing capabilities at those sites;
 - (c) Spare capacity;
 - (d) Routes to market, in particular whether each metal recycler has access to its own docks, and whether it has other means of exporting itself or whether it sells a significant proportion of the waste scrap metal that it purchases to other recyclers, including the Parties;
- 9.67 We then present a summary conclusion in relation to each of the largest individual competitors in London, based on the above criteria as well as information from the survey and from qualitative comments received from metal recyclers, suppliers, and the Parties.

Volumes

9.68 As discussed above, we estimate that the Parties account for [30-40%] of purchases of ferrous and non-ferrous waste scrap in the London region, with EMR being by far the largest metal recycler in the region. While all other metal recyclers are significantly smaller than EMR, we note that there are a number that, while also having lower purchase volumes than MWR's [] tonnes, do account for substantial purchases. As set out in Table 9.1, above, six other metal recyclers in the London region have total purchase volumes of between [] and [] tonnes: Sims, S Norton, Benfleet, London City Metals, and Total Waste Management, with five of these also making non-shredder feed purchases in excess of [] tonnes per year.

Site locations and processing equipment

9.69 EMR has argued that a number of competing metal recyclers operate sites that are close to EMR sites.⁴²⁰ Given our assessment is focused on whether the loss of the constraint from MWR would lead to an SLC, we are more focussed on those competitors than can impose a constraint on EMR sites in the north and east of London, the locations in which we believe MWR to have most strongly constrained EMR pre-merger. This assessment also takes account of the extent to which these competitors would be likely to constrain MWR's Edmonton site post-merger.

9.70 In relation to processing capabilities, EMR has argued that there are seven competitors in the London region with processing capabilities equivalent to or greater than MWR's one shear and one baler, while two other metal recyclers ([] and []) have argued that the types of shears operated by many other metal recyclers in the region have much lower capacity than those operated by the Parties:

(a) [] pointed out that MWR's shear at Edmonton can process up to six times the volume of its shear, and stated that most of the shears operated by recyclers other than EMR and MWR are either mobile units or old machines which are likely to have lower capacities,⁴²¹ and

(b) [].⁴²²

9.71 In Table 9.3 we present, for each of the main metal recyclers in the region, data on overall purchase volumes, site locations relative to the Parties and

⁴²⁰ []

⁴²¹ []

⁴²² []

processing equipment of each of the main metal recyclers. This table focusses on those sites with processing capabilities that are comparable to MWR's Edmonton site, ie those with at least one shear. Taking account of the issues raised in relation to shear capacities, we have sought to identify those competitors that are likely to have comparable shearing capacity to MWR (where possible) in our assessment below and in our assessments of individual metal recyclers at paragraphs 9.100 to 9.177, below. We also include dock facilities of the main metal recyclers, as these are an important factor in determining their options in getting their scrap metal to market. The table can be compared against the earlier Table 9.1 which has equivalent data on the Parties' sites.

Table 9.3: Volume of waste scrap metal purchases at competitors' sites in the London region

<i>Metal recycler</i>	<i>Site location</i>	<i>Dock facilities*</i>	<i>Processing equipment</i>	<i>Purchase volumes of non-shredder feed at site (MTs)</i>	<i>Distance from nearest Party site (km)**</i>	<i>Nearest Party Site (name)</i>	<i>Distance from MWR Edmonton (km)</i>
<i>Competitor sites north of the Thames</i>							
Remet Company	Poplar	None	[X]	[X]	0	EMR Canning Town	11
ELG Haniel	Barking	[X]	[X]	[X]	6	EMR Canning Town	14
S Norton	Barking	Short-sea	[X]	[X]	7	EMR Canning Town	15
London City Metals	Silvertown	Container	[X]	[X]	4	EMR Canning Town	15
BFA Recycling	Uxbridge	None	[X]	[X]	14	EMR Brentford	28
Benfleet	Thurrock	None	[X]	[X]	2	EMR Tilbury Dock	31
Benfleet	Basildon	None	[X]	[X]	14	EMR East Tilbury	39
Benfleet	Benfleet	None	[X]	[X]	16	EMR East Tilbury	43
Total Waste Management ASM	Basildon	None	[X]	[X]	15	EMR East Tilbury	39
Nationwide	Aylesbury	None	[X]	[X]	42	EMR Bedford	59
	Brightlingsea	Short-sea	[X]	[X]	34	EMR Boreham	78
<i>Competitor sites south of the Thames</i>							
Southwark Metals Scrap Co	Peckham	None	[X]	[X]	6	EMR Wandsworth	15
LKM Metals	Erith	None	[X]	[X]	1	EMR Erith	23
	Chatham	Short-sea	[X]	[X]	3	EMR Rochester	48
Sims	Sheerness	[X]	[X]	[X]	17	EMR Rochester	59
Scrap Co	Kent	None	[X]	[X]	26	EMR Rochester	59
Sims	Aldershot	[X]	[X]	[X]	38	EMR Brentford	61
Sims	Yateley	[X]	[X]	[X]	40	EMR Brentford	63
LKM Metals	Sittingbourne	-	[X]	[X]	17	EMR Rochester	63
H Ripley	Ashford	(Short-sea at Newhaven)	[X]	[X]	39	EMR Rochester	83

Sources: Volumes provided by the Parties are for the Calendar Year 2017. Competitor questionnaire responses refer to the last financial year. EA Volume Data is for the 2016 calendar year. Removed shredder feed by using questionnaire responses where available; otherwise by removing the volumes of shredder feed sold to the Parties.

Notes:

* Where dock facilities are referred to as 'Deep-sea' or 'Short-sea', this indicates the facilities at the site in question, although some of these recyclers (eg [X] and [X]) operate dock facilities in other regions too. In the case of H Ripley, the Ashford site listed is not a dock facility, but it does operate one relatively nearby (Newhaven, Sussex), though this is outside our London catchment region. Those recyclers where 'None' is indicated refers to those with no dock facilities in the UK.

** Distances calculated by the CMA using postcode information provided by competitors and the Parties, and are based on straight-line, rather than road, distances.

9.72 Based on the information presented in Table 9.3, as well as the more detailed information on shears in the London region presented in Tables 1 and 2 of Appendix F, we found the following.

9.73 As the Parties have argued, there are a significant number of competitors in the region that also operate a shear, and a number of competitors operating multiple shears. However, taking account of a number of third-party concerns about the capacity and capability of these competitors' shears, we have also looked at the size of these shears, where possible. In assessing the size and capacity of these shears, we understand that the cutting force of a shear, which is measured in tonnes, indicates its capacity.⁴²³ As set out in Table 1 of Appendix F, EMR operates ten shears in the London region (with sizes ranging from 600 to 2,000 tonnes), while MWR operates one 1,300-tonne shear at Edmonton. In assessing the extent to which other metal recyclers in the London region operate shears of comparable size and capacity to MWR's shear, we found that:

- (a) Six other metal recyclers operate shears of comparable or equivalent capacity (based on their cutting force as measured in tonnes), with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] operating a total of seven shears with cutting force in excess of 960 tonnes;
- (b) A further six shears at competitor sites in the region appear to be somewhat lower capacity than MWR's shear, with those operated by [REDACTED] (at two sites), [REDACTED], [REDACTED] (two shears) and [REDACTED] being likely to be lower capacity due to their lower cutting force (all 900-tonne shears or lower) or because some are mobile shears rather than static;⁴²⁴ and
- (c) In relation to Sims, we have not been able to verify the size or capacity of its shears at its Hampshire sites and note that it does not operate a shear at its Sheerness site.

9.74 A number of competitor sites are located significant distances from the MWR site at Edmonton, which is where the loss of competition as a result of the merger is likely to be most strongly felt, as set out in more detail below.

9.75 Having said this, we note that a number of these competitors are located close to EMR sites (sometimes closer than MWR Edmonton is), which is likely to affect the strength of the constraint that they impose.

⁴²³ [REDACTED].

⁴²⁴ A number of third parties have expressed the view that mobile shears are lower capacity than fixed shears, as well as that the age of the shear impacts its capacity (eg [REDACTED]). EMR has disputed the former point and stated that whether a shear is mobile or static is irrelevant, with its capacity being determined by its cutting force. This distinction has not impacted on our overall assessment of competition in the London region, so we have not come to a firm conclusion on the impact of mobility or lack thereof on shear capacity. EMR response to third-party comments, 7 August 2018, paragraph 2.3.1.

9.76 We note that some metal recyclers compete for purchases across a narrower range of grades than the Parties:

- (a) Sims Sheerness site, while making significant purchase volumes ([REDACTED] tonnes per year), does not operate any processing equipment at this dock site, so these volumes are exclusively processed ferrous scrap metal for export. [REDACTED].⁴²⁵ However, based on information submitted by EMR, its Rochester site has purchase volumes that are over 90% ferrous scrap metal.⁴²⁶ More generally, both EMR and MWR purchase substantial volumes of both processed and unprocessed scrap metal in the London region,⁴²⁷ so even a competitor site that purchases processed scrap metal only is likely to be a relevant constraint.
- (b) [REDACTED], which limits the constraint that it can impose on the Parties' purchasing more generally. However, as EMR has noted, [REDACTED] making it an important constraint in this segment of the market.⁴²⁸
- (c) [REDACTED], which is dealt with in chapter 8, above.

9.77 Figures 9.1 and 9.2, below, present the locations of the processing sites and docks of the Parties and of the main metal recyclers in the region.

⁴²⁵ [REDACTED]

⁴²⁶ See Table 9.2, above.

⁴²⁷ EMR's purchase volumes in the London region are [REDACTED]% unprocessed and [REDACTED]% processed (by volume), while for MWR the equivalent split is [REDACTED]% unprocessed and [REDACTED]% processed.

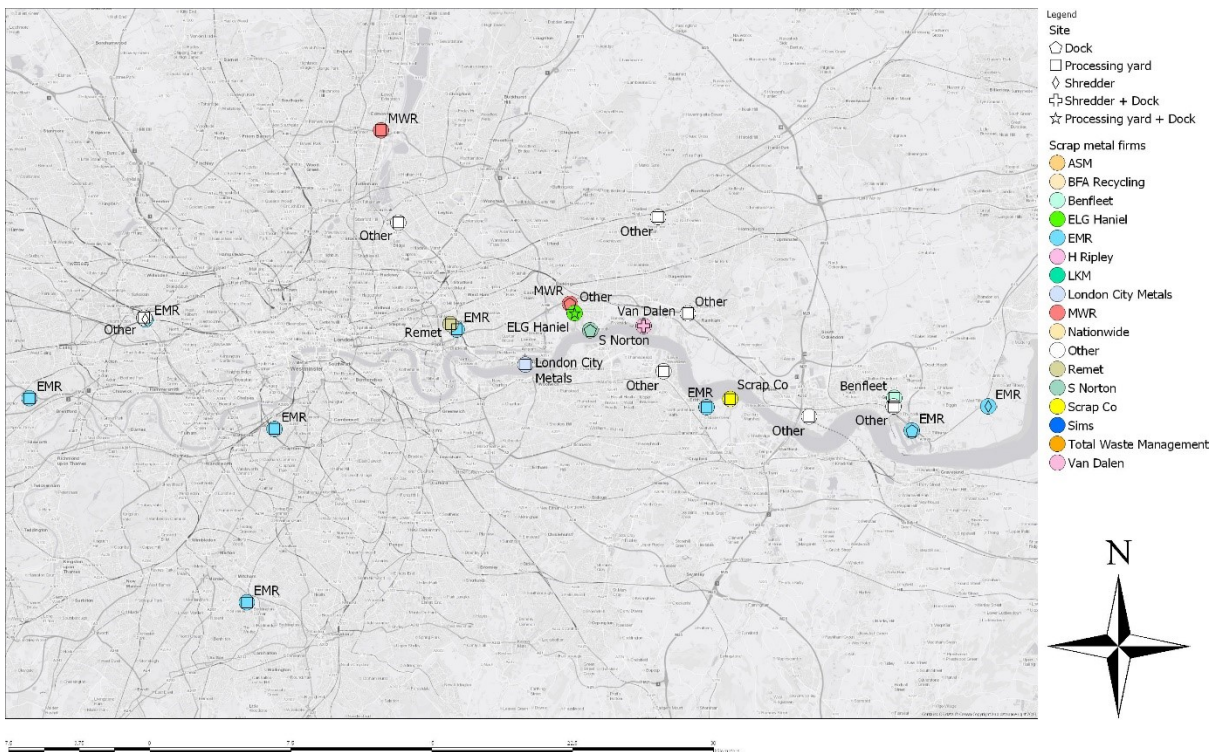
⁴²⁸ EMR argued that the [REDACTED] non-ferrous purchases were [REDACTED] times those of MWR, but our analysis indicates that these are around [REDACTED] times the size, with [REDACTED] purchasing almost [REDACTED] tonnes compared to MWR's 2017 purchases of [REDACTED] tonnes at its London sites.

Figure 9.1: Main Parties and competitor processing sites and docks in the London region



9.78 Figure 1 indicates that the Parties operate a high proportion of the large processing sites in the London region, but that a number of competitors, including those with docks, operate in the broader region. It also shows the concentration of sites (both processing sites and docks) on the Thames, as made clearer in Figure 2, below.

Figure 9.2: Main Parties and competitor processing sites and docks in Greater London and on the Thames estuary



- 9.79 As is clear from Figure 2, while the Parties have a high proportion of the processing sites in Greater London and neighbouring areas of Essex and Kent along the Thames estuary, there are a small number of competitors with processing sites and docks (S Norton and ELG Haniel), as well as other multi-site (Benfleet) or specialist competitors (Remet in non-ferrous) located within 15km of a site belonging to the Parties. These are quite concentrated in the east and along the Thames estuary, with fewer sites in other parts of the London region.
- 9.80 As set out in Appendix F, we have also looked in more detail at the set of competitor sites⁴²⁹ that are located close to each of the Parties' sites in the London region.⁴³⁰ Table 1 of Appendix F shows that six of EMR's sites are located within 30km of MWR's Edmonton site, as are five main competitor sites – one for each of the Remet Company, London City Metals, S Norton, Total Waste Management and BFA Recycling. A similar pattern is true of MWR's Neasden site, with five EMR sites falling within 30km, while four sites belonging to competitors are located within 30km – these are Remet, London City Metals, S Norton, and BFA Recycling. This indicates the strong constraints that EMR exerts on MWR in London pre-merger, but that multiple other competitors are also located nearby.
- 9.81 Table 2 in Appendix F presents a similar analysis for EMR's sites in the region. Two main points emerge:
- (a) For a number of these sites, MWR's London sites were not located within 30km and a number of competitor sites were located closer, eg, EMR Rochester, as well as East Tilbury and Tilbury Dock. We also note that the Tilbury sites are a shredder site and a deep-sea dock, so are less relevant to our assessment of competition between MWR and EMR in the purchase of non-shredder feed;
 - (b) Focussing on those sites where the loss of the constraint from MWR's Edmonton site is most relevant – those with shears and located within 30km of Edmonton – a number of these also have several competitor sites located within 30km:⁴³¹

⁴²⁹ In Appendix F, we have included only those sites belonging to competitors with a market share in excess of 2% - equivalent to purchase volumes of non-shredder feed in excess of [REDACTED] tonnes.

⁴³⁰ This is in line with survey results that location is the most important factor for suppliers in choosing a site in London (paragraph 9.35).

⁴³¹ EMR's Willesden site has not been included here, as it is shredder site with [REDACTED], as set out in Table 2, above.

- (i) EMR Brentford has three main competitor sites within 30km, as well as five additional competitor sites (operated by four metal recyclers) within 50km;
- (ii) EMR Canning Town has five main competitor sites within 30km, as well as five additional competitor sites (operated by four metal recyclers) within 50km;
- (iii) EMR Erith has nine main competitor sites (operated by six recyclers) within 30km, as well as three additional competitor sites within 50km;
- (iv) EMR Mitcham has four main competitor sites within 30km, as well as five additional competitor sites (operated by four recyclers) within 50km; and
- (v) EMR Wandsworth has four main competitor sites within 30km, as well as six additional competitor sites (operated by four recyclers) within 50km.

9.82 In our detailed assessment of individual competing metal recyclers, below, we take account of the extent to which particular recyclers constrain EMR at different sites across the region.

Spare capacity

9.83 The evidence set out below suggests that there is spare capacity available to many of the metal recyclers operating in the London region. We have two sources of spare capacity estimates: first, the Parties submitted estimates of spare capacity at competitor sites based on data on site surface areas and volumes purchased; and, second, we asked other metal recyclers to estimate the level of spare capacity at their own sites. [REDACTED], London City Metal, and [REDACTED] did not provide an estimate of spare capacity at their sites. These estimates are summarised, alongside the Parties' estimates based on site surface areas, in Table 9.4, below.

Table 9.4: Spare capacity and current total purchases at competitor sites in the London region

<i>Metal recycler</i>	<i>Number of sites in the London region</i>	<i>Purchase volumes in the London region (MT) including shredder feed and other volumes</i>	<i>Spare capacity - own estimate (MT)</i>	<i>Spare capacity – Parties' estimate (MT)</i>	<i>Total Surface Area (Acres)</i>
EMR	10	[REDACTED]	-	-	[REDACTED]
MWR	3	[REDACTED]	-	-	[REDACTED]
Parties Combined	13	[REDACTED]	-	-	[REDACTED]
Sims	3	[REDACTED]	[REDACTED]	-	[REDACTED]
S Norton	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Benfleet	3	[REDACTED]	-	[REDACTED]	[REDACTED]
London City Metals	1	[REDACTED]	-	-	[REDACTED]
ASM	4	[REDACTED]	-	[REDACTED]	[REDACTED]
Total Waste Management	2	[REDACTED]	-	[REDACTED]	-
LKM Metals	2	[REDACTED]	[REDACTED]	[REDACTED]	-
The Remet Company	1	[REDACTED]	-	-	-
BFA Recycling	1	[REDACTED]	-	[REDACTED]	-
Scrap Co	2	[REDACTED]	-	[REDACTED]	[REDACTED]
Van Dalen	1	[REDACTED]	[REDACTED]	-	-
Southwark Metals	1	[REDACTED]	[REDACTED]	-	[REDACTED]
Other sites	48	[REDACTED]			-

Source: Spare capacity – Parties' estimate [REDACTED] and current total volume from a mixture of questionnaire responses and EA data.

Note: "Number of sites in the London region" only include sites within 50km of one of the Parties' London sites.

9.84 Based on this analysis, there may be spare capacity in excess of 320,000 tonnes across the sites of S Norton, Sims and LKM, while the Parties' estimates for Benfleet, ASM, Total Waste Management, BFA and Scrap Co would mean an additional 290,000 tonnes of spare capacity.

9.85 EMR argued that there is substantial spare capacity in the region and that this had not been taken into account in our provisional findings report.⁴³² EMR argued that we should not discount spare capacity at sites on the basis of their location and that all of the spare capacity identified as being within the London region is relevant to the assessment of the merger.⁴³³ EMR also argued that we had not made a proper assessment of how much spare capacity would be necessary to constrain EMR post-merger and that this should be based on the constraint that is lost by MWR's spare capacity no longer constraining EMR.⁴³⁴ It argues that, under any scenario, the spare capacity available at competitor sites is 'significant and sufficient' to achieve

⁴³² EMR response to provisional findings report, paragraphs 1.5.4, 1.7.4, 2.3.2, 2.46 to 2.49.

⁴³³ EMR response to provisional findings report, paragraph 2.50.

⁴³⁴ EMR response to provisional findings report, paragraphs 2.51 to 2.52.

this.⁴³⁵ A number of other metal recyclers argued that the spare capacity estimates submitted by the Parties were likely to be overstated, in particular due to many recyclers (other than the Parties and S Norton) operating shears that have relatively low capacities, due to their size, age or the fact that they are mobile rather than static shears.⁴³⁶

9.86 While we agree that, in simple terms, the total identified spare capacity across other metal recyclers' sites is significant and likely to be in excess of MWR's spare capacity at its Edmonton and Neasden sites, it is not possible to come to a definitive conclusion on the constraint imposed on EMR by this spare capacity based on the total numbers alone. Spare capacity is a necessary, but not sufficient, condition and its relevance still depends on whether the metal recyclers that possess spare capacity can effectively replace the constraint from the loss of MWR. In our assessment of spare capacity, we have attempted to determine:

- (a) Whether competitors do in fact have a material level of spare capacity. If they do not, then these competitors could not be considered credible constraints on the Parties post-merger. The evidence suggests that a number of credible competitors possess spare capacity based on their own views (eg S Norton and Sims), but we note that the Parties' estimates have changed over time and appear somewhat high.
- (b) Whether those competitors with spare capacity also have other characteristics that allow them to constrain EMR, eg site locations and range of grades purchased. This is taken into account in our assessment of individual metal recyclers, below.

Routes to market

9.87 We have assessed the extent to which competing metal recyclers in the region have sufficient routes to market. This informs two questions: whether the loss of MWR removes an important route to market for smaller recyclers; and whether other recyclers have sufficient routes to market to ensure that they can impose a material constraint on the Parties post-merger.

9.88 The Parties argued that our assessment of routes to market should take account of the following points:

- (a) First, EMR argued that MWR did not have a unique route to market in the London region, with a high proportion of its volumes being sold to EMR

⁴³⁵ EMR response to provisional findings report, paragraph 2.52.

⁴³⁶ [REDACTED]

([X]%) and other metal recyclers ([X]%) pre-merger, with [X]% being sold to traders that export and [X]% directly to UK customers. It argued that [X]% of MWR's routes to market were available to competing metal recyclers, ie selling to EMR or to other metal recyclers, to UK traders that export, or to UK final customers.⁴³⁷

- (b) Second, EMR argued that MWR is not an important alternative route to market for smaller recyclers, as it sells a high proportion of its volumes to EMR and S Norton for export. EMR argued that MWR was 'simply an intermediary' purchasing [X]% of its volumes from other recyclers and selling [X]% of its sales to other UK metal recyclers or traders.⁴³⁸ EMR noted that smaller recyclers have many other routes to market, either through their own dock facilities or through larger recyclers other than MWR or EMR.⁴³⁹
- (c) Third, in assessing the constraint from other metal recyclers, EMR argued that, in our provisional findings report, we were incorrect to characterise some as being reliant on MWR as a route to market, as none were;⁴⁴⁰ and
- (d) Finally, EMR argued that each of the metal recyclers assessed in the provisional findings report sells less to EMR than MWR had pre-merger.⁴⁴¹

9.89 We first set out which metal recyclers have their own direct routes to market, eg by operating dock facilities in the region, and then we present evidence on the extent of other metal recyclers' sales to the Parties. The latter informs our view of both the extent which MWR provided a route to market pre-merger, and on the extent to which other metal recyclers are likely to be dependent on the Parties post-merger.

Direct routes to export markets

9.90 A number of the main competitors in the London region export directly using their own dock facilities:

- (a) S Norton (which exports virtually all of its UK purchases of scrap metal) operates a short-sea dock at Barking, where it recently expanded its

⁴³⁷ EMR response to provisional findings report, paragraph 2.12.

⁴³⁸ EMR response to provisional findings report, paragraphs 2.13 and 2.14.

⁴³⁹ EMR response to provisional findings report, paragraph 2.13.

⁴⁴⁰ EMR response to provisional findings report, paragraphs 2.3.4 and 2.20.

⁴⁴¹ EMR response to provisional findings report, paragraphs 2.3.4 and 2.21.

processing capacity, while Sims, also a major exporter, opened a deep-sea dock at Sheerness on the Medway in Kent in 2017;

- (b) [REDACTED], while Nationwide exports from its short-sea dock facility at Brightlingsea in Essex; and
- (c) Further from London, H Ripley exports through its own short-sea dock at Newhaven in East Sussex,⁴⁴² while S Norton exports from its deep-sea dock at Southampton and Sims operates a short-sea dock at Ipswich in Suffolk.⁴⁴³

9.91 While far from comprehensive, we did get some indication of the extent to which some of the smaller metal recyclers are able to access export markets, [REDACTED]⁴⁴⁴ [REDACTED], and S Norton pointing out that some of the metal recyclers that supply it also export some grades themselves.⁴⁴⁵

Routes to market provided by MWR pre-merger

9.92 Before the merger, MWR purchased significant volumes from other metal recyclers – [60-70%] of its total purchases nationally, equivalent to almost [REDACTED] tonnes in 2017.⁴⁴⁶ Its sales, again based on 2017 pre-merger data, were split between EMR ([20-30%]), other metal recyclers ([10-20%]), UK customers ([0-5%]), export ([30-40%]) and UK traders that export ([20-30%]). As such, based on the national figures, it represented an additional route to market for other metal recyclers, as an alternative to selling directly to EMR.

9.93 In the London region, its purchases from other metal recyclers accounted for [70-80%] of its purchases – equivalent to annual purchases of over [REDACTED] tonnes in 2017.⁴⁴⁷ Based on transactions at its London sites, the breakdown is somewhat different from elsewhere, with [50-60%] of sales going to EMR and [5-10%] to UK customers, while [10-20%] is exported, [5-10%] is sold to UK traders that export, and [20-30%] is sold to metal recyclers other than EMR. As set out below, these sales included those to metal recyclers that exported all or almost all of these volumes, eg S Norton.

⁴⁴² [REDACTED]

⁴⁴³ [REDACTED]

⁴⁴⁴ [REDACTED]

⁴⁴⁵ [REDACTED]

⁴⁴⁶ CMA analysis of MWR transaction data. The [60-70%] share is based on the 8-month pre-merger period of January to August 2017, with the total purchases for that period increased pro-rata to give an annual equivalent figure.

⁴⁴⁷ CMA analysis of MWR transaction data for MWR Edmonton and MWR Neasden. The [70-80%] share is based on the 8-month pre-merger period of January to August 2017, with the purchases from other metal recyclers for that period increased pro-rata to give an annual equivalent figure

9.94 MWR is likely to provide an important route to market for some metal recyclers, as we note that [REDACTED] and, to a lesser extent, [REDACTED] supplied a significant proportion of their volumes to MWR, as set out in Table 9.5, below. EMR has argued that, given MWR sold the large majority of its volumes to other metal recyclers and traders, for many smaller recyclers it is not likely to have provided a unique route to market that they could not access by selling directly to, eg EMR or S Norton in the London region. However, we note that those metal recyclers that do sell to MWR must do so to gain some advantage in accessing customers, eg through MWR's greater bargaining power or efficiency when selling the aggregated volumes of many smaller recyclers. [REDACTED] argued that the fact that MWR has the option to use Pinns Wharf for its own short-sea exports means that it constrains the prices that EMR can pay, even if it does not always exercise this option.⁴⁴⁸

9.95 [REDACTED] argued that basing our assessment of MWR's role as a route to market in the London region on 2017 data was likely to be of 'limited value'. It pointed out that there may have been specific reasons for MWR selling a high proportion of its volumes to EMR in 2017, which may have included discussion around the merger. It suggested that looking at data over a two-year period before the acquisition would provide a proper understanding of MWR's position as a route to market. Looking at MWR site-level data on its sales and purchases for 2015 to 2017 indicates that:⁴⁴⁹

(a) In 2015, [50-60%] of MWR's London volumes were sold to EMR;

(b) In 2016, this fell to [30-40%]; and

(c) In 2017 (pre-merger), as above, this share rose again to [REDACTED] of MWR's London volumes ([50-60%]).

9.96 We have taken account of this variation in MWR's sales to EMR over recent years – especially in comparing this to other metal recyclers' reliance on EMR as a route to market – but we note that MWR's sales to EMR have accounted for a high share of its London volumes in recent years.

Metal recyclers selling to the Parties

9.97 As the Parties both purchase substantial volumes from other metal recyclers, a number of their competitors in the region are, in a sense, reliant on the Parties as a route to market for arisings in the London region.⁴⁵⁰ However, we

⁴⁴⁸ [REDACTED]

⁴⁴⁹ Based on MWR sales and purchasing data for the period May 2015 to August 2017.

⁴⁵⁰ This is the case in relation to [REDACTED], [REDACTED], [REDACTED] and [REDACTED], as set out in Table 9.5, below.

note that most of the competitors with market shares in excess of 2% either make no or negligible sales to the Parties (eg [REDACTED]) or sell most of their volumes to customers other than the Parties (eg [REDACTED]). As EMR has argued, our assessment of competitors' reliance on the Parties post-merger should be conducted in the context of MWR's reliance on EMR pre-merger. As set out above, MWR supplied [REDACTED] of its volumes to EMR pre-merger, so competing metal recyclers that supply lower volumes to EMR should not be considered to be weaker competitors relative to MWR for this reason.

9.98 As set out in Table 9.5, below, a number of the Parties' competitors in London currently sell a substantial share of their purchases to the Parties. While most competitors use other routes to market for most or all of their volumes, in three cases this is on a scale that suggests the metal recycler would be expected to provide a weaker constraint than MWR:

- (a) [REDACTED] appears highly reliant on the Parties, with [70-80%] of its volumes being sold to EMR;
- (b) [REDACTED] supplied [REDACTED] of its volumes to the Parties; and
- (c) ASM supplied a high proportion of its volumes to the Parties pre-merger, but these were almost exclusively shredder feed, so this is unlikely to be relevant to its non-shredder feed purchasing activity.

Table 9.5: Extent of competitor sales to the Parties in the London region, 2017

Metal recycler	Purchase volumes in the London region including shredder feed	Sales to MWR			Sales to EMR		
		Shredder Feed	Non-Shredder Feed	% of Purchases	Shredder Feed	Non-Shredder Feed	% of Purchases
Sims	[REDACTED]	324	463	[0-5]%	0	0	[0-5]%
S Norton	[REDACTED]	0	0	[0-5]%	0	0	[0-5]%
Benfleet	[REDACTED]	0	0	[0-5]%	26,687	29,638	[50- 60]%
London City Metals	[REDACTED]	7,654	43,128	[50-60]%	312	24,947	[20-30]%
ASM	[REDACTED]	41,710	0	[40-50]%	11,616	1,589	[10-20]%
Total Waste Management	[REDACTED]	7,125	7,774	[10-20]%	2,708	1,055	[0-5]%
LKM Metals	[REDACTED]	0	0	[0-5]%	2,944	815	[5-10]%
The Remet Company	[REDACTED]	0	0	[0-5]%	0	0	[0-5]%
BFA Recycling	[REDACTED]	0	0	[0-5]%	1	612	[0-5]%
Scrap Co	[REDACTED]	0	0	[0-5]%	0	0	[0-5]%
Southwark Metals	[REDACTED]	0	0	[0-5]%	751	26,352	[70-80]%

Source: Sales to MWR, sales to EMR and Sales to Parties are from Party transaction data. Purchase volumes in the London region sourced from mixture of questionnaire responses and EA data.

† For London City Metals, the sales to Parties include all sales by London City Metals, C&C Metal Trading, and London Scrap Metal Recycling.

Notes:

1. Purchase volumes are for all grades of metal at sites which are listed by the parties as a competitor and are within 50km of one of the Parties' sites.
2. Sales to MWR and EMR are for based on a combination of third-party data on their sales and the Parties' data on their purchases.
3. Sales to MWR are for the pre-merger period, and are then annualised.

9.99 As discussed below in our assessment of the main competitors, this issue is also of relevance to our reassessment of [REDACTED] where (relative to our provisional findings) we have changed our view of its reliance on the Parties, as it sells a lower share of its volumes to EMR than MWR did pre-merger, and a significant proportion of its sales to EMR are shredder feed.

Assessment of competitors in the London region

9.100 In assessing the likely constraint from individual competitors in the region, we have focussed on the following metal recyclers: Sims, S Norton, Benfleet Scrap, London City Metals, ASM Metal Recycling, Total Waste Management, LKM Metals, the Remet Company, and BFA Recycling. This is based on the fact that, after the Parties, these are largest metal recyclers in the London region as measured by waste scrap metal purchases in the area (Table 9.1), with all of these having a market share of [0-5%] or more.

Sims Metals

9.101 Sims is a large national player with 37 sites nationally, with at least [REDACTED] shears, and [REDACTED] short-sea and [REDACTED] deep-sea dock facilities. In the London region, it operates three sites – a deep-sea dock at Sheerness in Kent (with no processing equipment) and two sites in Hampshire, with processing equipment ([REDACTED]) at each. Its purchase volumes of [REDACTED] tonnes give it a [5-10%] market share in the region (Table 9.1).

Site locations and processing capabilities

9.102 All three of Sims' sites in the region are located approximately 60 km from MWR's Edmonton site. Its two Hampshire sites are located 40 km from EMR's Brentford site (50km by road), while its Sheerness dock site is 17 km from EMR's Rochester site (Table 3) (37km by road). Sims pointed out that its Sheerness site is a considerable distance from MWR's Edmonton site (100km by road), that transporting scrap metal from that area would require payment of a toll on the Dartford crossing, and that its Sheerness site draws its scrap from [REDACTED] and surrounding areas rather than from North London.⁴⁵¹ Sims also pointed out that the nearest EMR site (Rochester) to its Sheerness site concentrates on non-ferrous purchases and is a 'traditional feeder site', so

⁴⁵¹ [REDACTED]

does not compete with its export dock with no processing capability. However, information submitted by EMR indicate that its Rochester site purchase volumes are [REDACTED].⁴⁵² More generally, as both EMR and MWR purchase both processed and unprocessed scrap metal at their London sites, the fact that one of Sims' sites purchases processed scrap metal only does not rule it out as a competitive constraint.⁴⁵³ Sims also pointed out that its Yateley site almost exclusively handles non-ferrous volumes.

Spare capacity

9.103 Based on Sims' estimates of the maximum annual capacity at its Aldershot and Yateley sites (both in Hampshire) indicates that it is likely to have spare capacity in the region of [REDACTED] tonnes per year, in addition to its annual purchases of just over [REDACTED] tonnes at these sites. Sims estimated its spare capacity at its Sheerness dock to be in the region of [REDACTED] tonnes,⁴⁵⁴ although this constraint relates only to the purchase of processed scrap metal, as Sims does not operate any processing equipment on this site nor does it have permission to do so.⁴⁵⁵

9.104 The Parties pointed to Sims publicly stating that it has the capacity to export 300,000 tonnes per year from this site,⁴⁵⁶ implying spare capacity in the region of [REDACTED] tonnes when current purchase volumes are accounted for.

Routes to market

9.105 In relation to routes to market, nationally Sims exports the majority of its volumes and purchases a substantial share of its volumes from other metal recyclers. Its sites in the London region also purchase a high proportion from other metal recyclers – just under [REDACTED]% by volume at its Aldershot and Yateley sites in Hampshire – and it purchases significant volumes from metal recyclers in the London region, including [REDACTED], [REDACTED] and [REDACTED].⁴⁵⁷ Sims' deep-sea dock at Sheerness accounts for purchases in the region of [REDACTED] tonnes, providing a potential route to market for other recyclers in the London region,

⁴⁵² See Table 9.2, above.

⁴⁵³ EMR's purchase volumes in the London region are [REDACTED]% unprocessed and [REDACTED]% processed (by volume), while for MWR its split is [REDACTED]% unprocessed and [REDACTED]% processed.

⁴⁵⁴ Sims estimated the maximum capacity of the Sheerness site to be [REDACTED] tonnes of ferrous scrap metal for export (Sims response to CMA questionnaire, 23 March 2018, question 3). Sims stated that its volumes at Sheerness were c. [REDACTED] tonne over its first 10 months in operation, split between approximately [REDACTED]% purchases and [REDACTED] % volumes transferred from other Sims sites. Based on these, we have used annualised volumes of [REDACTED] tonnes in total, with [REDACTED] tonnes as our estimate of Sims purchases at this site. The latter figure has been used in calculating our volumes shares in this chapter. [REDACTED].

⁴⁵⁵ [REDACTED]

⁴⁵⁶ [REDACTED] referencing articles on the [Materials Recycling World](#) and [Multimodal](#) websites.

⁴⁵⁷ [REDACTED]

as all of this is processed scrap metal.⁴⁵⁸ Sims does not sell scrap metal to MWR or to EMR.

Views of the Parties and third parties

- 9.106 Sims' own view of the competitive constraint it imposes in the London region was that it is not active in London in terms of the purchase of waste scrap metal or shredding. It pointed out that its only presence in the South East is a dock facility in Sheerness in Kent for export and small facilities in Aldershot and Yateley in Hampshire. As such, it argued that it is not a realistic competitor to the Parties for any supplier in London, particularly for those located inside the M25. Sims argued that a very low proportion of waste scrap metal travels outside of the London region due to factors such as traffic congestion and the lack of metal recycling sites immediately outside of London.⁴⁵⁹
- 9.107 However, Sims was considered a strong competitor by a number of recyclers in the London region,⁴⁶⁰ as well as by seven suppliers. EMR argued that Sims is a strong competitor based on: its estimates of significant purchases by Sims in London, its role in providing a route to market for smaller recyclers, and its overall size and strength as a major metal recycler, as well as suppliers' views and survey results.⁴⁶¹
- 9.108 In response to our provisional findings we received comment from a large London competitor highlighting that the competition provided by Sims had recently increased through expansion at Sheerness, and that it is now an effective competitor in the London region.⁴⁶² However, this competition only related to processed grades of ferrous metal, as there is no [REDACTED] at this site and the competitor took the view that [REDACTED].⁴⁶³ Sims itself emphasised the fact that its Sheerness site has no processing capability and is located outside London and a significant distance from MWR's Edmonton site. As such, it argued that it the constraint that this site imposes on the Parties is 'minimal'.⁴⁶⁴

458 [REDACTED]
459 [REDACTED]
460 [REDACTED]
461 [REDACTED]
462 [REDACTED]
463 [REDACTED]
464 [REDACTED]

Survey evidence

9.109 Sims was one of the stronger results from the survey, though based on small numbers, with some diversion from both EMR and MWR sites. Its sites at Aldershot (6 out of 47) and Sheerness (despite having no processing equipment) (8 out of 25) were considered viable alternative by a reasonable proportion of respondents at specific sites.

Conclusion on Sims

9.110 We note that, as Sims has argued, its sites are not ideally located to replace the constraint on EMR lost by the acquisition of MWR (in particular, its Edmonton site). As shown in Figure 9.1 and Table 9.3, all three are outside Greater London, approximately 60 km from Edmonton.⁴⁶⁵ However, its sites are within 50km of several EMR sites. We also note that it does not operate any processing equipment at its Sheerness site. Its [redacted] purchase volumes (around [redacted] of the size of MWR's purchase volumes), substantial spare capacity, and the role that its Sheerness site is likely to play as a route to market for smaller recyclers mean that it is likely to impose a material constraint on EMR post-merger.

S Norton

Purchase volumes

9.111 S Norton is one of the three largest national players (along with Sims and EMR). In the London region it purchases in excess of [redacted] tonnes, giving it a [5-10]% share of purchases (Table 9.1), and making it the fourth largest purchaser in the London region. Based on its purchases last year, S Norton was around [redacted]% of the size of MWR in the London region.

Site locations

9.112 S Norton has a site in Barking, London which is only 7km (10km by road) from the nearest site of the Parties' and 15km from MWR Edmonton (Table 9.3) (19km by road).

⁴⁶⁵ Sims' Hampshire sites are both 80km by road, and its Sheerness site is 100km by road.

Processing capabilities

9.113 S Norton has comparable (if not greater) processing capability to MWR, with two shears in the London region, at least one of which is a 1,250-tonne static shear.

Spare capacity

9.114 S Norton recently installed a second shear at its Barking site⁴⁶⁶ and expected to significantly increase the volume of HMS (ferrous scrap for shearing) processed at the site – up to [redacted] per year over the next two years, compared to current purchases of [redacted] tonnes. S Norton recently installed a second shear at its Barking site⁴⁶⁷ and expects to significantly increase the volume of HMS (ferrous scrap for shearing) processed at the site – up to [redacted] per year over the next two years, compared to current purchases of [redacted] tonnes. Overall, S Norton considers that it has spare capacity of [redacted] tonnes at present purchase volumes,⁴⁶⁸ but has the potential to [redacted] with EA approval.⁴⁶⁹

Routes to market

9.115 S Norton operates three dock sites around the UK - two deep-sea and one short-sea dock – and operates two shredders and five shears. In the London region, it has a short-sea dock and two shears at its site in Barking. It exports almost all of its UK purchases of scrap metal. It purchases significant volumes from other metal recyclers ([redacted]% of its purchases nationally),⁴⁷⁰ including from MWR pre-merger.⁴⁷¹ It does not sell scrap to MWR or to EMR.

9.116 In the London region, pre-merger, S Norton bought substantial volumes from MWR for export from its deep-sea dock at Southampton and Barking. [redacted] before the merger in 2017⁴⁷² – which accounted for a [redacted] of MWR's sales to other metal recyclers.

⁴⁶⁶ News story on S Norton website: <http://www.s-norton.com/s-norton-co-shear-investment-doubles-capacity-at-london-site/>

⁴⁶⁷ News story on S Norton website: <http://www.s-norton.com/s-norton-co-shear-investment-doubles-capacity-at-london-site/>

⁴⁶⁸ [redacted]

⁴⁶⁹ [redacted]

⁴⁷⁰ [redacted]

⁴⁷¹ [redacted]

⁴⁷² [redacted]

Views of the Parties and third parties

9.117 In relation to S Norton's own view of the competitive constraint it imposes in the London region, it stated that:

(a) Its Barking site accepts all grades [REDACTED],⁴⁷³ and that it is competitive in purchasing ferrous metal within about [REDACTED] of its Barking site, with transport costs making it 'impossible to compete with most other recyclers for ferrous grades above that distance'. It also does not compete on [REDACTED] from its Barking site.⁴⁷⁴

(b) [REDACTED].⁴⁷⁵ [REDACTED].⁴⁷⁶

9.118 S Norton was noted as a strong competitor by several other recyclers and a number of suppliers.⁴⁷⁷

Survey evidence

9.119 In the supplier survey, no respondents at EMR's London region sites considered S Norton their next best option if the EMR site were to close down, although 25 (out of 165) respondents considering it a viable option when prompted - a similar proportion to those EMR suppliers that considered MWR a viable option when prompted (27 out of 209).⁴⁷⁸

Conclusion on S Norton

9.120 Overall, given its current size and spare capacity, and its export and processing facilities, we conclude that S Norton is likely to be a strong competitor to the Parties.

Benfleet Scrap

Purchase volumes

9.121 Benfleet Scrap [REDACTED],⁴⁷⁹ which give it a [0-5]% share within the region (Table 9.1).

⁴⁷³ [REDACTED]

⁴⁷⁴ [REDACTED]

⁴⁷⁵ [REDACTED]

⁴⁷⁶ [REDACTED]

⁴⁷⁷ [REDACTED] and as viable alternative by one customer and 3 suppliers.

⁴⁷⁸ [REDACTED].

⁴⁷⁹ [REDACTED]

Site locations

9.122 Benfleet Scrap operates from three sites in Essex – Thurrock, Basildon and Benfleet. Its Thurrock site is only 2km from the EMR site at Tilbury Docks (4km by road). Its sites range from 31km to 43km away from MWR Edmonton (42km to 56km by road).

Processing capabilities

9.123 [REDACTED], and therefore has processing capability comparable or in excess of MWR in the London region.

Spare capacity

9.124 [REDACTED]⁴⁸⁰ [REDACTED].⁴⁸¹

Routes to market

9.125 Benfleet sources [REDACTED] of its purchases from other metal recyclers, exports [REDACTED] and sells the remainder to [REDACTED] ([REDACTED], [REDACTED] and [REDACTED]), with EMR buying [REDACTED] of Benfleet's purchase volumes.⁴⁸²

Views of the Parties and third parties

9.126 Benfleet Scrap was considered a strong competitor by [REDACTED], and a viable alternative for one supplier that we spoke with directly. EMR argued that it is a strong competitor based on: its relatively large size; the fact that it exports more than MWR did and is less reliant on sales to EMR as route to market; its greater site numbers and processing capabilities compared to MWR; the views of a supplier and a competitor; and survey results.⁴⁸³

Survey evidence

9.127 In the survey, Benfleet was considered the next best option to the relevant EMR site by 2 respondents, while a further 14 (out of 87) considered it a viable option to the relevant EMR site when prompted, while, among suppliers to MWR sites, the equivalent number was 6 out of 22.⁴⁸⁴

⁴⁸⁰ [REDACTED]

⁴⁸¹ EMR response to provisional findings report, Annex 1, Table 1.

⁴⁸² [REDACTED]

⁴⁸³ EMR response to provisional findings report, paragraph 2.31.3.

⁴⁸⁴ [REDACTED].

Conclusion on Benfleet Scrap

9.128 Benfleet Scrap's sites are relatively well located to replace the competition lost from MWR's Edmonton site. We note that, while [REDACTED]. Also, its export volumes from the London region are [REDACTED] MWR pre-merger. We note the Parties' estimates of its spare capacity. Overall, we consider that it is likely to impose a material constraint on the Parties.

London City Metals

Purchase volumes

9.129 London City Metals has annual purchases of almost [REDACTED] tonnes (excluding shredder feed), giving it a [0-5]% share of purchases (Table 9.1).

Site locations

9.130 London City Metals operates from two sites – one at Silvertown in East London and one at Colindale in Northwest London – and [REDACTED]⁴⁸⁵.

Processing capabilities

9.131 London City Metals operates a shear at both sites, including a 1,000-tonne shear at its Silvertown site.⁴⁸⁶

Spare capacity

9.132 We have not received any information from London City Metals on its spare capacity. The Parties have estimated that London City Metals has [REDACTED] spare capacity, implying that it could increase its purchases by over [REDACTED] tonnes.

Routes to market

9.133 London City Metals sells the majority of its purchases to the Parties, with EMR purchasing [REDACTED] tonnes and MWR purchasing over [REDACTED] tonnes.⁴⁸⁷

⁴⁸⁵ [REDACTED]

⁴⁸⁶ [REDACTED]

⁴⁸⁷ [REDACTED]

Views of the Parties and third parties

9.134 London City Metals was considered a strong competitor by [REDACTED], and one supplier⁴⁸⁸ considers it a competitor to the Parties. EMR listed London City Metals as one of the top 6 competitors to EMR's Canning Town site, and pointed to its installation of a new shear within the last 5 years as an example of expansion in London. [REDACTED] view is that the constraint from London City Metals is limited due to 'its limited processing capacity'.⁴⁸⁹

Survey evidence

9.135 In the survey, 3 suppliers stated that they would divert to London City Metals. When prompted, 7 suppliers to EMR stated they could use London City Metals (out of 17), and 8 suppliers to MWR stated they could use them (out of 22).⁴⁹⁰

Conclusion on London City Metals

9.136 Based on its site locations and purchase volumes, London City Metals could be a credible competitor, but the fact that it is [REDACTED] suggests that the strength of the constraint could be limited.

ASM Metal Recycling

Purchase volumes

9.137 [REDACTED].

Site locations

9.138 ASM Metal Recycling operates four sites near London: at Aylesbury (where it operates two yards, split between handling ferrous and non-ferrous scrap), Kings Langley and Totternhoe. Its closest site to one of the Parties' site is 42km away (54km by road) (and 59km from MWR Edmonton by straight-line distance, and 76km by road).⁴⁹¹

488 [REDACTED]

489 [REDACTED]

490 [REDACTED]

491 [REDACTED]

Processing capabilities

9.139 ASM Metal Recycling has a [REDACTED] shear and baler at Aylesbury (Buckinghamshire). Its sites at Kings Langley (Hertfordshire) and Totternhoe (Bedfordshire) are feeder sites.

Spare capacity

9.140 [REDACTED].⁴⁹² [REDACTED].

Routes to market

9.141 [REDACTED].

Views of the Parties and third parties

9.142 ASM Metal Recycling was considered a viable alternative to the Parties by one supplier. On its own ability to compete with the Parties, ASM listed its closest competitors to be [REDACTED].⁴⁹³

Survey evidence

9.143 In the survey, no suppliers to EMR stated, unprompted, that they would switch to ASM if an EMR site were not available. When prompted, four (out of 37) suppliers to EMR sites said that ASM was a viable alternative. Among MWR suppliers, two stated, unprompted, that they would switch to ASM if an MWR site were unavailable.⁴⁹⁴

Conclusion on ASM Metal Recycling

9.144 Given [REDACTED], ASM appears likely to represent only a weak constraint on the Parties.

Total Waste Management

Purchase volumes

9.145 Total Waste Management has purchase volumes of [REDACTED] tonnes, giving it a share of [0-5]% (Table 9.1).⁴⁹⁵

⁴⁹² [REDACTED]

⁴⁹³ [REDACTED]

⁴⁹⁴ [REDACTED]

⁴⁹⁵ [REDACTED].

Site locations

9.146 Total Waste Management operates two sites in the region, at Basildon and Epping, both in Essex. Its nearest site to one of the Parties is 15km away (20km by road).⁴⁹⁶

Processing capabilities

9.147 Total Waste Management operates a shear and a baler at its Basildon site, but pointed out that its shear has much lower capacity than those operated by the Parties, estimating that MWR's shear at Edmonton is capable of processing up to six times as much material as Total Waste Management's shear.⁴⁹⁷

Spare capacity

9.148 Total Waste Management did not provide an estimate of its spare capacity. The Parties submitted that Total Waste Management's spare capacity is around [REDACTED] tonnes a year (or around [REDACTED] of its annual purchases in the London region).

Routes to market

9.149 Total Waste Management sells over [REDACTED]% of its purchase volumes to the Parties, including significant volumes to MWR Hitchin. Almost a quarter of its volumes are exported ([REDACTED] tonnes out of total purchase volumes of [REDACTED]).⁴⁹⁸

Views of the Parties and third Parties

9.150 Total Waste Management was listed by one supplier as a viable alternative to the Parties. Its own view is that [REDACTED] its smaller processing capacities and its lack of site network, [REDACTED] makes it difficult to compete for arisings in London. EMR pointed to: Total Waste Management's size and purchase volumes; its lack of reliance on the Parties for routes to market (as it exports almost a quarter of its purchases); its proximity to EMR East Tilbury; its considerable spare capacity; and views of suppliers, as well as the survey results, as evidence that it imposes a strong constraint on EMR.⁴⁹⁹

496 [REDACTED]

497 [REDACTED]

498 [REDACTED]

499 [REDACTED]

Survey evidence

9.151 Total Waste Management got a relatively strong response from the survey, with two respondents at EMR sites considering it their next best alternative and 12 out of 42 respondents considering it a viable alternative when prompted, though based on small sample numbers.⁵⁰⁰

Conclusion on Total Waste Management

9.152 Total Waste Management is likely to be a material constraint on the Parties, given its processing capabilities, site locations, and its relatively low level of current sales to the Parties, although we note its current size (with less than [REDACTED] the purchase volumes of MWR in the London region) and its own view of its processing capacity.

LKM Recycling

Purchase volumes

9.153 LKM Recycling purchased over [REDACTED] tonne last year,⁵⁰¹ representing [0-5]% of (non-shredder feed) volumes purchased in the London region (Table 9.1).

Site locations

9.154 LKM Recycling operates two sites in Kent (as shown Table 9.3 and Figure 9.1) – in Chatham (where it operates a short-sea dock) and at Sittingbourne. Chatham is only 3km straight-line distance from the nearest EMR site (4km by road) and Sittingbourne is 17km away from EMR's nearest site (30km by road) – Rochester in both cases. LKM's sites are 50 to 60km straight-line distance from MWR's Edmonton site (66km to 88km by road).

Processing capabilities

9.155 LKM Recycling has a shear at Chatham and an aluminium shredder and a shear in Sittingbourne.

⁵⁰⁰ [REDACTED]
⁵⁰¹ [REDACTED]

Spare capacity

9.156 LKM stated that it has the capacity to double the amount of waste scrap metal that it purchases.⁵⁰²

Routes to market

9.157 LKM Recycling operates a short-sea dock on the Medway, at Chatham. LKM Metals noted the advantage of having its own dock facility in getting better prices and being able to pass these on to its suppliers, in contrast to its position when it supplies to Sims and EMR for export.⁵⁰³

9.158 LKM Recycling also buys from other metal recyclers. LKM Metals told us that these purchases account for about [REDACTED] of its purchase volumes.⁵⁰⁴

Views of the Parties and third parties

9.159 LKM Recycling itself submitted that it considers its closest competitors to be [REDACTED], while it was itself considered a strong competitor in the purchase of scrap metal by [REDACTED]. LKM provided a number of examples of its competition with EMR for specific suppliers, but did not consider itself a strong competitor, as EMR was willing to outbid it in purchasing from other metal recyclers. EMR argued that LKM is a strong competitor based on: its purchase of significant volumes in London; its greater processing capability compared to MWR; its location close to EMR Rochester; its spare capacity; the fact that it has its own dock and makes minimal sales to the Parties; it having stated that it competes with MWR; and the survey results pointing towards it imposing a similar level of constraint on EMR as MWR does.⁵⁰⁵

Survey evidence

9.160 The survey found that 12 out of 81 suppliers at EMR sites considered LKM a viable alternative when prompted.⁵⁰⁶

502 [REDACTED]

503 [REDACTED]

504 [REDACTED]

505 [REDACTED]

506 [REDACTED]

Conclusion on LKM Recycling

9.161 We conclude that, despite its export facilities and processing capabilities, LKM Recycling's current small size and its distance from the MWR Edmonton site mean that it is likely to represent only a weak constraint on the Parties.

The Remet Company

Purchase volumes

9.162 The Remet Company purchased around [REDACTED] tonnes in 2017, giving it a [0-5%] share of purchases of non-shredder feed waste scrap metal in the London region. All of its volumes are in non-ferrous scrap metal.⁵⁰⁷ EMR submitted that, in this segment of scrap metal, Remet Company is [REDACTED] MWR.⁵⁰⁸ Its purchase volumes were [REDACTED] those of MWR's non-ferrous purchase volumes in 2017.

Site locations

9.163 The Remet Company is located in Poplar, London, very close to EMR's site at Canning Town (less than 1km away) and 11km straight-line distance from MWR Edmonton (22km by road).⁵⁰⁹

Processing capabilities

9.164 The Remet Company operates a shear at its site in Poplar.

Spare capacity

9.165 The Remet Company did not submit to us how much spare capacity it has nor did the Parties submit any estimate of its spare capacity.

Routes to market

9.166 EMR submitted that last year Remet Company [REDACTED].

⁵⁰⁷ [REDACTED]

⁵⁰⁸ [REDACTED]

⁵⁰⁹ [REDACTED]

Views of the Parties and third parties

9.167 EMR submitted that the Remet Company is a stronger competitor to EMR in the purchase of non-ferrous scrap metal in the London region than is MWR, as it purchases [REDACTED] the volume of non-ferrous metal that MWR purchases. It also pointed to Remet's location very close to EMR's Canning Town site and 11km from MWR's Edmonton site as evidence that it is a strong competitor.⁵¹⁰

Survey evidence

9.168 Remet received a reasonably strong response from respondents to our supplier survey. When asked if Remet was a viable alternative, 17 out of 99 suppliers to EMR sites responded that it was, while for suppliers to MWR sites the share was 7 out of 22.⁵¹¹

Conclusion on the Remet Company

9.169 The Remet Company does not purchase ferrous scrap, so we do not consider that it currently constrains the Parties in the purchase of ferrous scrap metal. We do, however, consider that it is likely to provide effective competition in purchases of non-ferrous metals and we note that its purchase volumes are likely to significantly understate its true size in the market, as non-ferrous prices are, on average, significantly higher than ferrous prices on a per-tonne basis.

BFA Recycling

Purchase volumes

9.170 BFA Recycling purchased [REDACTED] tonnes of scrap metal last year,⁵¹² giving it a [0-5]% share of purchases (Table 9.1).

Site locations

9.171 BFA Recycling operates a site at Uxbridge - 14km straight-line distance from the nearest EMR site (at Brentford) (22km by road) and 28km straight-line distance from MWR's Edmonton site (Table 9.3) (38km by road).

⁵¹⁰ [REDACTED]

⁵¹¹ [REDACTED]

⁵¹² This is based on Environment Agency data for 2016, as BFA Recycling did not respond to the CMA's information requests.

Processing capabilities

9.172 BFA Recycling operates two 900-tonne mobile shears at its site.⁵¹³

Spare capacity

9.173 BFA Recycling did not submit to us its level of spare capacity. The Parties submitted that they thought BFA Recycling has around 65,300 tonnes of spare capacity.⁵¹⁴

Routes to market

9.174 EMR submitted that BFA Recycling sells [REDACTED] to MWR in 2017 (accounting for around [REDACTED] of BFA Recycling's purchases in the London region) and nothing to EMR. It would therefore appear that the Parties are not an important route to market for BFA Recycling.

View of the Parties and third parties

9.175 [REDACTED].⁵¹⁵ One metal recycler ([REDACTED]) identified BFA as a competitor, as did the Parties, while one supplier also listed it as an alternative to the Parties. EMR argued that BFA is at least as effective a competitor as MWR, pointing to its processing capabilities, [REDACTED] sales to the Parties, and its significant spare capacity.⁵¹⁶

Survey evidence

9.176 We note that the supplier survey identified BFA Recycling as one of the more prominent competitors to EMR sites with 11 out of 39 respondents considering it a viable option when prompted, while among suppliers to MWR sites, one out of six respondents considered it a viable option when prompted.⁵¹⁷

⁵¹³ We have not been able to confirm this with BFA Recycling directly, but this is based on EMR's response to Provisional Findings report ([REDACTED]) and the [Lefort company website](#).

⁵¹⁴ [REDACTED].

⁵¹⁵ [REDACTED]

⁵¹⁶ EMR response to provisional findings, paragraphs 1.7.3, 2.20 and 2.24, and Annex 1, Table 1.

⁵¹⁷ CMA analysis of survey results

Conclusion on BFA Recycling

9.177 Taking account of its location, processing capacity and lack of dependence on the Parties, we conclude that BFA Recycling is likely to impose a material constraint on EMR post-merger.

Other metal recyclers in the London region

9.178 As set out in Table 9.1, above, there are a number of other metal recyclers in the region, with market shares below 5%, but which may still impose some level of competitive constraint on EMR post-merger. These include:

- (a) Scrap Co, with a market share of [0-5%] and a relatively strong response among suppliers to EMR in our survey;⁵¹⁸
- (b) H Ripley, with a market share of [0-5%] in the London region and a shredder and short-sea dock site in Sussex;
- (c) [X], with a market share of [0-5%], a relatively centrally-located site, as well as a relatively strong response in our survey,⁵¹⁹ but we note its lack of processing capability; and
- (d) ELG Haniel, with a market share of [0-5%], a short-sea dock in the London region and a number of other sites in the UK.

9.179 The remaining metal recyclers in the London region account for purchases of almost 360,000 tonnes and a combined market share of 17%. While individually these metal recyclers have small purchase volumes of non-shredder feed in the London region, we note that this may still include some competitors that could, in combination with other recyclers, contribute to the constraint on EMR post-merger.

Conclusion on the competition from other metal recyclers

9.180 While not all of the competing metal recyclers discussed above are likely to represent strong competitive constraints, we conclude that, in aggregate,

⁵¹⁸ When supplier to EMR sites were asked which metal recycler they would have used if EMR sites were to close (unprompted), 9 out of 209 mentioned Scrap Co's site in Erith. However, no suppliers to MWR sites in London mentioned Scrap Co in this context. See Appendix I, Table I.2.

⁵¹⁹ When supplier to EMR sites were asked which metal recycler they would have used if EMR sites were to close (unprompted), 3 out of 209 mentioned Scrap Co's site in Erith. However, no suppliers to MWR sites in London mentioned Scrap Co in this context. When asked whether specific competitor sites were viable options, 18 out of 64 suppliers to EMR sites replied that Southwark Metals was a viable option. See Appendix I, Tables I.2 and I.3.

these competitors are likely to exert a sufficiently strong competitive constraint to prevent an SLC. Specifically, we found that:

- (a) A strong constraint is likely to come from S Norton ([5-10]% market share), given its nearby location, short-sea dock, two shears, its importance as a route to market for smaller recyclers, and its likely increase in volumes given its recent expansion and its spare capacity;
- (b) A material constraint is likely to come from:
 - (i) Sims ([5-10]% market share), despite its site locations (on the Medway and in Hampshire), given its increasing volumes, its deep-sea dock site at Sheerness, and its importance as a route to market for smaller recyclers;
 - (ii) Total Waste Management ([0-5]% market share), given its processing capabilities and site locations;
 - (iii) BFA Recycling ([0-5]% market share), based on its site location, processing capacity and lack of dependence on the Parties as a route to market;
 - (iv) Benfleet Scrap ([0-5]% market share), given its sites are relatively well-located to replace the competition lost from MWR's Edmonton site; and
 - (v) Remet ([0-5%] market share), given its strength in non-ferrous purchases in the region.
- (c) Some level of constraint is also likely from London City Metals ([0-5]% market share) based on its site locations and current volumes, but we note that [REDACTED]; and
- (d) A weak constraint is likely to come from:
 - (i) ASM ([0-5]% market share [REDACTED]); [REDACTED]; and
 - (ii) LKM Metals ([0-5]% market share), given its site locations (in the Kent) and its own view on the limited extent to which it currently constrains EMR in London.

Conclusion on competition for purchasing in the London region

9.181 Our conclusion on the purchase of ferrous and non-ferrous metals (other than shredder feed) in the London region is that the Transaction has not resulted, nor is it expected to result, in an SLC. Our decision in relation to this market

has changed since we published our provisional findings report, where we provisionally concluded that the Transaction had resulted, or may be expected to result, in an SLC.

- 9.182 Since the publication of our provisional findings report, additional evidence from the Parties and from third parties have caused us to reconsider our findings in relation the Parties' estimated shares, and the competitive strength of rivals, including the extent of their reliance on the Parties for routes to market.
- 9.183 Based on this additional evidence and having reassessed our findings in response to arguments put forward by EMR and third parties, our conclusion on the purchase of ferrous and non-ferrous metals (other than shredder feed) in the London region is that, on balance, the Transaction has not resulted, nor is it expected to result, in an SLC. As we found in our provisional findings report, not all of the evidence on the likely effect of the merger on competition in the London region pointed in the same direction,⁵²⁰ and this remains the case, particularly with regard to EMR's strong position relative to other metal recyclers in the region.
- 9.184 Our conclusion that there has not been, nor is there expected to be, an SLC as a result of the merger, is based on:
- (a) The Parties' combined market share is [30-40%], although we note that the increment to this provided by the acquisition of MWR is material at [5-10%].
 - (b) Our finding that although some evidence points towards the Parties being close competitors, other evidence – from the survey, supplier views, and MWR's reliance on others for deep-sea exports – indicates that the constraint from MWR was not particularly strong.
 - (c) Our finding that, although the merger brings together the two largest purchasers in the region, there are a number of other metal recyclers with substantial (non-shredder feed) purchase volumes in the London region, as well as many smaller recyclers. While the strength of the constraint imposed by these other recyclers varies, there are a number with London site networks, processing capabilities, and routes to market that are similar to those of MWR.
 - (d) Evidence that, although EMR clearly provides an important route to export through its control of one of only two metal-export deep sea docks in the

⁵²⁰ [Provisional findings report](#), paragraph 9.107.

London region, the metal recyclers that sell to MWR in London have alternative routes to market, with MWR not providing a unique constraint to EMR in this regard.

10. Purchasing under tendered contracts

- 10.1 This chapter assesses the likely effect of the merger on competition in purchasing under tendered contracts, which typically are let by industrial suppliers and involve large volumes of materials.
- 10.2 As set out in chapter 6 (Market definition):
- (a) The relevant product market is the purchase of waste scrap metal under tendered contracts; and
 - (b) In relation to the geographic market, our starting point is the 50km catchment areas around sites, as for other purchases of waste scrap metal (excluding shredder feed).
- 10.3 Whilst we have used catchment areas as a starting point, we have identified suppliers and competitors to the parties in this market not primarily by reference to their physical location, but by whether suppliers tender contracts in the region and competitors bid against the parties for these contracts and win.
- 10.4 The reason for our focus on tendered contracts is that, as set out in chapter 6, the evidence suggests that the conditions of competition are different in this segment. Tendered contracts tend to be for large volumes. Third-party comments also suggested that purchasing under large tendered contracts tends to be more challenging than other methods of purchasing waste scrap metal involving the spot market. For example, there is a closer relationship with the customer and a significant focus on quality of service, including reliability of service (see paragraphs 6.29-6.36). One of the Parties' internal documents contained a quote from a car manufacturer which said:

We're a car manufacturing business in the UK and tendered the contract for waste removal from our factory – we have a large site, variable amounts and types of wastes and our partners need to be on site every day.

We're looking for high levels of service – there's generally a lot of material and they need to be here multiple times a day to remove the waste - it needs to be run like clockwork or it would impact on production. Proven experience of this type of contract is key...

... It is important that we deal with a partner who has a good reputation and is here to stay. Working with a smaller player

would be a risk, even if it looked financially attractive. You get what you pay for with this type of thing!⁵²¹

- 10.5 We consider that quality of service requirements are likely to be an important factor in limiting the number of metal recyclers that are able to fulfil these tendered contracts. The evidence available to us shows that a limited set of competitors, including the Parties, hold the largest contracts, which are tendered. A number of the larger suppliers of, and some of the Parties' competitors for, tendered contracts raised concerns about competition and the effects of the merger in this segment.⁵²² In contrast, our survey indicated that small industrial suppliers are not typically concerned about the merger.⁵²³
- 10.6 The theory of harm that we have investigated in relation to tendered contracts is that the merger would enable the Parties to submit bids for and secure these contracts at prices below the pre-merger level, and/or reduce the quality of service provided to suppliers that use tendered contracts.
- 10.7 This chapter first sets out the Parties' views on tendered contracts overall and then presents our assessment. The assessment begins with an explanation of the types of evidence we have used and how we have interpreted it. We then present an assessment of competition between metal recyclers specific to each of the West Midlands, North East and Wales, and under multi-region contracts.⁵²⁴ We then assess the possibility of additional countervailing constraints from direct relationships between suppliers and final customers, from customers that are also suppliers choosing to self-supply, or from entry or expansion by other metal recyclers.

The Parties' views

- 10.8 The Parties' detailed views on competition in the West Midlands, the North East and Wales are contained in the regional assessments below. As a general point, the Parties argued that MWR is capable, but not uniquely capable, of serving large industrial contracts and provided a list of contracts served by other recyclers. They argued that the merger does not represent a substantial reduction in choice for suppliers.

⁵²¹ [REDACTED]

⁵²² [REDACTED]

⁵²³ Respondents to the survey of suppliers to the Parties' sites in London and the West Midlands generally sold only small volumes to the Parties, although some industrial suppliers that sell NPS to the Parties were included. In London, 5 small suppliers of NPS that are not metal recyclers responded, and none raised concerns about the merger. In the West Midlands, 23 small suppliers responded and one was concerned.

⁵²⁴ See paragraph 7.3 for our reasons for not finding an SLC in relation to tendered contracts in London.

10.9 The Parties submitted that many relevant suppliers are unconcerned (citing the 23 small industrial suppliers in the CMA's survey, as well as the unconcerned respondents noted in the provisional findings and in the CMA's summary of responses received since publication of its provisional findings).⁵²⁵ The Parties emphasised that these suppliers' comments included submissions that:⁵²⁶

- (i) they have a choice of multiple competitors;
- (ii) customers compete against metal recyclers to purchase NPS from suppliers;
- (iii) scrap is a globalised commodity with transparent pricing linked to global benchmarks; and
- (iv) suppliers can self-supply.

10.10 We note that most of these suppliers are small and do not tender contracts. The responses of tendering suppliers are summarised where relevant in the regional assessments below. Whether suppliers can process scrap metal themselves and sell it directly to end-customers without using a metal recycler (ie self-supply) is addressed under countervailing constraints.

10.11 The Parties also submitted that:

- (a) where customers require services in multiple regions, there are some multi-region recyclers that can meet such requirements and suppliers also have the option of using different recyclers in different regions;⁵²⁷
- (b) there is no SLC in any of the overlap regions and the Parties face sufficient competition within each region, and competition from outside the geographic market as defined in chapter 6. The Parties did not make specific submissions in relation to Wales, but submitted that in the West Midlands they face competition from many credible competitors with similar equipment to MWR, including three metal recyclers that have higher overall total volumes in the region than MWR and some that have additional sites a short distance outside the catchment area. They argued

⁵²⁵ [Summary of responses to the Supplementary provisional findings report](#)

There are 15 suppliers located in the West Midlands that responded to our investigation (and nine of these are unconcerned about the merger), of which five suppliers go out for tender (and one of these is unconcerned about the merger). There are seven suppliers located in the North East that responded to our investigation (and five of these are unconcerned about the merger), of which six go out for tender (and four of these are unconcerned about the merger). [REDACTED].

⁵²⁶ [REDACTED]

⁵²⁷ [REDACTED]

that, in the North East, MWR is not a strong competitor, as it has only one site and a single supplier makes up over 80% of its purchase volumes.⁵²⁸ The Parties identified at least 10 competitors in the North East that they argued have the appropriate facilities to serve large tendered contracts, including two that have equipment of a scale equivalent to or larger than MWR.⁵²⁹ They also identified, in each of the North East and West Midlands, many competitors that they believe to purchase at least some NPS,⁵³⁰

- (c) tendering suppliers are sophisticated suppliers with central procurement teams and substantial buyer power, who use tender processes to achieve the best selling price;⁵³¹
- (d) there are strong competitive constraints from self-supply (ie where the supplier is also a customer for the processed metal and retains the metal in-house), from supplying directly to final customers and from encouraging entry from other regions;⁵³² and
- (e) barriers to entry and expansion are low.⁵³³

10.12 We consider these points in our assessment below.

Our assessment of purchasing under tendered contracts

10.13 We set out below our assessment of competition in purchasing under tendered contracts in the West Midlands, North East and Wales, and under multi-region contracts.

Evidence used in our assessment

10.14 In our assessment we have used bidding data provided by the Parties. This data relates to large, primarily industrial, tendered contracts for which the Parties submitted a bid.⁵³⁴ While this data may not include every contract

⁵²⁸ [REDACTED]

⁵²⁹ [REDACTED]

⁵³⁰ [REDACTED]

⁵³¹ [REDACTED]

⁵³² [REDACTED]

⁵³³ [REDACTED]

⁵³⁴ The Parties told us that they cannot be sure that the list of tenders provided to us is a complete list of tenders, because there is no central repository of this information at EMR and MWR, hence obtaining this information is a manual process and reliant on seeking information from individuals based on their recollections. The Parties do not systematically record information on tenders in which they did not submit a bid. Information on bidders, winners of bids, contract values and volumes is incomplete. Furthermore, purchase volumes heavily fluctuate for some contracts and prices change regularly, which is another reason why this information is not available for some contracts.

tendered in the UK in the relevant period (from the start of 2015 until the merger in August 2017), we have tested the data with the Parties' largest rivals in each region and believe that it includes the vast majority of higher value contracts in the relevant overlap regions.⁵³⁵ Focusing on contracts where one of the Parties bid also means that we are focusing on the competitive interaction potentially lost as a result of the Transaction.

10.15 Since the publication of our Provisional Findings, EMR has made some corrections to the bidding data it provided, reducing the number of contracts that we believe to relate to the overlap regions. We have also, for clarity, separated out those contracts which relate to multiple regions to avoid double counting them by including them in the assessment of each local area – these contracts are discussed later in the assessment. As a result of these changes the number of contracts presented in relation to each region has changed since our Provisional Findings: from [X] to [X] in the West Midlands, from [X] to [X] in the North East, and from [X] to [X] in Wales.

10.16 We have used the bidding data to understand for past contracts the extent of competition between the Parties, and competitors. We have also used other indicators of competition, both to corroborate and sense-check the picture painted by the bidding data, and because they are indicators in their own right of the potential strength of the Parties and their rivals in competing for future contracts:

(a) overall volumes of all waste scrap metal purchased in each of the regions: shares of overall purchases give a broad indication of the scale of operations of the various metal recyclers in a region. We note, however, that MWR focuses on factory contracts and does not accept door trade in the West Midlands, whereas many other recyclers do accept door trade but find it more difficult to compete for tendered contracts (as set out in the assessment below and in chapter 6).⁵³⁶ This means that looking at shares of overall purchases is likely to understate the impact of the merger in relation to tendered contracts;

(b) overall UK purchases of NPS: NPS makes up a significant proportion of material that is purchased under tendered contracts, both overall⁵³⁷ and for the Parties in particular,⁵³⁸ and a large proportion of the Parties' NPS

⁵³⁵ [X]

⁵³⁶ See paragraphs 6.29-6.36

⁵³⁷ Among the contracts that at least one of the Parties bid for from the start of 2015 until the merger, [X]% of the contracts (weighted by annual contract value) were made up of at least [X]% NPS, [X]% of the contracts included some NPS and [X]% of the contracts included no NPS. No annual contract value was available for [X] contracts that cover more than [X]% of NPS, and for [X] contracts that covered [X] NPS.

⁵³⁸ Approximately three-quarters (by value) of the tendered contracts that they held in 2017 involved NPS [X]

purchases come from suppliers that go out for tender.⁵³⁹ Because of this, we consider that recyclers' overall national volumes of NPS provide a broad indicator of the extent to which they compete for large tendered contracts,⁵⁴⁰ albeit that their competitive strength is likely to vary from one region to another depending on the sites they operate in different regions. However, because a lot of NPS volumes are also purchased under non-tendered contracts, looking at shares of overall purchases of NPS may also understate the impact of the merger; and

- (c) value of tendered contracts served in the overlap regions: the value of a contract provides an indicator of the scrap volumes it involves. We consider that the larger a contract is the larger and more capable a metal recycler needs to be in order to have the logistics in place to serve the contracts. Hence, the more scrap metal a metal recycler purchases via tendered contracts (measured in contract value), the more likely it is to place a strong competitive constraint on the Parties.
- (d) views of the Parties and third parties: in the assessment below we include comments from the Parties and third parties on metal recyclers' relative strength in competing for tendered contracts. We contacted the Parties' largest tendering suppliers, and competitors. We also received comments from a number of suppliers that were encouraged by EMR to respond.

10.17 In relation to estimates of recyclers' shares of purchases, in each region overall and of NPS, we use two measures:

- (a) our central measures are shares of known volumes only. These are based on confirmed purchases, collected from our own inquiries with the largest recyclers and with those that appear in the bidding data, and for overall volumes from the Environment Agency dataset;⁵⁴¹ and
- (b) we also, where relevant, present shares of known and estimated volumes, which additionally include a large number of other recyclers for whom

⁵³⁹ [REDACTED]

⁵⁴⁰ We estimate that metal recyclers bought about 60% of their NPS purchases from suppliers that go out for tender based on EMR's estimate of the total volume of NPS available in the UK annually, and what volumes of NPS metal recyclers buy annually from tendering suppliers. This is likely to be an underestimate of what volumes of NPS are purchased from suppliers that tender NPS in the UK, because we only know the suppliers that tender where one of the Parties submitted a bid. However, given that most NPS arises in the WM and the NE and we believe the Parties bid for most available contracts, we consider it to be a close estimate of what volumes of NPS are bought from NPS suppliers. Therefore, we think that NPS volumes is an indicator of competitors' strength in tendered contracts and provides additional information on top of the tender data which we understand to be incomplete. [REDACTED]

⁵⁴¹ See Appendix D for further details regarding the Environmental Agency dataset.

EMR submitted estimated purchase volumes of NPS.⁵⁴² We take these shares into account in our assessment but note that:

- (i) Although the sum of the estimated NPS purchases by additional competitors is substantial overall, these additional recyclers are all estimated to purchase far less NPS than either of the Parties. We consider that very little of the estimated purchases, if accurate, are likely to come from tendered contracts;
- (ii) For those competitors where we have both estimates from the Parties and confirmed data from the competitor, the Parties overestimated the competitors' purchase volume by 32% on average⁵⁴³. We therefore interpret the figures with caution.
- (iii) Very few of these competitors were mentioned to us by tendering suppliers (or customers)⁵⁴⁴, suggesting that these recyclers may sell on to other recyclers such as the Parties in order to reach final customers. As discussed in chapter 7, this may affect their overall competitiveness against the Parties.

How we have interpreted the bidding data

10.18 The bidding data that we have considered relates to 34 tendered contracts that are served in one or more of the West Midlands, North East, and Wales, and that one or the other of the Parties bid for between the start of 2015 and the merger in August 2017.⁵⁴⁵ We cannot be sure that this is all the tendered contracts that took place in these regions in the relevant time period. However, based on the estimates of the Parties and submissions from competitors we believe that this set of contracts include the vast majority of higher value contracts in the relevant overlap regions.⁵⁴⁶

⁵⁴² These estimates include additional competitors submitted by the Parties. In relation to the regional shares of overall volumes, only those competitors within 50km of one of the Parties' sites are included. Where available, the volume data for both overall volumes and NPS volumes is taken from the competitor's questionnaire responses. Otherwise, for NPS volumes we have used the Parties' estimate, and for overall volumes in specific regions we have used whichever is the largest of the Parties' regional NPS estimate for that competitor, and the volumes recorded in the EA dataset for that competitor.

⁵⁴³ [REDACTED]

⁵⁴⁴ 17 Tendering suppliers (ie [REDACTED]) use or consider six of the metal recyclers (ie CF Booth, Suez, AE Burgess, JJ Stanley, Robert Gibbs, Veolia) for which the Parties submitted estimated purchase volumes as good alternatives to the Parties.

⁵⁴⁵ We have not considered contracts put out for tender after the completion of the merger in August 2017, because we believe that the competitive constraints between EMR and MWR are best observed in their bidding behaviour before the two entities merged.

⁵⁴⁶ Based on tenders listed by the main metal recyclers (ie Sims, S Norton, Ward Recycling, GES Recycling, One Stop Recycling, Enablelink, Ward Bros, and O'Brien) in response to question 7 of the Phase 1 & question 10 of the Phase 2 competitor questionnaire.

10.19 In response to our provisional findings (which found an SLC in the West Midlands and North East) EMR argued that we had focused our analysis of the bidding data on the frequency with which EMR and MWR bid against each other and the frequency with which they won,⁵⁴⁷ and that this was not reflective of the competitive constraint that MWR exerts on EMR. It argued that:

- (a) EMR and MWR bidding against one another is not a constraint unless it can be shown that they are the closest competitors (in the context of an individual tender this would imply they are first and second-placed bidders);⁵⁴⁸
- (b) In any event, in the West Midlands the Parties bid against one another in only 37% of contracts, and in the North East MWR bid only a small number of times;⁵⁴⁹ and
- (c) There is no evidence of one of the Parties winning contracts when the other is the incumbent, which means they are not close competitors.⁵⁵⁰

10.20 However, we consider to be important indicators of competition both the number of times that each of the Parties and competitors bid and the number of times that they win, and do so in competition with the other party.

- (a) the number of times a metal recycler bids for tendered contracts is a good indicator of its overall strength in this segment - we think metal recyclers will be more likely to be invited to bid when suppliers consider that they are credible and viable.
- (b) the Parties' and competitors 'win rates' (ie the proportion of the contracts that they bid for which they won) are also a good indicator of how strongly their participation (or beliefs by other bidders about their participation) may affect the results of bidding, although these rates are more informative the larger the number of contracts bid for.
- (c) even in tenders in which the Parties are not the two best-placed firms, if this cannot be identified this ex-ante⁵⁵¹ the bid each Party submits will still likely be influenced by the bidding activity of the other Party (ie each Party will consider the potential bid of the other Party when formulating its own

⁵⁴⁷ [REDACTED]

⁵⁴⁸ [REDACTED]

⁵⁴⁹ [REDACTED]

⁵⁵⁰ [REDACTED]

⁵⁵¹ This may be the case, for example, where quality is an important factor in the choice of bidder to award the contract to and firms have imperfect information on the quality offers of their rivals.

bid). Consequently, the Parties' bidding incentives will change post-merger. As the European Commission set out in *UPS/TNT Express*:

'In a context where the merging firms are the first and second choices for some customers, and [the merging parties and competing firms] are aware of that fact, price effects will be targeted to such customers. However, when there is some uncertainty about the precise rankings of the merging firms, merger effects are likely to spread across a wider group of customers'⁵⁵²

- (d) there were a number of occasions when EMR believed that MWR had bid for a contract when in fact it had not. This suggests that EMR is unable to accurately predict when MWR will bid and whether MWR would be the second-placed bidder and the merger effects are therefore likely to be spread over a range of contracts.
- (e) to the extent that there is an incumbency advantage, ie incumbent metal recyclers are more likely to win a contract due to having served the contract before (for example, where relevant past experience, an existing relationship with the supplier or existing infrastructure is important), the participation of other metal recyclers may still impose a competitive constraint on the incumbent, even if such bids are unsuccessful. See for example paragraph 10.83 for an example of this.

Regional assessment - West Midlands

10.21 In our examination of the merger's effect on competition for tendered contracts in the West Midlands, we have considered the Parties' views, data on bidding activity in the region, the position of recyclers in metal recycling in the West Midlands generally and in NPS throughout the UK, and the comments we received from third parties.

Parties' views

10.22 The Parties submitted that they face competition in the West Midlands from many credible competitors with similar equipment to MWR, including:

- (a) three that have higher overall volumes in the region than MWR (Ward Recycling, Enablelink, and Sims)⁵⁵³ and some that have additional sites a

⁵⁵² Commission decision of 30 January 2013 in Case M.6570 – *UPS/TNT Express*, Recital 722.

⁵⁵³ [REDACTED]

short distance outside the catchment area.⁵⁵⁴ EMR submitted that, of these, Ward Recycling has recently invested heavily in growth.⁵⁵⁵

- (b) 92 that are based in the West Midlands that they believe to purchase least some volumes of NPS,⁵⁵⁶ plus additional competition from outside the region; and
- (c) 20 that they believe to have bid against one or both of them for at least one West Midlands contract (and seven that they believe to have bid for two or more).⁵⁵⁷

Tender data

10.23 Table 10.1 below presents data on the tendered contracts in which the Parties submitted bids in the West Midlands. In total there were [REDACTED] contracts put out for tender by suppliers located in the West Midlands between 2015 and when the merger was completed in August 2017.⁵⁵⁸ EMR submitted a bid in 17 tenders and MWR in [REDACTED] (Table 10.1). Of these, there were eight tenders in which both EMR and MWR submitted a bid. Details of all tenders are set out in Table 10.1 below.

10.24 Table 10.1 shows that in total, EMR won 10 and MWR won four of the 21 contracts that one or the other of the Parties bid for (67%). [REDACTED], [REDACTED] and [REDACTED] each won one contract in the West Midlands over the relevant period.⁵⁵⁹ Other bidders have not been successful at winning tendered contracts in the West Midlands against either of the Parties.

⁵⁵⁴ [REDACTED].

⁵⁵⁵ In response to our Provisional Findings, EMR submitted, as evidence of the strength of Ward Recycling, a recent article which stated that Ward Recycling has invested heavily (including in a 3,000hp shredder and one of the largest shears in the UK), and that while it is particularly strong in Leicestershire, Yorkshire, Staffordshire, Derbyshire and Nottinghamshire, it offers a national service. [Letsrecycle.com](https://letsrecycle.com), published 6 July 2018.

⁵⁵⁶ [REDACTED]– this figure is derived from the CMA by including only those competitors with sites within 50km of the Parties' West Midlands sites.

⁵⁵⁷ [REDACTED].

⁵⁵⁸ As noted above this is based on data provided by the Parties but information provided by third parties suggests that it is likely to include the majority of relevant contracts.

⁵⁵⁹ Whilst WH Marren has been successful in the past, it stopped trading pre-merger.

Table 10.1: Data on West Midlands competitors' bidding activity and contracts held

<i>Metal Recycler</i>	<i># contracts bid in</i>	<i>In the West Midlands</i>	<i># won</i>	<i>Win rate</i>
EMR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
MWR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<i>Parties Combined¹</i>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sims	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
S Norton	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Ward Recycling	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GES Recycling	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
One Stop Recycling	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Whites of Coventry	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Liberty Steel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
WH Marren ²	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Enablelink	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Other recyclers	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: [REDACTED].

¹ Parties' combined refers to all contracts one and/or the other Party bid for and includes eight instances of tenders in which they both submitted a bid. Therefore, the total number of contracts is not the sum of their individual bids.

² Stopped trading pre-merger.

³ Winner of bid is unknown to the CMA.

10.25 The Parties faced each other in eight of the 21 contracts in the West Midlands.⁵⁶⁰ The Parties believe that they faced at least two other metal recyclers bidding for each of these eight contracts, and that on average across all 21 contracts they faced four other bidders. In total the Parties believe there were thirteen metal recyclers that bid for at least one of these eight contracts.⁵⁶¹ MWR has not faced anyone else more often than EMR, although it faced [REDACTED] on seven occasions and [REDACTED] on four occasions.

10.26 Of the rival metal recyclers, only Sims bid for more contracts than MWR (without winning any). All other metal recyclers bid in half or fewer contracts than MWR.

10.27 Importantly, whilst MWR did not bid against EMR in nine contracts that EMR bid for, EMR believed MWR to have been a bidder for seven of these nine contracts. This suggests that, whilst MWR did not actually compete against EMR in these bids, it nonetheless provided a competitive constraint at the time of bidding.

10.28 Of the [REDACTED] contracts that they both bid for, EMR won [REDACTED] and MWR won [REDACTED] (ie [REDACTED] between them). The other contract was won by [REDACTED].⁵⁶² In [REDACTED] cases

⁵⁶⁰ [REDACTED].

⁵⁶¹ [REDACTED]

⁵⁶² [REDACTED]

the incumbent (whether EMR, MWR or another party) won the contract.⁵⁶³ In the other four cases, EMR won [REDACTED] contracts from [REDACTED], and [REDACTED] contract from [REDACTED], and MWR won [REDACTED] contract that was tendered for the first time.

10.29 Across all 21 contracts for which either Party bid in the West Midlands, there were five contracts for which MWR was the incumbent and four contracts for which EMR was the incumbent. MWR lost one contract to [REDACTED] and one contract to EMR, whilst EMR did not lose any contract for which it was the incumbent metal recycler in the West Midlands.⁵⁶⁴

10.30 We also considered evidence on which of the metal recyclers have served or are currently serving large industrial contracts in the West Midlands. Sims, GES Recycling, and One Stop Recycling have served similar sized contracts to EMR and MWR in the West Midlands.⁵⁶⁵

10.31 Table 10.2 shows the average annual value of contracts tendered in the West Midlands for which either Party bid, from the start of 2015 until the merger in August 2017.⁵⁶⁶

10.32 The table shows that EMR and MWR won by far the most valuable tendered contracts, hence purchased by far the largest amount of scrap metal via tendered contracts.

10.33 The Parties argue that, by construction, they hold a high share of contract value, because this table is only considering contracts for which the Parties bid. This simply reflects that the Parties have won contracts when they have bid, it does not indicate a closeness of competition between the Parties.⁵⁶⁷

10.34 However, as discussed in paragraph 10.14, we believe that the contracts that either Party bid for represents the majority of contracts tendered in the West Midlands in the given time period. Furthermore, as discussed in paragraph 10.16 we consider that the more scrap metal a metal recycler purchases via tendered contracts (measured in contract value), the more likely it is to place a strong competitive constraint on the Parties.

⁵⁶³ [REDACTED]

⁵⁶⁴ EMR did however lose (while the incumbent) to [REDACTED] in the West Midlands [REDACTED]. EMR also lost to [REDACTED]. However, we note that according to EMR's submission the Progress Rail contract is serviced in [REDACTED] and the [REDACTED] contract is serviced in the East Midlands. [REDACTED]

⁵⁶⁵ Example contracts (with annual size) are: EMR [REDACTED]; MWR ([REDACTED] Sims ([REDACTED]), GES Recycling ([REDACTED]), One Stop Recycling ([REDACTED]), Enablelink ([REDACTED])

⁵⁶⁶ As noted above this is based on data provided by the Parties but information provided by third parties suggests that it is likely to include the majority of relevant contracts

⁵⁶⁷ [REDACTED]

Table 10.2: Value of contracts won in the West Midlands

<i>Metal recycler</i>	<i>Annual value of contracts won (£)</i>	<i>Share of annual contract value</i>
EMR**	[REDACTED]	[40-50]%
MWR	[REDACTED]	[30-40]%
<i>Parties Combined</i>	36,236,120	80%
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Other (unknown winner of bid)*	240,000	1%
Total	45,262,120	100%

Source: [REDACTED]. This table presents data on contracts for which either or both parties bid in the period from the start of 2015 to the merger in August 2017. The value of each contract is represented by its expected annual value at the time of the tender

*Annual contract value for 1 contract not available.

** Annual contract value for 2 contracts not available

***No longer trading.

Volumes of waste scrap metal in the West Midlands and NPS in the UK

10.35 To support our analysis of bidding data, which in theory could understate the activity of rivals since it only includes tenders for which one of the Parties bid, we also looked to see if other data suggests that there are significant competitors in the West Midlands that are likely to exert a strong constraint.

10.36 Table 10.3 shows data on competitors' sites and equipment, overall ferrous and non-ferrous volumes in the West Midlands (including tendered and non-tendered volumes), and UK-wide purchase of NPS for 2017. Total volumes of scrap metal purchased via tendered contracts, and region-specific data on NPS purchases in the West Midlands are mostly unknown.⁵⁶⁸

10.37 The Parties have a combined share of total known purchases in the West Midlands of [30-40%] with an increment of [5-10%]. Including the additional purchase estimates provided by the Parties would reduce this to [30-40%] with an increment of [5-10%]. For NPS, which we consider to be a closer approximation for tendered contracts than is the case for data on overall volumes, we estimate that the Parties account for over [60-70%] of known UK purchases, with a [10-20%] increment. Including the additional purchase estimates provided by the Parties would reduce this to [40-50%] with a [10-20%] increment. As discussed in paragraph 10.18 there are reasons to exercise caution in interpreting the lower estimates that include substantial competitor volumes estimated by the Parties.

⁵⁶⁸ The value of metal purchased under tendered contracts for which either or both parties bid in the period 2015 to 2017 (pre-merger) and which are known is listed in Table 10.2 above.

- 10.38 We acknowledge that Table 10.3 is likely to be an overestimate of the Parties' true shares of purchases from original sources because we do not know all recyclers' purchase volumes, and because some of the Parties' volumes are purchased from other metal recyclers. However, we note that our estimates of the Parties' shares are consistent with submissions from several competitors and customers. It is clear from those submissions, and our own estimates, that EMR is by far the strongest competitor in relation to purchases from industrial suppliers, and that MWR is also a strong competitor in this segment.
- 10.39 As a sensitivity check aimed at understanding shares of purchases from original suppliers, we recalculated the shares, excluding from consideration the volumes that were purchased from other recyclers. We were only able to do this for the Parties and two other competitors.⁵⁶⁹ This gives an estimate of the Parties' combined share of known UK NPS purchases of [50-60%] with a [10-20%] increment.
- 10.40 Aside from the Parties, Sims is the only competitor with at least moderate volumes of both waste scrap metal purchases in the West Midlands and of NPS purchases in the UK. Other than Sims, competitors all have fewer sites and fewer balers than MWR (or EMR) in the West Midlands. GES Recycling, Ward Recycling, Enablelink and S Norton all have a material share of either all waste scrap metal in the West Midlands or NPS in the UK but not in both. S Norton does not operate any sites in the West Midlands.
- 10.41 Among the competitors for which we do not have confirmed data on their volumes of NPS (or in some cases, also have no data on their volumes overall in the West Midlands meaning that they are not shown in Table 10.3) and for which the Parties submitted estimated NPS purchase volumes:
- (a) The Parties estimate that One Stop Recycling holds contracts equivalent to around 2% of national volumes of NPS (using the Parties' estimated UK total), and 2% of West Midlands volumes overall. One Stop Recycling bid for [redacted] in the time period covered by the bidding data, and was also mentioned by two West Midlands tendering suppliers.⁵⁷⁰
 - (b) They also estimate that there are seven additional recyclers in the West Midlands⁵⁷¹ with shares of 1% of national NPS volumes each and around 1% of overall West Midlands volumes. None of the tendering suppliers sold to any of these metal recyclers. Whilst one tendering supplier ([redacted])

⁵⁶⁹ [redacted]

⁵⁷⁰ [redacted]

⁵⁷¹ [redacted]

who is also a customer of NPS purchased from one of these metal recyclers ([REDACTED]), it only bought about [REDACTED]% of its yearly intake from this metal recycler.⁵⁷² Furthermore, only one of the businesses for which the Parties estimated NPS purchase volumes is seen in the bidding data at all for the West Midlands. This is a total waste management company that usually sub-contracts these tenders to metal recyclers.⁵⁷³ We do not consider that these recyclers exert a meaningful constraint on the Parties in their bidding for tendered contracts in the West Midlands. Other recyclers for whom the Parties provided estimates have very much smaller volumes and are unlikely to exert any constraint for tendered contracts.

⁵⁷² [REDACTED]

⁵⁷³ [REDACTED]

Table 10.3: Data on competitors' sites and equipment, overall ferrous and non-ferrous volumes in the West Midlands (including tendered and non-tendered volumes), and UK-wide volumes of NPS, 2017

	<i>Sites in the WM</i>	<i>Balers in the WM</i>	<i>WM total known volumes (MT)</i>	<i>% share all known WM purchases</i>	<i>Known UK NPS purchases (MT)</i>	<i>% share of known UK NPS purchases</i>
EMR	5	2	[X]	[30-40%]	[X]	[40-50%]
MWR	3	3	[X]	[5-10%]	[X]	[10-20%]
<i>Parties Combined</i>	8	5	[X]	[30-40%]	[X]	[60-70%]
Sims	[X]	[X]	[X]	[10-20%]	[X]	[5-10%]
S Norton	0	[X]	[X]	[0-5%]	[X]	[5-10%]
GES Recycling	[X]	[X]	[X]	[0-5%]	[X]	[5-10%]
Enablelink	1	[X]	[X]	[5-10%]	[X]	[0-5%]
Ward Recycling	[X]	[X]	[X]	[10-20%]	[X]	[0-5%]
B Shakespeare	1	[X]	[X]	[0-5%]	[X]	[0-5%]
A Goodman & Sons	0	[X]	[X]	[0-5%]	[X]	[0-5%]
Alutrade**	1	[X]	[X]	[0-5%]	[X]	[0-5%]
Richards & Jerrom	1	*	[X]	[0-5%]	*	*
Wades of Wednesbury	1	*	[X]	[0-5%]	*	*
Whites of Coventry	1	*	[X]	[0-5%]	*	*
Beaver Metals (Flexdart)	1	*	[X]	[0-5%]	*	*
Moores Metals	1	*	[X]	[0-5%]	[X]	[0-5%]
KLM Steels	1	*	[X]	[0-5%]	*	*
Brown Recycling	1	*	[X]	[0-5%]	*	*
One Stop Recycling	1	*	[X]	[0-5%]	*	*
Other recyclers in WM***	141	*	327,636	17%	-	-
Other 19 recyclers UK wide***	-	-	-	-	107,132	12%
Total	203	12	1,986,417	100%	1,159,633	100%

Source: [X]

*unknown

**Non-ferrous only

***This includes Green Earth Metal Recycling specifically named by the Parties.

WM = West Midlands

Third parties' views

10.42 This section considers the responses we received from suppliers that tender contracts in the West Midlands. It also considers responses we received from competitors in this region. As noted above, respondents to our survey typically supplied much smaller volumes and therefore (to the extent that industrial suppliers were included in the sample) their responses are not likely to be indicative of the views of suppliers that tender contracts.⁵⁷⁴

⁵⁷⁴ Our survey received responses from 23 industrial suppliers in the West Midlands, of which only one thought that the merger would have an adverse effect.

10.43 We spoke with five suppliers that tendered contracts in the West Midlands for which either Party bid for from the beginning of 2015 until the merger in August 2017, including two that are also consumers of NPS. Among the two that are consumers of NPS, one also sometimes competes directly with the Parties for the purchase of NPS from other suppliers.⁵⁷⁵ Among these respondents, four, including the two that are also consumers, were concerned about the effects of the merger, while the rest were unconcerned.⁵⁷⁶

10.44 The tendering suppliers that were unconcerned about the merger told us that they know or believe there to be multiple other options to choose from in the local area.⁵⁷⁷ However, one of those suppliers also stated that large recyclers have the advantage of experience and track record (and financial background) for the required level of service, and of good access to export markets. But it also stated that it has many tools available to ensure that the service of any metal recycler is efficient and price competitive. Primarily these are competition with other metal recycling companies and steel producers such as [REDACTED], but also the extensive use of price indices to understand movements in the global scrap price.⁵⁷⁸

10.45 Those tendering suppliers that were concerned said that:

- (a) There are few viable competitors for factory contracts;⁵⁷⁹
- (b) Self-supply, or supplying direct from supplier to customer, is difficult and costly, and a weak constraint on the larger metal recyclers that have better logistical and processing capabilities.⁵⁸⁰

10.46 Some tendering suppliers highlighted their relatively demanding service needs in terms of frequency of collection (which implies that the recycler needs many skips, and many vehicles) and in some cases the number of sites for which they need coverage (which implies the metal recycler also needs multiple sites). They also highlighted that it is extremely costly if anything goes wrong with their collection service.⁵⁸¹ One supplier also stated that, based on the

⁵⁷⁵ [REDACTED]

Since the publication of our provisional findings the number of contracts that we believe to relate to the West Midlands reduced as discussed in paragraph 10.15, hence the number of suppliers we talked to that tender in the West Midlands reduced as well.

⁵⁷⁶ We also spoke with ten suppliers of NPS in the West Midlands who have not tendered any contracts recently. Only one of these suppliers [REDACTED] supplied one of the Parties with significant volumes of NPS [REDACTED] who was not concerned about the merger. Of the smaller suppliers two were concerned about the merger and eight were unconcerned. [REDACTED]

⁵⁷⁷ [REDACTED]

⁵⁷⁸ [REDACTED].

⁵⁷⁹ [REDACTED], [REDACTED], [REDACTED].

⁵⁸⁰ [REDACTED], [REDACTED].

⁵⁸¹ [REDACTED], [REDACTED], [REDACTED], [REDACTED].

Parties' combined market shares, they have a 'dominant position to control prices in the market'. It stated that, although there will still be other buyers for its scrap metal, these smaller recyclers will not be able to provide a competitive rate.⁵⁸²

10.47 Table 10.4 below shows the extent to which suppliers identified the metal recyclers in the West Midlands as suitable options for them to use. It shows that among the large West Midlands suppliers that responded to us, Sims was commonly mentioned as an alternative. Ward Recycling, GES Recycling and S Norton were also mentioned more than once.

Table 10.4: Awareness among suppliers and customers of West Midlands competitors

<i>Metal Recycler</i>	<i>Named by supplier</i>
EMR	[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]
MWR	[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]*, [REDACTED]
Sims	[REDACTED], [REDACTED], [REDACTED]*, [REDACTED], [REDACTED], 1 survey respondent*
Ward Recycling	[REDACTED]*, [REDACTED], [REDACTED]
S Norton	[REDACTED], [REDACTED]
GES Recycling	[REDACTED], [REDACTED]
One Stop Recycling	[REDACTED], [REDACTED]
Brown Recycling	
KLM Steels	[REDACTED]
Enablelink	1 survey respondent*
B Shakespeare	[REDACTED] 1 survey respondent*
A Goodman & Son	
HL Thorne	[REDACTED]
Beaver Metals	[REDACTED]
CF Booth	[REDACTED], [REDACTED]

**Located in the East Midlands.
Source: [REDACTED]

10.48 We spoke to six metal recyclers that compete with the Parties in the West Midlands, two of which also sell NPS to the Parties in the region.⁵⁸³ Of these six, four had bid for contracts but none of these had won any.⁵⁸⁴

10.49 [REDACTED].⁵⁸⁵ However, [REDACTED].⁵⁸⁶ It told us that tendered contracts are 'not something you can dip in and dip out of' and that it would be an expensive gamble to try to expand, and not one it is prepared to take.^{587,588} [REDACTED] argued that it faces

582 [REDACTED].

583 [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

584 [REDACTED], [REDACTED], [REDACTED], [REDACTED].

585 [REDACTED].

586 [REDACTED].

587 [REDACTED] is here referring to both tendered and non-tendered industrial contracts.

588 [REDACTED].

strong barriers to expansion in relation to industrial contracts including price: it argued that EMR has a powerful position on the sales side and as a result can pay a premium on the purchases side.⁵⁸⁹

10.50 [X] told us that for many years EMR has been the biggest player in relation to NPS, and that MWR is number two.⁵⁹⁰

10.51 [X].⁵⁹¹

10.52 [X] has bid infrequently in the West Midlands and has yet to win a tender there, although it confirmed that it hopes to expand. It does however serve some industrial suppliers elsewhere and said that the reason it had been able to attract these suppliers was because suppliers wanted to have alternatives to EMR (and that this was also true of suppliers that used MWR).⁵⁹²

10.53 [X] told us that EMR is competitive in everything. Its view is that MWR is not as competitive as it does not have the same geographic presence, but that MWR has a strong presence on very good contracts. It said that, in its view, both EMR and MWR are close in terms of price, financial stability (although MWR less so than EMR), and service.⁵⁹³

10.54 [X] has also bid infrequently in the West Midlands and is yet to win a tender. [X].⁵⁹⁴

10.55 [X] said that MWR is very big in factory contracts, and has a low-residual steel (ie NPS) speciality, specifically in the West Midlands, although it is weakened by its lack of access to a deep-sea dock.^{595, 596}

10.56 Two of the competitors have not bid for any contracts. [X] did not raise any concerns about the merger, noting that it did not think it would affect its business.⁵⁹⁷ [X] did raise concerns about the merger, saying that 'EMR will now control the vast majority of the UK scrap market'.⁵⁹⁸ It argued that EMR

589 [X]

590 [X]

591 [X]

592 [X]

593 [X]

594 [X]

595 MWR Seaham is a deep-sea dock in the North East.

596 [X]

597 [X]

598 [X]

tends to bid above the market value to win contracts, and that ‘the market is controlled by them in this way’.⁵⁹⁹

10.57 Among customers that could potentially bid to purchase from suppliers, [REDACTED]⁶⁰⁰. [REDACTED] has been bidding to purchase directly from suppliers, but told us that this is very difficult without the necessary infrastructure in place and it remains reliant on existing recyclers in the region.⁶⁰¹ Tata told us that purchasing directly from suppliers is a difficult option for it.⁶⁰² This issue of customers purchasing directly from suppliers is considered in more detail in the later section on countervailing constraints.

Conclusion on constraints from metal recyclers in the West Midlands

10.58 We consider that the evidence discussed in this section indicates that the merger would lead to the loss of an important competitive constraint in relation to purchases from tendered contracts in the West Midlands.

10.59 EMR is the largest competitor in relation to tendered contracts, as borne out in the bidding data discussed above (in terms of the number and value of contracts won) as well as from comments from third parties. EMR is also the largest purchaser of scrap metal generally in the region and of NPS in the UK.

10.60 MWR provides a significant competitive constraint. Since 2015, it has bid frequently, won on several occasions, and holds a high share of the value of known contracts in the West Midlands. Only [REDACTED] and EMR bid more often, and no bidder other than EMR won more often (with [REDACTED]). MWR’s scale overall in metal recycling in the West Midlands is comparable to [REDACTED] and slightly smaller than [REDACTED] and [REDACTED]. However, in contrast to these competitors, MWR purchases less material in the West Midlands from small suppliers (and it does not accept ‘door trade’), meaning that for a given share of overall West Midlands volumes, it is likely to exert a greater constraint on EMR in competing for tendered contracts than is the case for those other recyclers of similar scale.

10.61 For both Parties, there appears to be an incumbency advantage (see paragraph 10.27), meaning that the Parties are particularly strong competitors for the contracts they currently hold, and that it is likely to be difficult for rivals to enter or expand in purchasing from tendered contracts.

⁵⁹⁹ [REDACTED]. As explained in Chapter 7, our concern is with EMR reducing prices to suppliers, rather than increasing them; this comment is therefore relevant to our assessment only insofar as it suggests that [REDACTED] finds it hard to compete against EMR and may therefore be a weak constraint.

⁶⁰⁰ [REDACTED]

⁶⁰¹ [REDACTED].

⁶⁰² [REDACTED]

10.62 The Parties do face competition from Sims to some extent. Sims is [REDACTED].⁶⁰³ In the data we saw it bid for [REDACTED], but it [REDACTED]. Its estimated share of NPS volumes in the UK is [5-10]% and it accounts for [10-20]% of scrap metal volumes generally in the West Midlands. Sims was named as a viable alternative to the Parties by several large West Midlands suppliers that responded to our questionnaire.

10.63 Regarding other bidders:

- (a) S Norton is a large recycler overall [REDACTED] and was mentioned by two West Midlands suppliers, suggesting it may exert some constraint. However [REDACTED];
- (b) Ward Recycling was named by some suppliers and bid for [REDACTED] and it told us that [REDACTED].⁶⁰⁴
- (c) The Parties believe that One Stop Recycling won [REDACTED] in the area [REDACTED] and it was mentioned by two suppliers, but we do not consider this sufficient evidence to consider it a strong constraint.
- (d) GES Recycling was named by some suppliers and bid for three contracts but it did not win any of these. Whilst GES Recycling hopes to expand and improve its bidding activity in the future,⁶⁰⁵ we do not consider GES Recycling to be a strong constraint in the West Midlands at the moment.
- (e) Enablelink was named by one supplier [REDACTED] the West Midlands. Hence, we do not consider Enablelink to be a strong competitive constraint on the Parties at the moment.

10.64 We therefore consider that in the absence of sufficient countervailing constraints the loss of the constraint from MWR as a result of the merger is likely to lead to an SLC in the purchase of waste scrap metal under tendered contracts in the West Midlands.

Regional assessment - North East

10.65 In our examination of the merger's effect on competition for tendered contracts in the North East, we have considered the Parties' views, the position of recyclers in metal recycling in the North East generally and in NPS

⁶⁰³ [REDACTED]

⁶⁰⁴ [REDACTED]

⁶⁰⁵ [REDACTED]

throughout the UK, data on bidding activity in the region, and comments we received from third parties.

The Parties' views

- 10.66 The Parties submitted that in the North East they are not close competitors, that the increment is small, and that they face competition from many competitors. They argued that MWR is not a strong competitor, as it has only one site in the North East and over 80% of its volumes are purchased from a single supplier that EMR has not bid for in recent years.⁶⁰⁶
- 10.67 MWR's site at a dock facility in Seaham was acquired to service [REDACTED], a contract which MWR won through a tender and which makes up over 80% of MWR's volumes. MWR does not accept drop-off deliveries at Seaham, and the Parties submit that MWR does not have a particularly good geographic coverage or network in the North East.⁶⁰⁷
- 10.68 In relation to [REDACTED] (an automotive parts manufacturer), the Parties submitted that:
- (a) it puts its requirements for the collection of production scrap out to tender every two to three years with multiple bidders. The Parties believe that they competed against multiple suppliers for the last tender ([REDACTED]);^{608,609}
 - (b) EMR [REDACTED]⁶¹⁰ and so there is currently no significant competition between the Parties; and
 - (c) [REDACTED] is a sophisticated supplier which has significant negotiating power. [REDACTED] invites MWR to re-quote on every renewal of the contract.⁶¹¹
- 10.69 In respect of local competition, the Parties submitted that their combined share of sites in the region (including all EA-licensed recyclers) is [0-5%], and that there are at least ten competitors within 50km of their sites that have collection services, processing capabilities, export capability, operate on a large scale, and are competitive on pricing. They submitted that this includes two metal recyclers (Ward Bros and J Denham) that have equivalent equipment to MWR and, in the case of Ward Bros, a larger scale – Ward Bros purchases more metal than MWR in the region and the websites of both Ward

⁶⁰⁶ [REDACTED].

⁶⁰⁷ [REDACTED].

⁶⁰⁸ [REDACTED].

⁶⁰⁹ [REDACTED].

⁶¹⁰ [REDACTED].

⁶¹¹ [REDACTED].

Bros and J Denham state that they are the largest metal recyclers in the North East. The Parties also highlighted that Sims (the second-largest recycler in the UK) is present in the North East, and submitted that there are at least seven metal recyclers not present in the North East that regularly buy in the region.^{612, 613}

10.70 The Parties submitted that among recyclers in the North East:

(a) There are 12 in the North East that they believe to purchase at least some volumes of NPS, plus additional competition from outside the region;⁶¹⁴ and

(b) 8 that they believe to have bid against them for at least one contract in the North East (and two that they believe to have bid for two or more).⁶¹⁵

10.71 The Parties also submitted that metal recyclers in the North East have successfully expanded their businesses and that the prospect of additional competition will act as a constraint.⁶¹⁶

Tender data

10.72 Table 10.5, below, presents data on the tendered contracts in which the Parties submitted bids in the North East between the start of 2015 and the merger in August 2017.⁶¹⁷ Over the relevant period there were [X] tenders in which at least one of the Parties submitted a bid.⁶¹⁸ Overall, EMR and MWR each submitted [X] bids and the Parties bid against each other in [X] of the [X] contracts. Of these [X] contracts, EMR won one and MWR won [X]. The other contract for which both Parties bid was won by [X]. In all [X] cases the incumbent recycler won the contract.

10.73 The Parties believe they faced [X] other metal recyclers bidding for [X] of these [X] contracts, but only [X] other metal recycler in the other [X] contracts. In total, there were [X] metal recyclers that the Parties believe

⁶¹² (Christie (Glasgow); S Dalton (Edinburgh); Lord & Midgley (Hull); S Norton (Liverpool); CF Booth (Rotherham); KAS Metals (Manchester) and Ashvin (Blackpool))

⁶¹³ [X]

⁶¹⁴ [X]— this figure is derived from the CMA by including only those competitors with sites within 50km of the Parties' North East sites.

⁶¹⁵ [X]

⁶¹⁶ [X]

⁶¹⁷ [X]

⁶¹⁸ This is a lower number of contracts than was discussed in our analysis of the North East set out in our Provisional Findings. The change is driven by corrections provided by the Parties, and the removal from this analysis of some multi-region contracts which had previously been double counted (ie in each of the regional assessments) and are now considered separately. See [X]. The bids that MWR bid for include contracts of [X]. The bids EMR bid for include [X].

have bid for these [REDACTED] contracts but, of these, only [REDACTED] and [REDACTED] bid [REDACTED] and only [REDACTED].⁶¹⁹

10.74 Each Party bid for one contract which the other Party did not bid for in the North East. Whilst EMR faced competition from Sims and Ward Bros, and Ward Bros won the contract, MWR did not face competition for its [REDACTED] contract the last time it was put out to tender in March 2017. However, [REDACTED] as told us that when the tender comes up for renewal in autumn 2018, it intends to approach EMR, Sims and Ward Bros to discuss purchasing its scrap metal.⁶²⁰

10.75 Overall, although there is a relatively small number of contracts (albeit of high value), the Parties are the most frequent and most successful bidders. The data does, however, suggest they face some competition from other recyclers - [REDACTED] has bid several times and won once. A small number of other recyclers also bid in a small number of cases; of these, [REDACTED] was the only one to win (one) contract.

Table 10.5: Data on North East competitors' bidding activity and contracts held

<i>Metal Recycler</i>	In the North East		Win rate
	<i># contracts bid in</i>	<i># won</i>	
EMR	[REDACTED]	[REDACTED]	[REDACTED]
MWR	[REDACTED]	[REDACTED]	[REDACTED]
<i>Parties Combined</i>	[REDACTED]	[REDACTED]	[REDACTED]
Sims	[REDACTED]	[REDACTED]	[REDACTED]
S Norton	[REDACTED]	[REDACTED]	[REDACTED]
Ward Bros Steel Ltd	[REDACTED]	[REDACTED]	[REDACTED]
Total Recycling Services	[REDACTED]	[REDACTED]	[REDACTED]
Suez	[REDACTED]	[REDACTED]	[REDACTED]
Green Metals	[REDACTED]	[REDACTED]	[REDACTED]
Robertson Metal Recycling	[REDACTED]	[REDACTED]	[REDACTED]
Avon Metals	[REDACTED]	[REDACTED]	[REDACTED]
GES Recycling	[REDACTED]	[REDACTED]	[REDACTED]
Other recyclers	[REDACTED]	[REDACTED]	[REDACTED]

*Located in the West Midlands.

Source: [REDACTED]

'Parties Combined' refers to all contracts one and/or the other Party bid for including instances in which both Parties submitted a bid. Therefore, the combined number of tenders in which the Parties were active is less than the sum of their individual bids.

10.76 We also considered evidence on which of the metal recyclers have served or are currently serving large industrial contracts in the North East. Sims is the

⁶¹⁹ [REDACTED]
⁶²⁰ [REDACTED]

only recycler known to hold a large tendered contract of a scale similar to those of the Parties, yet this is not specific to the North East.⁶²¹

10.77 Table 10.6 below sets out the value of contracts tendered in the North East. MWR purchases more than [REDACTED] of the scrap metal via tendered contracts that one or both Parties bid for in the period 2015 to 2017 (pre-merger), based on annual values of tenders. EMR accounted for around [REDACTED]% of the contract values and together the Parties accounted for over [REDACTED]% of the total annual contract values of the tenders in which they participated over the period. As noted by the Parties,⁶²² the value of metal fluctuates strongly, meaning that these numbers (which aggregate contracts won over a two-and-a-half-year period) should be interpreted with caution. Moreover, for MWR this figure is strongly driven by [REDACTED].

Table 10.6: Annual value of contracts won in the North East

<i>Metal recycler</i>	<i>Annual value of contracts won (£)</i>	<i>Share of annual value</i>
EMR	[REDACTED]	[30-40]%
MWR*	[REDACTED]	[50-60]%
<i>Parties Combined</i>	19,046,309	92%
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Total	20,782,227	100%

Source: CMA analysis of EMR response to the annotated issues statement and working papers, Annex 2, CMA analysis of EMR response to information request dated 9 April 2018. This table presents data on contracts for which either or both parties bid in the period from the start of 2015 to the merger in August 2017. The value of each contract is represented by its expected annual value at the time of the tender

*Annual contract value for one contract not available.

Volumes of waste scrap metal in the North East and NPS in the UK

10.78 Table 10.7 sets out data on competitors' sites and equipment, overall ferrous and non-ferrous purchase volumes in the North East, and UK-wide purchase volumes of NPS. For scrap metal generally, the Parties estimated that in the North East their combined share of all known ferrous and non-ferrous purchases is [50-60%] with an increment of [5-10%]. Including all purchases as estimated by EMR, this would fall to 50-60%] with an increment of [5-10%]. As discussed in the previous section (see paragraph 10.33), for NPS, which we consider to be a closer approximation for tendered contracts than is the case for data on overall volumes, we estimate that the Parties account for over [60-70%] of known UK purchases with a [10-20%] increment. Including

⁶²¹ Example contracts (with annual size) are: [REDACTED]

⁶²² EMR response to final report put back

all NPS purchases estimated by the EMR, this would fall to [40-50%] with a [10-20%] increment.

10.79 Aside from the Parties, Sims is the only competitor with at least moderate known volumes of both waste scrap metal purchased in the North East and of NPS purchases in the UK. S Norton (which does not operate any sites in the North East but bid for one contract), [REDACTED], [REDACTED] and [REDACTED] all have a material share of either waste scrap metal in the North East or of NPS nationally, but not both.

10.80 Among the additional competitors for which we do not have confirmed data on their volumes of NPS (or in some cases, also have no data on their volumes overall in the North East meaning that they are not shown in table 10.7) and for which the Parties submitted estimated purchases, the Parties estimate that:

- (a) [REDACTED] has NPS purchases of around 2% of national NPS purchases (equivalent to around 4% of overall North East volumes). This recycler was not mentioned by any tendering suppliers (see Table 10.8) and not seen in the bidding data (see Table 10.5).
- (b) [REDACTED] and [REDACTED] have NPS volumes of around 1% or less of national NPS purchases, and 2% or under of overall North East volumes. Neither was mentioned by tendering suppliers in the region (see Table 10.4 or present in the bidding data). We do not consider that these recyclers exert a meaningful constraint on the Parties in their bidding for tendered contracts in the North East. Other recyclers for whom the Parties provided estimates have very much smaller volumes and are unlikely to exert any constraint for tendered contracts.

Table 10.7: Data on competitors' sites and equipment, overall ferrous and non-ferrous volumes in the North East, and UK-wide volumes of NPS

	No. sites in North East	Balers in the NE	Total Volumes NE	% of total volumes NE	Total UK purchases of NPS	% of total UK purchases of NPS
EMR	8	0	[REDACTED]	[50-60%]	[REDACTED]	[40-50%]
MWR	1	1	[REDACTED]	[5-10%]	[REDACTED]	[10-20%]
<i>Parties Combined</i>	9	1	[REDACTED]	[50-60%]	[REDACTED]	[60-70%]
Sims	[REDACTED]	[REDACTED]	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
S Norton	0	0	[REDACTED]	[0-5%]	[REDACTED]	[5-10%]
GES Recycling	[REDACTED]	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[5-10%]
Ward Bros Steel Ltd	3	3	[REDACTED]	[10-20%]	[REDACTED]	[0-5%]
O Brien	4	0	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
Jebb Metals	1	1	[REDACTED]	[0-5%]	*	*
J Denham	2	1	[REDACTED]	[0-5%]	*	*
Pout & Foster	1	1	[REDACTED]	[0-5%]	*	*
Total Recycling Services	1	*	[REDACTED]	*	*	*
Other recyclers in NE	9	2	8,849	2%	-	-
Other 20 recyclers UK wide	-	-	-	-	135,693	16%
Total	33	10	861,570	100%	1,159,633	100%

Source: [REDACTED]

* Represent unknown values.

Third parties' views

10.81 We spoke to five suppliers that tender contracts in the North East, and are among the Parties' top suppliers of NPS.⁶²³ Of these respondents, two raised concerns about the effects of the merger.⁶²⁴ They argued that the merger would strengthen EMR's position as the leader in the UK scrap market, and that the merger will make it difficult to get a sufficient number of competitive bids.⁶²⁵ As in the West Midlands, several suppliers (including both concerned and unconcerned suppliers) emphasised their service needs. Those that were unconcerned about the merger were satisfied that (in most cases, a small number of) other suppliers could meet their needs.⁶²⁶ For example:

- (a) One tendering supplier stated that, although many in the industry do not live up to its expected service standards, it is too simplistic to say that the industry is not competitive. It told us that in theory, steel producers are not without the capability and capacity to service its accounts, but their

⁶²³ [REDACTED]

⁶²⁴ [REDACTED].

⁶²⁵ [REDACTED]

⁶²⁶ [REDACTED]

customer service needs to improve, and that the ability for UK domestic customers to access material is a matter of price rather than availability.⁶²⁷

(b) We received a further submission after publication of our draft provisional findings from [REDACTED]. It is one of [REDACTED] smaller suppliers and is unconcerned by the merger. It stated that ‘there always appears to be plenty of competition when tendering out work. This market is very price competitive’.⁶²⁸

10.82 Table 10.8, below, shows the awareness of the different metal recyclers among suppliers and customers. Several suppliers mentioned Sims and Ward Bros, and one of [REDACTED], which is not based in the region but has a relationship with [REDACTED].

Table 10.8: Awareness of North East competitors among suppliers and customers

<i>Metal Recycler</i>	<i>Named by supplier</i>
EMR	[REDACTED]
MWR	[REDACTED]
Sims	[REDACTED]
S Norton	[REDACTED]
GES Recycling	
Ward Bros Steel Ltd	[REDACTED]
Total Recycling Services	
Suez	[REDACTED]
Green Metals	
O Brien	[REDACTED]
Jebb Metals	
J Denham	
Pout & Foster	
Other recyclers	

*Located in the West Midlands.

Source: [REDACTED]

10.83 One of the suppliers that tenders contracts is also a metal recycler that sells to the Parties in the region. It deals [REDACTED] in NPS and last year sold [REDACTED] to EMR. It told us that it also sells to GES recycling, S Norton, and Ward Bros, and considers that Sims is also a good option [REDACTED] it includes MWR in its tendering process and uses its prices for benchmarking. It commented on the

⁶²⁷ [REDACTED]

⁶²⁸ Another North East supplier ([REDACTED] that did not sell NPS to EMR or MWR in 2017 up until the merger and that does not tender contracts also submitted that it is unconcerned by the merger. [REDACTED].

merger that it 'will have fewer companies in any tendering process – less competition.'⁶²⁹

- 10.84 Another supplier told us that it is able to ensure best prices through introducing European buyers, [REDACTED], into its tender process along with UK buyers, such as Sims and EMR. In its latest activity it included MWR, however discounted MWR at the time due to [REDACTED] from a credit rating perspective.⁶³⁰
- 10.85 We spoke to seven metal recyclers that are present or are believed to have bid for large contracts in the North East. Of these seven, according to data from the Parties and corroborated with competitors, two had bid for tendered contracts against both Parties, and one in a contract against EMR, but only two of these had won any.⁶³¹
- 10.86 Sims appears to be the strongest competitor in the North East after EMR and MWR in relation to tendered contracts. It is a large national recycler with moderate overall purchases of NPS (indicating the ability to serve industrial suppliers), and multiple sites, moderate overall volumes, and some bidding activity in the North East. Whilst it bid for [REDACTED] contracts, it [REDACTED]. [REDACTED].⁶³² However, multiple North East suppliers listed it as a viable alternative. [REDACTED] for example, stated it considers Sims as a viable alternative to MWR to serve its contract in its upcoming tender.⁶³³
- 10.87 Ward Bros has [REDACTED] against EMR in the North East according to the bidding data that we have. However, it considers that it can win additional business from the Parties (particularly in light of the merger).⁶³⁴ This is in line with [REDACTED] considering Ward Bros as an alternative to EMR in its next tendering round.⁶³⁵ Ward Bros described itself as [REDACTED]⁶³⁶ and told us that [REDACTED] of its business is from factories.⁶³⁷
- 10.88 [REDACTED]⁶³⁸

629 [REDACTED]
630 [REDACTED]
631 [REDACTED]
632 [REDACTED]
633 [REDACTED]
634 [REDACTED]
635 [REDACTED]
636 [REDACTED]
637 [REDACTED]
638 [REDACTED]

- 10.89 [X] confirmed that it competes for industrial contracts, and hopes to expand, although it is finding this difficult.⁶³⁹ It [X] the North East among those included in the data submitted by the Parties.
- 10.90 [X] according to the bidding data that we have. [X] volumes of NPS (which were around [X] tonnes last year) have been recently [X] (to around [X] tonnes) by the [X].⁶⁴⁰ [X] told us that it only buys from factories, manufacturers and construction sites, and that it buys very little from other metal recyclers.⁶⁴¹ Last year it exported only about [X] of its scrap metal and sold most of its material to other recyclers, including around [X] to EMR.⁶⁴² [X] has concerns about the merger, arguing that ‘EMR is willing to lose some money to gain more contracts, reducing the number of contracts that other firms have and forcing them to exit the market’, and that the ‘merger would enable them to manipulate the transportation in the area, making it extremely difficult for firms to hire the necessary transport’.⁶⁴³
- 10.91 [X] (which has sites in the North East and [X], and [0-5]% of all North East volumes) said that it did not compete for large industrial contracts⁶⁴⁴ and that 100% of its purchases are bilaterally negotiated.⁶⁴⁵ It submitted that its strongest competitors are EMR, [X], [X], [X], and [X].⁶⁴⁶ It told us that the merger would have no effect on its ability to source enough materials, and it has no concerns about the effect of the merger on competition.⁶⁴⁷
- 10.92 Green Metals UK (among the ‘other recyclers’ in the above table, and not mentioned by any suppliers) is a waste recycling company specialising in the automotive sector. [X]. However, it told us that at present it is not submitting bids for any tendered contracts and that its future strategy regarding large automotive manufacturers is to be decided. It does not plan to open any metal recycling sites.⁶⁴⁸

Conclusion on constraints faced by the Parties in the North East

- 10.93 Taken as a whole, we consider that the evidence set out in this section indicates that the Transaction has resulted in (or may be expected to result in)

639 [X]
640 [X]
641 [X]
642 [X]
643 [X]
644 [X]
645 [X]
646 [X]
647 [X]
648 [X]

the loss of a substantial competitive constraint in relation to purchases under tendered contracts in the North East, for the following reasons.

- 10.94 Although there is a relatively small number of contracts (albeit of high value), the Parties are the most frequent and most successful bidders. Among the contracts we are aware of, MWR has won [REDACTED] - more contracts than any other bidder in the North East - and accounts for more than [REDACTED] of the total value of the contracts in the North East. EMR bid for five contracts, winning one (which accounts for almost [REDACTED]% of the value of these contracts). Together the Parties account for over 90% of the value of these contracts.
- 10.95 For both Parties, there appears to be an incumbency advantage (see paragraph 10.65), meaning that the Parties are particularly strong competitors for the contracts they currently hold.
- 10.96 Whilst the Parties argue that MWR only holds one major contract in the North East ([REDACTED]), for which EMR has not competed, and specifically opened its site in Seaham to better serve this contract, MWR has also bid for other contracts, and won [REDACTED] contracts in addition to [REDACTED].
- 10.97 Sims bid against one or both of the Parties [REDACTED] times, winning [REDACTED]. We consider that Sims offers some competitive constraint in tendered contracts in the North East.
- 10.98 The Parties also face some competitive constraint from Ward Bros, which has [REDACTED]. [REDACTED] told us that it will be considered in the next round of its tender.⁶⁴⁹
- 10.99 S Norton [REDACTED] and is not present there. [REDACTED].
- 10.100 GES Recycling and O'Brien [REDACTED] and the evidence available to us indicates that they provide, at best, weak constraints.
- 10.101 Overall, we consider that absent sufficient countervailing constraints, the loss of the competitive constraint from MWR is likely to lead to an SLC in relation to tendered contracts in the North East.

Regional assessment - Wales

- 10.102 We have assessed the merger's effect on competition for tendered contracts in the Wales region (ie with specific focus in the South where the

⁶⁴⁹ [REDACTED]

Parties' sites are located in Newport, Cardiff and Sharpness; this includes some areas in Wales as well as in Bristol, Gloucestershire and Somerset).

10.103 MWR also serves one multi-regional contract with [REDACTED] that EMR also bid for, where MWR purchased about [REDACTED]% of the volumes from [REDACTED] at its site in Newport whilst the majority of the material was purchased in the North East. [REDACTED] other metal recyclers also bid for this contract.

10.104 We are aware of only one tendered contract specific to this region that both Parties bid for,⁶⁵⁰ which was put out for tender by the Royal Mint after the merger had already taken place. Both Parties bid and it was won by MWR. This supplier told us that the merger 'could impact the competitiveness of prices when it tenders business from MWR and/or EMR. Historically EMR and MWR have participated in tenders as separate entities – this has helped to ensure a competitive landscape in terms of prices'.

10.105 However, as alternatives to the parties, Royal Mint listed six other metal recyclers it currently sells scrap metal to (ie [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) and considers two other additional metal recyclers to also be viable alternatives ([REDACTED] and [REDACTED]).⁶⁵¹ At the time of the last tender, the Parties competed against [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. As shown in Table 10.7, each of these recyclers has greater scale than MWR in the region.

10.106 In particular, Sims is by far the largest recycler in the region (with sites in South Wales and in Bristol) and purchases significant UK volumes of NPS. It has five sites in the region compared to two for EMR and one for MWR, and it accounts for [50-60]% of all scrap metal purchases in the area compared to [20-30]% for EMR and [0-5]% for MWR.

10.107 We also note that [REDACTED], [REDACTED] and Bayliss Metals all have materially higher overall volumes of ferrous and non-ferrous purchases in Wales than MWR, (although they do not have significant volumes of NPS nationally).

10.108 As the Parties only serve a few suppliers that go out for tender or enter into formal contracts in Wales and these suppliers tend to supply substantially smaller volumes than suppliers in the other regions that we have examined, their needs are more similar to the general population of suppliers than is the case in other regions. This makes overall waste scrap metal shares (discussed below), rather than NPS shares, more relevant to the assessment

⁶⁵⁰ This figure has been corrected since the publication of our provisional findings, in which we mistakenly included tenders based in Wales but outside the catchment area of the Parties' overlapping sites.

⁶⁵¹ [REDACTED]

of competition for industrial suppliers in this region than is the case in other regions.

Table 10.9: Data on competitors' sites and equipment, overall ferrous and non-ferrous volumes in Wales region, and UK-wide volumes of NPS

Competitor	No. sites in Wales region	Balers in Wales region	Total Volumes Wales	% of total volumes Wales	Total UK volume of NPS	% of total UK volume of NPS
EMR	2	0	[REDACTED]	[20-30%]	[REDACTED]	[40-50%]
MWR	1	0	[REDACTED]	[0-5%]	[REDACTED]	[50-20%]
Parties Combined	3	0	[REDACTED]	[20 – 30%]	[REDACTED]	[60 – 70%]
Sims	[REDACTED]	[REDACTED]	[REDACTED]	[50-60%]	[REDACTED]	[5-10%]
S Norton	0	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[5-10%]
GD environmental	2	[REDACTED]	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
JC Thomas	1	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Bayliss Metals	3	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
ELG Haniel Metals LTD	1	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
GLJ Recycling	3	[REDACTED]	*	*	*	*
TDJ Williams	1	[REDACTED]	*	*	*	*
Avon Metals	1	[REDACTED]	*	*	*	*
Other recyclers in Wales	7	4	23,301	3%	-	-
Other 24 recyclers UK wide	-	-	-	-	267,340	23%
Total	27	10	779,622	100%	1,159,633	100%

Source: [REDACTED]

* Unknown

Conclusion on constraints faced by the Parties in Wales

10.109 We do not consider that the merger has resulted, or can be expected to result, in an SLC in relation to tendered contracts in Wales. In this region the Parties' overall shares are relatively small, MWR is very small and the Parties competed for only one contract there in the period reviewed. Furthermore, EMR faces particularly strong competition from [REDACTED] and there are a number of other bidders for tendered contracts.

Multi-region contracts

10.110 The Parties submitted that, between January 2015 and the merger at the end of August 2017, one or the other of the Parties bid for [REDACTED] contracts for which suppliers needed services in more than one overlap region or across the whole of the UK (ie national or multi-region contracts).⁶⁵² EMR bid for three and MWR bid for [REDACTED] of these contracts, and the Parties bid against

⁶⁵² The bids that MWR bid for include contracts of [REDACTED]. The bids EMR bid for include [REDACTED].

each other on only [REDACTED] occasions. EMR won [REDACTED] contracts in total, and [REDACTED] contracts when both Parties bid. MWR won [REDACTED].

10.111 However, we consider that the Parties are not particularly close competitors for these contracts, and/or that they are likely to face competition from multiple other recyclers, because

- (a) [REDACTED]⁶⁵³ of the [REDACTED] contracts involved a substantial proportion of volumes outside of the four overlap regions which suggests that the Parties would not have been close competitors for those contracts. Although MWR bid for [REDACTED] of these contracts (and did not win), we consider that the strength of MWR as a competitor against EMR to fulfil the entire contract was weak, and that it acted as a constraint only in respect of the overlap regions – competition in which has been considered above.⁶⁵⁴ This is in line with what we heard from some suppliers requiring national coverage - that MWR could not provide this coverage and so had not constrained EMR in competing for their supplies pre-merger;⁶⁵⁵
- (b) The volume that the Parties purchased from the suppliers of these [REDACTED] contracts were very low (mostly below [REDACTED] tonnes per contract in 2017 up until the merger). We consider that the small volumes involved make these contracts easier for a wider selection of recyclers to serve them, either individually or as part of a consortium of regional competitors.

10.112 Although we are aware of a small number of national or multi-region contracts, we have not seen any evidence in relation to them which has persuaded us to change our view based on our regional assessments discussed above.

Countervailing constraints

10.113 Countervailing constraints may prevent an SLC from arising, or mitigate the adverse effects of an SLC. Typically, countervailing constraints include whether in the event that the merged entity worsens prices or quality of service, rivals will enter or expand within a market with the consequence that the worsened prices or service levels cannot be sustained,⁶⁵⁶ or whether customers have sufficient negotiating strength to limit the ability of the merged entity to worsen prices or quality of service.⁶⁵⁷ We have assessed these

⁶⁵³ The bids that MWR bid for include contracts of [REDACTED]. The bids EMR bid for include [REDACTED].

⁶⁵⁴ Since in order to fulfil the contract in different parts of the country MWR would have needed to subcontract to another provider.

⁶⁵⁵ [REDACTED].

⁶⁵⁶ [Merger assessment guidelines](#), paragraph 5.8.1.

⁶⁵⁷ [Merger assessment guidelines](#), paragraph 5.9.1.

below. Specifically, we have examined the prospect of suppliers by-passing the Parties by supplying directly to downstream customers (eg steel mills) and the possibility of suppliers sponsoring the entry of firms who may be able to bid for tendered contracts including downstream customers.

10.114 The Parties made arguments about specific large suppliers selling directly to final customers or encouraging entry of metal recyclers from other regions, which are discussed separately below. They argued that this buyer power would prevent any SLC from arising in purchasing under tendered contracts.

10.115 The Parties also argued that large suppliers (that are also customers) can re-use the scrap metal they produce, thereby self-supplying instead of purchasing from metal recyclers. This argument is discussed in detail in Chapter 11 when considering countervailing constraints in relation to sales of NPS to UK final customer. We conclude, in that context, that self-supply by customers does not provide a sufficient constraint to prevent an SLC in the sale of NPS. In effect, the same issues arise in both markets: metal recyclers, such as the Parties, that have a strong position in purchasing under tendered contracts have, for similar reasons, a strong position in the sale of NPS to UK final customers. In both cases, the issues affecting the constraint from direct supply between suppliers and final customers and the constraint from self-supply within a single firm are similar and so affect both the relevant purchase and sales markets.

Direct supply to final customers

10.116 We received views from the Parties and from a number of third parties on whether direct supply to final customers is likely to be an effective constraint. Although the Parties suggested it was a strong constraint, and provided some examples of it happening in the past and possible future examples, most third parties indicated that they did not consider final customers to be good alternative purchasers. This is reflected in the tender data which shows that very few final customers have bid for direct supplies and even fewer of these bids have been successful, as set out in Tables 10.1 (for contracts in the West Midlands) and 10.5 (for contracts in the North East), where final customers do not feature as important competitors to the Parties in these regions.

Parties' views

10.117 The Parties submitted that there is a strong constraint from suppliers selling directly to final customers. If suppliers could do this, the Parties argue,

then they would not suffer any worsening in terms from the Parties as a result of the merger.

10.118 The Parties argued that this can be done through ‘tolling’ arrangements, in which industrial suppliers retain ownership of the scrap and sub-contract the metal recycling service element, or through the supplier carrying out the recycling activity itself. They gave examples of:

(a) Past and present instances of direct relationships between suppliers and customers:

(i) [REDACTED], [REDACTED]. and BMW previously supplying Tata;⁶⁵⁸

(ii) Jaguar Land Rover supplying some materials to Novelis;⁶⁵⁹

(iii) [REDACTED];⁶⁶⁰ and

(iv) ‘Closed loop’ arrangements between manufacturers and raw material suppliers in the aerospace industry.⁶⁶¹

(b) Suppliers that they consider potentially likely to carry out direct supply in future:

(i) [REDACTED];⁶⁶² and

(ii) [REDACTED], which currently uses metal recyclers but the parties believe is a potential direct-supplier.⁶⁶³

10.119 The Parties submitted that suppliers of NPS have the ability to switch between self-supply, tolling and selling to metal recyclers. This, they argued, can occur relatively regularly. For example, Tata has in the past switched between outsourcing and self-supply in response to changes in metal prices.⁶⁶⁴

658 [REDACTED]
659 [REDACTED]
660 [REDACTED]
661 [REDACTED]
662 [REDACTED]
663 [REDACTED]
664 [REDACTED]

Third parties' views

- 10.120 In relation to supplying directly to final customers, one supplier ([REDACTED]).⁶⁶⁵ and some suppliers told us that they could sell some material directly to customers or had done so in the past.⁶⁶⁶ However most suppliers told us that this option was either difficult or impossible for them.⁶⁶⁷
- 10.121 One large supplier of NPS (Tata), who tendered [REDACTED] that both Parties bid for, told us that it can sell NPS directly to end-users. However, it finds it difficult [REDACTED].⁶⁶⁸ [REDACTED].
- 10.122 [REDACTED] previously sold its steel in the North to [REDACTED] under a tendered contract, which [REDACTED] lost to EMR in 2017. [REDACTED] stated that the price EMR could offer to export the material was preferential to the price [REDACTED] could offer due to the costs involved in transporting the material within the UK. [REDACTED], which [REDACTED] stated it may consider; [REDACTED] said that this specific small [REDACTED] is more feasible to bid for than other large contracts (including other [REDACTED]) because very little processing is required meaning that [REDACTED] can bid using a logistics provider rather than metal recycler. [REDACTED]. [REDACTED] also stated that it used to supply [REDACTED] directly but it did not make sense for it to go to steel mills as merchants can provide better prices by exporting.⁶⁶⁹
- 10.123 Barrett Steel told us that in the past it had approaches to supply UK mills directly but this has never been workable. For example, it was previously approached by [REDACTED] to supply direct but ultimately both parties decided it could not work.⁶⁷⁰ Barret Steel told us that this is because, first, a mill looks for a lower price than it would pay a metal recycler, which, when including transport costs, Barrett Steel finds to be a worse price than it could achieve elsewhere. Second, Barrett Steel does not have the space to store or handle metal waste and [REDACTED] struggled to accept its inconsistent transport patterns and low-weight shipments.
- 10.124 The remaining nine tendering suppliers that responded to our information requests currently sell waste scrap metal only to metal recyclers and do not consider end-customers as good alternative purchasers.⁶⁷¹

⁶⁶⁵ We note that [REDACTED] is a subsidiary of [REDACTED], so it is not clear the extent to which this is a good example of a UK final customer, as opposed to a buyer with some processing or logistical capacity, comparable to a metal recycling operation.

⁶⁶⁶ [REDACTED]

⁶⁶⁷ [REDACTED]

⁶⁶⁸ [REDACTED]

⁶⁶⁹ [REDACTED]

⁶⁷⁰ [REDACTED]

⁶⁷¹ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].

10.125 We also spoke to suppliers that sell scrap metal via bilateral negotiations rather than tenders. Out of 15 suppliers only one has sold directly to UK mills in the past, three had considered it before and only one supplier responded that it is actively considering this at present.⁶⁷² The supplier who supplied UK mills directly in the past stated that for many years it arranged its own logistics using an independent haulier which enabled it to choose where to sell its material anywhere in the UK to achieve the best price from month to month.⁶⁷³

10.126 The reasons given by other suppliers for not seriously considering selling direct to customers were:

- (a) Processing scrap metal is not their core business and suppliers have no expertise in this.⁶⁷⁴
- (b) It would involve significant investment which suppliers are not willing to undertake.⁶⁷⁵ Whilst one supplier considered installing relevant equipment to process ferrous metal, it stated that the costs of the site, plant, equipment, infrastructure, environmental permissions, and running costs would have been so high that it concluded the investment required is best placed elsewhere.⁶⁷⁶
- (c) Payment terms are 90 days or more which they find unattractive.⁶⁷⁷
- (d) Mills are not in proximate locations.⁶⁷⁸

10.127 As set out in the discussion of direct purchases in chapter 11, customers also emphasised that purchasing direct from suppliers is very challenging and in most cases not something that they would consider.

Information on tendered contracts

10.128 Of the 69 tendered contracts that either of the Parties bid for between January 2015 and the merger in August 2017 (which covered all regions of the UK, including non-overlap regions), in 10 of these tendered contracts (relating to 5 of 45 suppliers) end-customers submitted a bid.⁶⁷⁹

672 [REDACTED].
673 [REDACTED].
674 [REDACTED].
675 [REDACTED].
676 [REDACTED].
677 [REDACTED]. [REDACTED].
678 [REDACTED].
679 [REDACTED].

10.129 Only one end-customer was successful in winning a contract on its own ([REDACTED]). Two end-customers were successful in winning parts of contracts jointly alongside other metal recyclers ([REDACTED]).

10.130 The Parties told us that they believe that, in early 2018 (ie post-merger), Sheffield Forgemasters had won a contract on its own that was put out for tender by Green Metals. Previously, Sheffield Forgemasters had jointly served the contract with EMR, Ward Recycling and GES Recycling. [REDACTED]. We consider that these circumstances are quite specific and unlikely to be replicated for tendering suppliers in general.

Sponsoring and encouraging entry

10.131 The Parties submitted that for the larger contracts they bid for, they are competing against not only UK metal recyclers and waste companies but also European operators that bid for such contracts and either set up local sites or use sub-contractors.⁶⁸⁰ The examples they gave were:

(a) Toyota: Scrap is marketed by Green Metals which not only provides metal recycling and trading services to Toyota sites internationally, but also provides these services to other manufacturers.

(b) Nissan: The Renault Nissan Purchasing Organisation (RNPO) operates across the alliance's international operations and controls the sale of scrap. Nissan also told us that [REDACTED] into its tender process.⁶⁸¹

(c) [REDACTED] has in the past introduced [REDACTED] to handle the scrap from its [REDACTED].

(d) [REDACTED]: A [REDACTED] multinational with a UK metal recycling subsidiary, which is [REDACTED].

10.132 Based on those firms the Parties believed had bid against them in the 69 tendered contracts that one or both of the Parties bid for between January 2015 and the merger at the end of August 2017, and that are served in any regions of the UK, three of the four operators presented above were listed as bidders by the Parties for some of these tendered contracts.⁶⁸² TSR did not bid for any of these contracts, according to the Parties.

10.133 The Parties submitted that they bid against Green Metals for the Nissan group contract in March 2017 - which EMR won. They submitted that they bid against GES Recycling on seven occasions - of which GES

⁶⁸⁰ [REDACTED].

⁶⁸¹ [REDACTED].

⁶⁸² [REDACTED].

Recycling won two contracts jointly with EMR and one with other metal recyclers. We discussed the competitive constraint from GES Recycling in detail in the regional assessment in the North East and the West Midlands and came to the conclusion that its competitive constraint on the Parties is limited.

10.134 [REDACTED]⁶⁸³ [REDACTED].⁶⁸⁴

Conclusion on direct supply and sponsoring entry

10.135 We recognise that some suppliers sell directly to end-customers, but we do not consider this to be a strong enough constraint to prevent any SLC arising in the purchasing of scrap metal under tendered contracts. This is because:

- (a) The vast majority of relevant suppliers currently do not sell directly to end-customers and do not consider end-customers to be viable alternatives to metal recyclers, for the reasons set out above;
- (b) End-customers have only bid very infrequently for tendered contracts in the past and in most instances have not been successful;
- (c) We have seen little evidence that suppliers would supply directly to end-customers, or that end-customers would be able to effectively bid for contracts, in the event of a worsening of prices and/or service quality after the merger;
- (d) The lack of expertise, investment in equipment, environmental regulation and payment terms make it unattractive for suppliers to sell directly to end-customers. Rather, we have seen an example of an end-customer using existing metal recyclers for handling the materials (suggesting that the end-customer itself may add little competition to the extent that it would still rely on having access to the services of a metal recycler with the logistical capabilities to serve the supplier in question);⁶⁸⁵ and
- (e) any supplier-specific competitive constraints do not protect other suppliers and there is no evidence that these options are available to other suppliers. For example, [REDACTED], [REDACTED] and [REDACTED] appear to have some additional options in the form of subsidiaries or partners with which they have relationships in other parts of the world, but prices are set individually for

⁶⁸³ [REDACTED]

⁶⁸⁴ [REDACTED]

⁶⁸⁵ [REDACTED]

each supplier and we have seen little evidence that these options are available to or constrain prices received by other suppliers.

10.136 In terms of suppliers sponsoring or encouraging entry, we found that although [REDACTED].⁶⁸⁶ We have seen little evidence in the bidding data that the firms that had been encouraged to enter had been bidding for tendered contracts.

Entry and expansion

10.137 Competition in a market may be affected as new firms enter, or the merged firm's rivals take actions which enhance their ability to compete against the merged firm. Examples include investment in new capacity or conversion of existing capacity to a new use, or sponsorship by customers/suppliers of a new entrant with guarantees of business.⁶⁸⁷ The sponsoring of entry by suppliers has already been considered above.

10.138 In this section we focus on the barriers to entry and expansion that recyclers may face in the purchasing of scrap metal from large tendered suppliers. In particular, we consider the possible barriers to entry and expansion created by the need for sites and equipment, and the ability to win industrial contracts. In assessing whether entry or expansion might prevent an SLC, we consider whether such entry or expansion would be timely, likely and sufficient.⁶⁸⁸ Detailed evidence is included in Appendix E.

The Parties' submissions

10.139 The Parties submitted that the barriers to serving tendered contracts are low, as NPS requires little processing.⁶⁸⁹ ⁶⁹⁰ They submitted that this means that many metal recyclers (even those with limited current purchases under tendered contracts) are able to exert a competitive constraint when contracts are offered for tender.

10.140 The Parties submitted that the securing of large contracts could facilitate entry, because tendered contracts are of a sufficient size to facilitate entry from outside the area, thereby expanding the competitor set to those

⁶⁸⁶ [REDACTED]

⁶⁸⁷ [Merger assessment guidelines](#), paragraph 5.8.1.

⁶⁸⁸ [Merger assessment guidelines](#), paragraph 5.8.3.

⁶⁸⁹ [REDACTED]

⁶⁹⁰ EMR provided the CMA with a number of videos on 1 May 2018 which according to EMR, demonstrated how NPS can be handled and that any metal recycler can (and many do) service NPS suppliers.

that are not currently active in the area. They submitted that this is not uncommon and that:

(a) [REDACTED].⁶⁹¹ Similarly, [REDACTED].

(b) [REDACTED].⁶⁹²

(c) Tom Martin (based in Preston) services a large industrial supplier, GKN, in Bristol.

10.141 The Parties also submitted that suppliers could lengthen their contracts to encourage entry.⁶⁹³

10.142 The Parties submitted that barriers to entry and expansion are low in the West Midlands. They gave One Stop Recycling as an example of a relatively recent new entrant which has risen to be one of the top competitors in the region and which, according to its website, handled over 300,000 tonnes of waste scrap metal annually, supplying processed scrap metal to domestic foundries, as well as exporting worldwide. They also submitted that Enablelink has recently doubled its capacity by installing a new shear,⁶⁹⁴ and that [REDACTED] was looking to open a site in the West Midlands.⁶⁹⁵

Third-party submissions

10.143 Third parties pointed to a number of barriers to metal recyclers entering or expanding in purchasing under tendered contracts in a region.

10.144 First, we heard that there are substantial barriers to establishing new scrap yards.⁶⁹⁶

10.145 Second, a number of third parties told us that it may be important to have multiple sites:

(a) One third party commented that smaller scrap merchants had, at most, one site in the Midlands, where most NPS arises, and these merchants would, therefore, face significantly higher costs in transporting scrap

⁶⁹¹ [REDACTED]

⁶⁹² [REDACTED]

⁶⁹³ [REDACTED]

⁶⁹⁴ [REDACTED]

⁶⁹⁵ EMR response to third party comments, footnote 30.

⁶⁹⁶ [REDACTED]

compared to the Parties, which had an established network of yards in this area.⁶⁹⁷

- (b) A large supplier told us that infrastructure and site network are important to it when selecting a provider for its contracts, and that the provider must have [REDACTED].⁶⁹⁸
- (c) A metal recycler echoed other third parties by saying that to break into the market, a provider would need strategically-located sites near the industrial contracts.⁶⁹⁹

10.146 Third, a number of third parties argued that processing equipment and vehicle needs are a barrier. Although the most commonly-used processing equipment for NPS is a baler, which is cheaper than, for example, a shredder, we were told that:

- (a) NPS needs to be processed with either a baler or a shear (apart from turnings and punchings that are sufficiently small to be transported easily), unless it was shipped to the US;⁷⁰⁰ and
- (b) Smaller scrap merchants often have a limited infrastructure network for collecting and delivering scrap, eg a network of collection vehicles, skips and round-the-clock service for transporting unprocessed scrap.⁷⁰¹

10.147 Fourth, we were also told that service requirements also present difficulties:

- (a) One third party told us that small recyclers face barriers to entry because they lack a track record in servicing such contracts and, as a result, lack credibility with tenderers, meaning that smaller scrap merchants were not invited to bid. This third party also said that smaller scrap merchants are less likely to be willing or able to compensate a factory if a failure by the recycler causes disruption to production.
- (b) We heard that for large industrial suppliers, other important factors are security procedures, use of new technologies to process material, financing arrangements and reliability. [REDACTED] stated that:
 - (i) access to a nearby shredder is an essential requirement so that sensitive material (such as prototypes) can be destroyed securely. It

697 [REDACTED]

698 [REDACTED]

699 [REDACTED]

700 [REDACTED]

701 [REDACTED]

told us that the absence of this would be a 'deal-breaker', and that smaller companies are unlikely to have the facilities to conform to these requirements.

- (ii) EMR obtained a contract despite not having the lowest price, because it offered softer benefits, such as account managers and finance resourcing, which meant that it cost [redacted] less to administer and run the contract. [redacted] considers that its options when contracts came up for renewal are EMR, MWR, S Norton and [redacted], because of the factors listed above.⁷⁰²
- (c) [redacted] told us that NPS producers looked for a combination of price, service and financial security. The service includes, for example, being able to operate 24/7 and being able to collect from the factory site [redacted] told us that it had difficulty winning some contracts, as the factories expected to see infrastructure already in place and [redacted].⁷⁰³
- (d) A metal recycler⁷⁰⁴ told us that:
 - (i) to break into the NPS market, it would require a large investment in people, plant, machinery, sites, account managers and relationships. It said that MWR and EMR managed to grow their NPS business over the last 10 years by acquiring businesses that were already specialised in that market, eg EMR purchased Easco (via its acquisition of SITA). It considers that this growth option is no longer available for other recyclers;
 - (ii) the suppliers want the scrap removed from their sites in a timely fashion, so they rarely risk switching supplier unless the price is much lower; and
 - (iii) even when this recycler matched incumbent recyclers on price, the factories were reluctant to switch to a new recycler. It told us that a metal recycler could not 'dip in and out' of large contracts and be successful.

10.148 Ward Brothers told us that it is planning to expand into the West Midlands to compete for factory contracts. It saw an opportunity in that segment since MWR had been acquired by EMR. Ward Brothers said that out of 15 industrial suppliers previously held by MWR in the North East, it had

⁷⁰² [redacted]

⁷⁰³ [redacted]

⁷⁰⁴ [redacted]

taken over 7 of these (which we understand to be small non-tendered contracts and therefore of limited relevance to our assessment here),⁷⁰⁵ and is also planning to open a site in the Wolverhampton area in 2019.⁷⁰⁶

Our assessment of barriers to entry and expansion

10.149 We have assessed whether entry or expansion might prevent an SLC from arising as a result of the Transaction, by considering whether any entry or expansion would be timely, likely and sufficient.⁷⁰⁷

10.150 We consider that having a presence in a region is a necessary but not sufficient condition to be able to offer effective competition in bidding for tendered contracts. We have heard from third-party suppliers (and rival metal recyclers) that, in addition to a track record of reliability, this is due to the services, infrastructure and reputational requirements that those tendering contracts expect from the bidders. The requirements include:

- (a) having a network of sites in close proximity to the supplier's site;
- (b) access to a large number of vehicles and skips;
- (c) a previous track record in fulfilling factory contracts;
- (d) ability to temporarily scale-up operations quickly if needed;
- (e) financial security; and
- (f) a confidentiality policy.

10.151 Based on the evidence we have received from third parties, we think that a new entrant is likely to require significant investment to set up a network of sites and the required infrastructure.

10.152 We think that larger metal recyclers with a nationwide network, existing infrastructure and established reputation are more likely to win tendered contracts. For example, we have found that although S Norton is a large recycler, it does not have sites in either the West Midlands or the North East

⁷⁰⁵ We note that our focus in this chapter is on formally-tendered contracts. Many industry players refer to more loosely-defined or more informal arrangements with industrial suppliers as 'factory contracts' even where these may not be the result of formal bidding processes, may not have defined lengths or other formal terms or conditions. In relation to the specific point on Ward Bros in the North East, we note that almost [REDACTED] of MWR's purchase volumes at its Seaham site are from [REDACTED], so the 'contracts' referred to here are likely to be informal rather than tendered contracts and are likely to be relatively small in volume terms. [REDACTED]

⁷⁰⁶ [REDACTED]

⁷⁰⁷ [Merger assessment guidelines](#), paragraph 5.8.3.

and, although it bids for contracts in those regions, it has not been a strong competitor to the Parties.

10.153 Therefore, in considering entry and expansion we have considered not only bidding for tendered contracts but also evidence on entry and expansion of more general waste scrap metal sites in the West Midlands and the North East.

Timeliness of entry or expansion

10.154 We have found that entry lead times vary according to the type of site in question. For example, we found that for feeder sites, entry can typically occur within 12 months, for a processing site (without a shredder) entry can occur within two years and for a processing site with a shredder entry can occur within three years.⁷⁰⁸

10.155 We have heard from one metal recycler that it is looking to open [REDACTED].⁷⁰⁹ As set out above, Ward Brothers (a metal recycler based in the North East) is planning to open a site in the West Midlands in 2019. [REDACTED] told us that [REDACTED].

Likelihood of entry or expansion

10.156 In the West Midlands we have been told by one metal recycler that it is looking to enter and compete for factory contracts.⁷¹⁰ It is opening a site in Wolverhampton in 2019. We consider that it is likely that this recycler will open a site in the West Midlands. We are not aware of any other planned entry or expansion in the West Midlands. We note that over the past five years there have been 12 feeder sites and one processing site opened in the West Midlands.⁷¹¹

10.157 We are not aware of any planned entry or expansion in the North East. We note that over the past five years there have been only four feeder sites and one processing site opened in the North East.⁷¹² On the evidence available to us we do not consider that entry or expansion in the North East is likely. Therefore, we have not found it necessary to discuss whether any entry or expansion in the North East would be sufficient to prevent an SLC from arising.

⁷⁰⁸ Appendix E, table E.7.

⁷⁰⁹ [REDACTED]

⁷¹⁰ [REDACTED]

⁷¹¹ Appendix E, table E.2.

⁷¹² Appendix E, table E.2.

Sufficiency of entry or expansion

- 10.158 In considering whether entry or expansion would be sufficient to prevent an SLC from arising in the West Midlands, we have been conscious that our analysis of the tender data suggests that there is a very significant incumbency advantage in purchases under tendered contracts and other large suppliers.
- 10.159 For example, in the West Midlands half of the tendered contracts that one or the other Party bid for from the start of 2015 up until the merger in the end of August 2017 were won by the incumbent. In particular, MWR won half of the contracts for which it was the incumbent and EMR won all contracts for which it was the incumbent.⁷¹³ In the North East, every contract that one or the other Party bid for was won by the incumbent.⁷¹⁴
- 10.160 In the West Midlands, we have seen that over recent years it has been possible to set up an individual site in the area. However, while establishing a new site may not be problematic, there are multiple existing recyclers in the area that do not currently have high-volume tendered contracts. This suggests that small scale entry is possible, but expansion through multiple sites and higher volumes is more problematic. We do not consider small-scale entry in the West Midlands sufficient to constrain large existing metal recyclers bidding for tendered contracts in the region.
- 10.161 We are, however, aware of entry by [X]. We note that suppliers in the West Midlands did not name [X] as a viable alternative, although we appreciate that this might change once it establishes a local presence. However, given the scale of the Parties' operations in the West Midlands and that no bidder apart from EMR has won more frequently than MWR or accounts for more contract value (paragraph 10.60) we do not consider that that the entry of [X] will be sufficient to prevent an SLC from arising in the purchase of scrap metal under tendered contracts in the West Midlands.

Conclusion on barriers to entry and expansion

- 10.162 We do not consider that entry into the purchasing of scrap metal under tendered contracts in the West Midlands and the North East will be timely, likely and sufficient. The difficulties of entering this market, due to the factors we have described above, is underlined by the lack of recent or potential entry of sufficient scale to substitute for the large existing competitors for tendered

⁷¹³ See paragraph 10.23.

⁷¹⁴ See paragraph 10.72.

contracts in these regions. We therefore consider that entry and expansion will not prevent an SLC from arising as a result of the merger.

Conclusions on purchases under tendered contracts

West Midlands

10.163 EMR is by far the largest competitor in relation to tendered contracts in the West Midlands, as borne out in the bidding data discussed above and in comments from suppliers and competitors. EMR is also the largest purchaser of scrap metal generally in the region.

10.164 MWR provides a significant competitive constraint. Together with Sims it provides the bulk of competition to EMR for tendered contracts, and only MWR [REDACTED].⁷¹⁵ Although MWR's scale overall in metal recycling in the West Midlands is smaller (comparable to [REDACTED] and smaller than [REDACTED] and [REDACTED]) its business model focuses on industrial suppliers in this region, making it a stronger competitor for tendered contracts than its overall share of volumes suggests.

10.165 The Parties do face competition from Sims, a large metal recycler with multiple sites. [REDACTED].⁷¹⁶ In the data we saw, it bid for [REDACTED]. Its estimated share of NPS volumes in the UK is [5-10%] and its NPS suppliers include two that supply over [REDACTED] tonnes a year. Sims was named as a viable alternative to the Parties by several large West Midlands suppliers that responded to our information requests.

10.166 While there are some other constraints in the West Midlands, they are weak:

- (a) S Norton does not have sites in the area [REDACTED];⁷¹⁷
- (b) Ward Recycling was named by some suppliers and [REDACTED]⁷¹⁸ and it told us that [REDACTED].
- (c) The Parties believe that One Stop Recycling [REDACTED], and it was mentioned by two suppliers, but we do not consider this sufficient evidence to consider it a strong constraint.

⁷¹⁵ [REDACTED]

⁷¹⁶ [REDACTED]

⁷¹⁷ [REDACTED]

⁷¹⁸ [REDACTED]

(d) GES Recycling was named by some suppliers and bid for three contracts but [REDACTED]. Whilst GES hopes to expand and improve its bidding activity in the future, we do not consider GES to be a strong constraint in bidding for contracts specific to the West Midlands at the moment.

(e) Enablelink was named by one supplier [REDACTED].⁷¹⁹ Hence, we do not consider Enablelink to be a strong competitive constraint on the Parties at the moment.

10.167 There is some potential constraint from the possibility of self-supply or suppliers seeking to sell directly to customers (as discussed in paragraphs 10.113 onwards above). However, there is little evidence that these are currently strong enough constraints to prevent a SLC in purchasing under tendered contracts in the West Midlands.

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

North East

10.169 Taken as a whole, we consider that the evidence discussed in this section indicates that the Transaction results in an SLC in relation to purchasing under large tendered contracts in the North East, for the following reasons.

10.170 Although there is a relatively small number of contracts (albeit of high value), the Parties are the most frequent and most successful bidders. Out of the tenders in which one or both of the Parties were active, MWR won more contracts than any other bidder in the North East and these contracts account for more than [REDACTED] of average annual contract values of all tendered contracts we considered in the analysis. EMR bid for five contracts, winning one (which accounts for almost [REDACTED]% of the average annual contract value of all tendered contracts we considered). Together the Parties account for over 90% of the average annual contract value of all the tendered contracts we considered in the North East, although we note that the value of MWR's purchases is strongly influenced by one contract for which EMR has not competed in recent years.

⁷¹⁹ [REDACTED]

- 10.171 Whilst the Parties argue that MWR only holds one major contract in the North East ([REDACTED]) and specifically opened its site in Seaham to better serve this contract, it bid for [REDACTED] contracts⁷²⁰ and between [REDACTED].
- 10.172 For the reasons set out in relation to the West Midlands, as well as because Sims [REDACTED] in the North East, we consider that Sims provides a competitive constraint.
- 10.173 S Norton [REDACTED].⁷²¹ Furthermore, [REDACTED]. Hence, to the extent it provides any constraint on the Parties we consider it to be weak.
- 10.174 Ward Bros has [REDACTED] in the relevant period but, according to [REDACTED], it will be considered in the next round of its tender. Although it was mentioned by suppliers, to the extent it provides any constraint on the Parties we consider it to be weak.
- 10.175 GES Recycling and O'Brien [REDACTED] and the evidence available to us indicates that they provide, at best, weak constraints.
- 10.176 No supplier in the North East told us that self-supply is an option, and (as discussed further above) customers say that purchasing directly is very difficult without the necessary infrastructure. We note that for [REDACTED] there may be some constraint provided by [REDACTED] out-of-region recycler [REDACTED].
- 10.177 Overall, we consider that the loss of MWR would amount to the loss of an important competitive constraint on EMR in relation to tendered contracts in the North East and, although other metal recyclers offer some constraint, this is insufficient to prevent an SLC arising.
- 10.178 We therefore conclude that the Transaction has resulted, or may be expected to result, in an SLC in purchasing of scrap metal under tendered contracts in the North East.

Wales

- 10.179 We do not consider that the merger has resulted, or can be expected to result, in an SLC in relation to tendered contracts in Wales. In this region the Parties' overall shares are relatively small, MWR is very small and MWR had not bid for any contract specific to Wales between January 2015 and August 2017. Furthermore, EMR faces particularly strong competition from [REDACTED] and there are a number of other bidders for tendered contracts.

⁷²⁰ That is, four bids in total including Unipres.

⁷²¹ [REDACTED].

11. Sales of New Production Steel

- 11.1 NPS (a type of low residual steel) is a grade of metal that derives primarily from industrial sources. It is a particularly important input into the production of high-grade steel, but is also used in the production of lower grades of steel. Customers of NPS are mostly steel mills and foundries.
- 11.2 The theory of harm that we have examined is that after the merger prices of NPS will be increased for UK customers.
- 11.3 We note that EMR exports about [REDACTED]% of the NPS that it purchases, and, for MWR, [REDACTED]% of the NPS that it purchases is exported or sold to traders for export. However, the Parties also each sell to around 20-30 UK steel mills and foundries. Among these customers, the largest 10 or so account for the large majority of NPS volumes the Parties sell in the UK.⁷²²
- 11.4 This chapter first sets out the Parties' views on sales of NPS to UK customers. It then sets out our assessment, within which we present market shares and third parties' views, before assessing the constraints from other recyclers (through their existing volumes of NPS and the possibility of them purchasing additional volumes). We then discuss countervailing constraints from buyer power or the possibility of self-supply or purchasing from suppliers directly.
- 11.5 There is a link between the market for sales of NPS and purchases from tendered contracts (considered in chapter 10), since a large proportion of the Parties' NPS purchases (and therefore the NPS they have available for sale) is derived from suppliers that tender contracts.⁷²³ Within the later section on constraints from other metal recyclers, we take into account evidence on their ability to win additional volumes of NPS, including from tendered contracts and other suppliers.

The Parties' views

- 11.6 The Parties submitted that there is no prospect of an SLC in relation to sales of NPS, because:⁷²⁴
- (a) MWR is not a significant supplier of NPS to UK customers and, in any case, is no stronger than five other competitors: Enablelink, Ward Bros, and GES Recycling (which each sell broadly similar volumes of NPS in

⁷²² [REDACTED]

⁷²³ [REDACTED]

⁷²⁴ [REDACTED]

the UK as MWR) and Sims and S Norton who are large recyclers and were highlighted by customers in the CMA's provisional findings. EMR also noted that some customers highlighted several other options (with one saying that it had fifteen);

- (b) there are numerous metal recyclers purchasing substantial volumes of NPS which is therefore available for sale to customers in the UK. In particular, UK supply of NPS exceeds UK demand, meaning that there are large volumes that are currently exported which could be diverted to the UK in response to a price rise, in turn meaning that UK prices are constrained by the price achieved on the global market. In support of this EMR presented graphs showing that movements in UK and export prices are broadly aligned,⁷²⁵ and examples of EMR diverting substantial volumes between sales to UK customers and to export customers.⁷²⁶ EMR also highlighted a previous OFT decision which found evidence of an international market, although the OFT did not need to conclude on this,⁷²⁷ and EMR argued that UK customers have an advantage compared to export customers because it is very simple to supply them;
- (c) UK customers are sophisticated, with well-developed procurement, logistics and supply-chain functions. EMR submitted that these customers protect their interests by multi-sourcing; that where they are also a supplier they can easily switch to self-supply (because there is usually little processing required); and that customers can and do deal directly with other suppliers of NPS; and
- (d) Barriers to entry are not high – as discussed in chapter 10, they argued (providing supporting videos) that NPS is often very simple to deal with, requiring only skips and vehicles, and submitted that new depots can easily be opened to serve customers.

11.7 The Parties also argued against the third-party submissions⁷²⁸ that EMR has pricing power, arguing that they are unsubstantiated and contradicted by submissions by some customers that they expect to continue to receive competitive prices post-merger.⁷²⁹

⁷²⁵ [REDACTED]

⁷²⁶ [REDACTED]

⁷²⁷ See [Sims/Dunn](#), paragraphs 32-35.

⁷²⁸ See paragraph 11.28 – 11.34.

⁷²⁹ [REDACTED]

Our assessment of sales of New Production Steel

11.8 This section first considers the market shares of the Parties and competitors in relation to sales of NPS. It then considers the competitive constraint that EMR and MWR exercised on each other pre-merger, followed by an assessment of the competitive constraint provided by other firms that sell NPS. We consider buyer power, self supply and direct purchases in the following section on countervailing constraints.

Market shares

11.9 We found that the Parties, as well as being the two largest purchasers of NPS in the UK, are the two largest providers of processed NPS to UK customers. An individual recycler's total volumes of purchased NPS will be roughly equal to its total sales of NPS. However, not all sales of NPS are to UK customers – a proportion is exported or sold to other metal recyclers that export or sell to UK customers. Our estimates indicate that over twice as much NPS is exported as is sold to UK customers.

11.10 Table 11.1 summarises the volumes of NPS that UK metal recyclers handled in 2017. In most cases the estimates in Table 11.1 are based on data provided directly by metal recyclers. We augmented this data with customers' NPS purchase data relating to their top five suppliers of NPS⁷³⁰ and with the Parties' estimates of NPS purchases and sales by those competitors for which we did not have data directly from the metal recycler.

11.11 We have estimated that the Parties' combined share of supply of NPS sales to UK consumers (excluding self-supply) is around [50-60%] with MWR providing an increment of [5-10%].⁷³¹ We consider that such shares are sufficiently high for competition concerns to arise. As shown in the first column of the table, EMR sells by far the largest volumes of NPS to UK consumers of any recycler, and only Enablelink ([5-10%]) and Ward Bros ([5-10%]) sell similar volumes to those sold by MWR. GES recycling sells [5-10%], and others (including Sims and B Shakespeare) sell much less.

11.12 Looking at all known purchases of NPS (ie including volumes that are exported or sold to other metal recyclers), the Parties' combined share is

⁷³⁰ We used the purchase volumes to estimate the lower bound for UK sales for 16 competitors, which totalled 54,704 tonnes of NPS, to five customers ([X]). These customers account for [X]% of the Parties' sales of NPS. [X]

⁷³¹ These are likely to overestimate the Parties' shares as we do not have full data on all competitors or all customers' purchases, but we think that the effect is likely to be small since we have data from most large customers and most of the competitors highlighted by the Parties.

around [60-70%] with an increment of [10-20%]. We consider below, when assessing the Parties' competitors, the extent to which a competitive constraint may be provided by volumes that are currently sold on through other routes rather than sold to UK consumers. Including all the estimated NPS volumes that EMR submitted (mainly for many recyclers with small volumes of NPS)⁷³² would reduce the Parties' share of purchases of NPS to [40-50%] with a [10-20%] increment. We take into account in our assessment the possible constraint from these recyclers for which we do not have confirmed NPS purchase data, but we note that:

- (a) Although the sum of the estimated NPS purchases by additional competitors is substantial overall, these additional recyclers are all estimated to purchase far less NPS than either of the Parties and form part of a long tail of recyclers handling small volumes of NPS. As discussed below at paragraphs 11.15 to 11.36, our primary concern in relation to NPS is related to competition between recyclers that provide a reliable supply of large volumes;
- (b) As noted in paragraph 10.17, for those competitors where we have both estimates from the Parties and confirmed data from the competitor, the Parties overestimated the competitors' purchase volume by 32% on average. We therefore interpret the figures with caution.
- (c) Very few of these competitors were mentioned to us by customers, suggesting that these recyclers are not focused on UK customers and may sell on to other recyclers such as the Parties in order to reach final customers.⁷³³

11.13 The Parties also provided an estimate of the volumes that users of NPS currently self-supply, rather than buying from metal recyclers. When these are included, the Parties' share of NPS volumes is [30-40%] with an increment of [5-10%].⁷³⁴ Should the Parties increase NPS sales prices post-merger, a given volume of metal can only act as a constraint on the Parties if it provides an alternative source of metal for customers, which would allow them to switch away from buying from the Parties. Material that is already self-supplied does not provide this option, in contrast with material that is held by competing metal recyclers. We therefore consider that this share of [30-40%]

⁷³² See Paragraph 10.17 for comments on the likely accuracy of these estimates

⁷³³ Out of the 91 competitors the Parties submitted additional estimates, customers use or consider seven of them as good alternatives (ie [X]).

⁷³⁴ EMR's overestimates the total volumes of self-supply, when comparing these figures with the figures submitted by two of the largest steel mills. [X]. [X].

is a lower bound estimate of the Parties' competitive strength in relation to NPS because it includes these self-supply volumes.⁷³⁵

- 11.14 We consider below, when assessing countervailing constraints, the competitive constraint that may be provided by the possibility of additional self-supply by customers of NPS that also currently supply some scrap NPS to metal recyclers, or by the possibility of NPS consumers contracting directly with other suppliers of NPS.

⁷³⁵ EMR estimates that 700,000 tonnes of NPS arises as scrap metal at UK steel works annually [REDACTED].

Table 11.1: Metal recyclers' sales of NPS (MT), 2017

	<i>Shares of NPS sales to final UK customers</i>	<i>Volume sold to final UK customers</i>	<i>Volume sold to Metal recyclers</i>	<i>Volume exported</i>	<i>Unknown (Parties' estimate)</i>	<i>Total volume of NPS</i>	<i>Share of all known NPS sales including export</i>	<i>Share of all NPS volumes including self-supply</i>
EMR	[40-50%]	[0]	[0]	[0]	[0]	[0]	[40-50%]	[20-30%]
MWR	[5-10%]	[0]	[0]	[0]	[0]	[0]	[10-20%]	[10-20%]
<i>Parties Combined</i>	<i>[50-60%]</i>	[0]	[0]	[0]	[0]	[0]	<i>[60-70%]</i>	<i>[30-40%]</i>
Enablelink	[5-10%]	[0]	[0]	[0]	[0]	[0]	[0-5%]	[0-5%]
Ward Bros Steel Ltd	[5-10%]	[0]	[0]	[0]	[0]	[0]	[0-5%]	[0-5%]
GES Recycling	[5-10%]	[0]	[0]	[0]	[0]	[0]	[5-10%]	[5-10%]
Sims	[0-5%]	[0]	[0]	[0]	[0]	[0]	[5-10%]	[5-10%]
B Shakespeare	[0-5%]	[0]	[0]	[0]	[0]	[0]	[0-5%]	[0-5%]
S Norton	[0-5%]	[0]	[0]	[0]	[0]	[0]	[5-10%]	[0-5%]
O Brien	[0-5%]	[0]	[0]	[0]	[0]	[0]	[0-5%]	[0-5%]
Green Earth Recycling	[0-5%]	[0]	[0]	[0]	[0]	[0]	[0-5%]	[0-5%]
KA Anderson*	-	-	-	-	[0]	[0]	-	[0-5%]
Adams*	-	-	-	-	[0]	[0]	-	[0-5%]
JT Watton Metals*	-	-	-	-	[0]	[0]	-	[0-5%]
One Stop Recycling*	-	-	-	-	[0]	[0]	-	[0-5%]
R Davies Metals*	-	-	-	-	[0]	[0]	-	[0-5%]
Sheffield Forgemasters*	-	-	-	-	[0]	[0]	-	[0-5%]
Other known volumes (from 20 other competitors)	20%	[0]	[0]	[0]	[0]	[0]	3%	2%
Total known volumes	100%	[0]	[0]	[0]	[0]	[0]	100%	64%
Parties' estimated total including self-supply						[0]	-	100%

Source: Individual sales figures reported from the Parties' customer transaction data (2017), metal recyclers' responses to [~~0~~] competitor questionnaire (based on their LFY) and sales total for other metal recyclers derived from response to [~~0~~] customer questionnaire from customers (based on LFY).

*For these recyclers we do not know their true volumes; the figures shown are the Parties' estimates.

Note:

1. "0" values are actual 0's; "-" represent unknown values.

2. For the parties we classified all sales to UK metal traders as the volume exported.

3. "Share of all NPS sales" measures the share of sales volumes as a proportion of all sales provided by the involved parties to the CMA. It does not include Parties' estimates of NPS sales volumes.

4. In our provisional findings, this table incorrectly listed SSUK as a competitor, whereas its 2017 volumes of [~~0~~] were in fact self-supply and included in the Parties' estimate of total self-supply

Third parties' views

- 11.15 We received evidence from nine large NPS customers, which together purchase a large proportion of the Parties' UK sales of NPS ([REDACTED]) - ie excluding sales to other recyclers, traders, and export customers.⁷³⁶ We also received evidence from nine competitors, which together account for 33% of total volumes of sales of NPS.⁷³⁷
- 11.16 The responses from customers and competitors together indicate that the key parameters of competition, in addition to price, include:
- (a) Volume, with reliable supply of large volumes being particularly valuable; and
 - (b) Willingness to accept delayed payment terms (particularly for large volumes)
- 11.17 Customers told us that they value reliable supply of high volumes and pay higher prices per tonne to those recyclers that can provide this. For example:
- (a) [REDACTED].⁷³⁸
 - (b) [REDACTED] told us that the more scrap metal a supplier offers, the more it tries to leverage a higher price. [REDACTED].⁷³⁹
- 11.18 Competitors also confirmed that customers pay more per tonne for higher volumes – for example [REDACTED].⁷⁴⁰ Several metal recyclers also told us that they cannot achieve the same sales prices as EMR because they do not have sufficiently large volumes to sell.⁷⁴¹ As set out in the previous chapter (and in chapter 6), we heard from several competitors that the largest sources of NPS (large industrial contracts) are difficult to compete for, affecting the ability of recyclers to purchase and in turn supply large volumes.
- 11.19 Several NPS customers highlighted that payment terms are an important factor when choosing a metal recycler.⁷⁴² One customer stated that payment terms need to be 60 days from the month end.⁷⁴³ Given these payment terms,

⁷³⁶ [REDACTED]

⁷³⁷ [REDACTED]

⁷³⁸ [REDACTED]

⁷³⁹ [REDACTED]

⁷⁴⁰ [REDACTED]. Others also made this point in relation to non-NPS grades [REDACTED].

⁷⁴¹ [REDACTED]

⁷⁴² [REDACTED]

⁷⁴³ [REDACTED]

some metal recyclers need credit insurance to supply scrap metal to UK customers. As discussed in paragraph 10.126, for some customers, payment terms may be 90 days or more which metal recyclers find unattractive.⁷⁴⁴

11.20 Some competitors said that they are reluctant to sell large volumes to UK customers because of the risks caused by UK customers' late payment terms and, for some customers, high credit risk, eg one metal recycler told us that there was a limit to the amount of exposure its credit insurer would cover per customer and that this limited the volumes that it was willing to sell to specific UK customers, including major steel mills.⁷⁴⁵ Both the Parties and competitors told us that small metal recyclers sell on to larger metal recyclers in part because they do not want to accept the payment terms of large UK customers,⁷⁴⁶ and that metal recyclers try to avoid selling large volumes to UK customers because of the risk that these payment terms entail once large volumes are involved (ie the risk that the customer does not pay the large amounts owed).⁷⁴⁷ One customer highlighted that the main advantages of purchasing from EMR and MWR are that they provide access to large volumes via a single transaction and they accept the customer's payment terms.⁷⁴⁸

11.21 Another customer told us that in 2017 insurers have been unwilling to offer credit insurance for UK steel producers following significant uncertainty in the UK steel market. It said that two metal recyclers ([redacted]) that it would consider as alternative to the Parties are at present unable to supply it as these metal recyclers cannot obtain credit insurance for UK steel producers.⁷⁴⁹

11.22 Another customer who had previously tried to purchase directly from smaller metal recyclers told us that it found it difficult to attract purchases as it could not offer cash payments which are offered by the larger metal recyclers.⁷⁵⁰

11.23 In addition, some competitors told us that it can sometimes be difficult for metal recyclers to meet the quality standards that UK customers require,⁷⁵¹ and several respondents told us that the quality standards required for export are lower than those of UK customers, making export an easier option.⁷⁵²

744 [redacted]
745 [redacted]
746 [redacted]
747 [redacted]
748 [redacted]
749 [redacted]
750 [redacted]
751 [redacted]
752 [redacted]

- 11.24 Seven of the nine large NPS customers stated that quality is an important factor, when choosing a metal recycler.⁷⁵³ One NPS customer stated that the quality of products has to meet their specification, another stated that low residual elements of the scrap are important to its operations, and a third emphasised that good quality, high-grade scrap is absolutely production critical.⁷⁵⁴ Another NPS customer believes that MWR has very good factory contracts, which means it has access to, and a good understanding of, the origin of the scrap, which is important as quality control is a big issue for many customers.⁷⁵⁵
- 11.25 A non-NPS customer stated that the condition of a site that scrap metal comes from can also be important for the quality of material, for example, if the segregation and cleaning processes are not good it can lead to quality issues.⁷⁵⁶
- 11.26 We note the submissions from some third parties that quality requirements can present a difficulty when selling to UK customers, and that several respondents highlighted the advantages that EMR and MWR have in their access to large quantities of high quality scrap. However, many recyclers do sell NPS to UK customers, albeit in small volumes – we received data on over 25 such recyclers from customers. This suggests that quality is not in itself a high barrier, separate from the issues of volumes and payment terms.
- 11.27 In relation to the effects of the merger, five of the nine large NPS customers we spoke to were concerned about the merger in relation to NPS sales – these customers make up a very large proportion of the Parties’ NPS sales.⁷⁵⁷ We note that a small number of these customers also buy large volumes of other types of metal, and that this may have affected their comments. [REDACTED], and we have taken this into account in our interpretation of the comments it made.
- 11.28 The customers that raised concerns highlighted the already strong position that EMR holds and indicated that they were concerned that the merger would impact on the prices they would have to pay. For example, [REDACTED] submitted that ‘The merger of MWR by EMR will further increase the dominance of EMR’s buying/selling power within the UK & global supply chain. This dominant

⁷⁵³ [REDACTED]

⁷⁵⁴ [REDACTED]

⁷⁵⁵ [REDACTED]

⁷⁵⁶ [REDACTED]

⁷⁵⁷ [REDACTED]

position within the UK scrap market may not be in the best interests of UK steelworks / foundries / independent merchants & end users'.⁷⁵⁸

11.29 [redacted]⁷⁵⁹ told us that it is [redacted] concerned because the Parties both have very strong positions [redacted] in relation to NPS, which it says it cannot substitute for other grades. It told us that [redacted]. [redacted], and that:⁷⁶⁰

'MWR is the only other metal recycler (besides EMR) that can reliably supply over [redacted] tonnes of NPS a month. Other suppliers (with the possible exception of Sims) are typically unable to supply more than [redacted] tonnes per month'.^{761, 762}

MWR is the only scrap merchant that is well placed to increase its share of the purchase and supply of NPS [because] MWR has not operated its processing facilities at full capacity and it is one of the few scrap merchants that is a credible bidder for (and is actually invited to bid for) the output of larger factory contracts for NPS.

11.30 [redacted]⁷⁶³ raised concerns about the merger, saying that:

'with EMR's geographical presence, their market share, and their access to all global markets, they already have an unrivalled influence on the purchase price of UK Scrap arisings' and that 'EMR's further consolidation of the UK Scrap market increasingly exposes us to price speculation and the withholding of tonnage as a negotiation tool. Even if [MWR] were not a supplier the increased consolidation leaves us exposed to the increases our alternative suppliers would have to pay for incoming material as their consolidation reduces the number of possible sellers into the export market. These increases would be passed on to us'.⁷⁶⁴

11.31 In relation to EMR, the customer stated that EMR's 'huge network of yards and logistics and differentiated processing equipment' allows it to access all UK scrap arisings, and that 'sourcing scrap is local because of the impact of haulage costs, so being close to the arisings gives purchasing power'.⁷⁶⁵ This

⁷⁵⁸ [redacted]

⁷⁵⁹ [redacted]

⁷⁶⁰ [redacted]

⁷⁶¹ We note that [redacted] started purchasing NPS in [redacted] and in the period from [redacted] it purchased about [redacted] tonnes of NPS from MWR, which is on average [redacted]. Overall, MWR's supply of NPS to [redacted].

⁷⁶² [redacted]

⁷⁶³ [redacted]

⁷⁶⁴ [redacted]

⁷⁶⁵ [redacted]

customer noted that EMR is strong on all grades and MWR is strong in NPS, and that NPS is among the more difficult grades to buy. [REDACTED].⁷⁶⁶

11.32 [REDACTED]⁷⁶⁷ told us that:

EMR, Sims and Norton are the larger suppliers in the market. They take supply from producers and smaller merchants. They are hugely influential in determining market prices for both sales and purchase of scrap. It is possible to access scrap direct or from smaller players, but it is notoriously difficult due to transportation costs.⁷⁶⁸

11.33 [REDACTED]⁷⁶⁹ told us that, as well as the Parties, it uses GES Recycling, and that other metal recyclers it considered to be viable alternatives were Ward Recycling and Sims (although the customer noted that it previously could not agree a price with Sims). This customer considered that 'the merger will potentially create an increased domination of EMR steel supply' to its foundry group and that the loss of a competitor to EMR will have effect on pricing stability. It thought that after the merger 'pricing may be more dictated than negotiated'. It also said that it is 'keen to maintain smaller independent sources of steel scrap' and that 'albeit MWR could not be considered 'small and independent' its usefulness in balancing supply and cost was evident'.⁷⁷⁰

11.34 [REDACTED]⁷⁷¹, which purchases a large proportion of its volumes from EMR was worried [REDACTED].⁷⁷²

11.35 However, some large customers were not concerned about the merger:

(c) [REDACTED]⁷⁷³, a large customer that currently buys only from EMR, told us that the Parties' main advantage is volume of material available. This customer told us that it is not concerned about the merger because it will continue to purchase through multiple suppliers. It listed three alternatives to the Parties ([REDACTED]), but noted that none had enough volume available to be able to replace EMR.⁷⁷⁴

766 [REDACTED]
767 [REDACTED]
768 [REDACTED]
769 [REDACTED]
770 [REDACTED]
771 [REDACTED]
772 [REDACTED]
773 [REDACTED]
774 [REDACTED]

(d) [REDACTED]⁷⁷⁵ told us that the Parties are ‘just two of approx. 15 suppliers [...] we will continue to get good quality material at competitive market rates, which is driven from foreign markets.’⁷⁷⁶

(e) NPS is a small percentage of [another customer’s] [REDACTED]⁷⁷⁷ needs. It told us that it finds it preferable to purchase the bulk of its NPS from EMR because of its capacity [REDACTED]. However, the customer is able to benchmark against the prices received in Europe by other parts of its group, and it also feels able to negotiate with EMR by using the prices it receives from [REDACTED].⁷⁷⁸

11.36 We also heard evidence from competitors. Their comments on the extent to which they currently compete in selling NPS to UK customers are set out in our assessment of each competitor below. In relation to competition overall, several competitors submitted that the large volumes that EMR can supply mean that customers are dependent on EMR to provide security of supply even where they also purchase from multiple other smaller recyclers, and that as a result EMR already has pricing power vis-à-vis UK mills and foundries,⁷⁷⁹ which would be exacerbated by the merger.

Constraints from other recyclers

11.37 In this section we assess the Parties and competitors in respect of their ability to reliably provide high volumes of high quality metal and accept the payment terms commonly imposed by UK customers. In the subsequent section we consider the constraint from new entry, self-supply, or direct supply from suppliers to customers.

11.38 As discussed above, steel mills and foundries need to ensure that they have reliable access to sufficient volumes and some customers also told us that they are willing to pay higher prices for large volumes of NPS (see paragraph 11.17).⁷⁸⁰ We have heard from multiple customers that although it is possible to buy NPS from small recyclers, they cannot be relied upon by customers requiring large volumes.⁷⁸¹ In addition, the financial risk involved in supplying UK customers will tend to reduce the effectiveness of smaller competitors, relative to EMR and MWR. We consider that larger recyclers, who deal with multiple customers and routes to market, are more likely to be willing to take

⁷⁷⁵ [REDACTED]

⁷⁷⁶ [REDACTED]

⁷⁷⁷ [REDACTED]

⁷⁷⁸ [REDACTED]

⁷⁷⁹ [REDACTED]

⁷⁸⁰ Tata told us that large companies such as EMR, Sims Metals etc provide it with the opportunity to secure large volumes of a product via a single transaction.

⁷⁸¹ [REDACTED]

on the financial risk associated with selling large volumes to an individual UK customer.

11.39 We note that materials that are currently exported could in principle exert a constraint on the price of materials sold to UK if, in response to a price rise in the UK, volumes would be diverted from export to UK sales in sufficient quantity to defeat the price rise. However, given the evidence that customers pay more for higher volumes,⁷⁸² and that customers the Parties' have an advantage in being able to provide reliable supply of large volumes from individual recyclers,⁷⁸³ we consider that sufficient competition will be maintained post-merger only if there are sufficient individual competitors likely to divert large enough volumes to impose an equivalent constraint to that provided by MWR pre-merger without incurring substantial time and expense to do so.⁷⁸⁴

11.40 In light of the discussion above, we consider that a metal recycler will exert a stronger constraint if it can provide large volumes of NPS, and is willing and able to provide large volumes to UK customers, subject to the associated delayed payment terms and quality requirements. We consider that:

- (a) the ability to supply large volumes of NPS is indicated by the extent of the recycler's current purchases of NPS (ie the total NPS that it handles), and by indicators of its ability to quickly compete for and win further purchases of NPS in response to an increase in NPS sales prices;
- (b) the ability and willingness to supply large volumes to UK customers is indicated by the extent to which the recycler's current sales are to UK customers or are export-focused, and what the recycler told us about its ability and willingness to switch to supplying UK customers in response to an increase in NPS sales prices.

11.41 In relation to the question of whether recyclers can quickly win additional purchases of NPS, competitors and customers told us that reliable supply of large volumes is driven by the number and scale of factory suppliers that a recycler has (including tendered and smaller contracts), and - related to this - the location and scale of its site network which affects the volumes of NPS for which it can compete (including that sold via multi-region contracts). Sites in the West Midlands were highlighted as particularly important for this as a sizeable proportion of NPS arises there.⁷⁸⁵

⁷⁸² See paragraph 11.17

⁷⁸³ See paragraphs 11.20, 11.24

⁷⁸⁴ [Merger assessment guidelines](#), paragraph 5.8.12.

⁷⁸⁵ [REDACTED]

11.42 Table 11.2 summarises information on the site networks, in the West Midlands and nationwide, of those recyclers that handle the largest volumes of NPS. It shows that EMR has by far the largest site network in the UK, and that although MWR's site network is much smaller than EMR's, only [X] has a larger network than MWR among those recyclers known to handle NPS volumes. As discussed in chapter 10 we found that those volumes of NPS sold through tendered contracts are particularly difficult to compete for, and we found significant competition concerns in relation to these contracts in the North East and West Midlands, where a large proportion of NPS arises.

Table 11.2: NPS Metal recyclers' site networks

	<i>No. sites competing in West Midlands</i>	<i>Sites in the UK</i>	<i>Docks in the UK</i>	<i>Shares of NPS sales to UK customers</i>	<i>Share of total known purchases of NPS</i>	<i>Purchases as % of Parties' estimate including self-supply</i>
EMR	5	65	10	[40-50%]	[40-50%]	[20-30%]
MWR	3	8	2	[5-10%]	[10-20%]	[10-20%]
<i>Parties Combined</i>	8	73	12	[50-60%]	[60-70%]	[30-40%]
Sims	[X]	[X]	[X]	[0-5%]	[5 -10%]	[5 -10%]
GES Recycling	[X]	[X]	[X]	[0-5%]	[5 -10%]	[5 -10%]
S Norton	0	4	3	[0-5%]	[5 -10%]	[0-5%]
KA Anderson*	0	2	*	-	-	[0-5%]
O Brien	0	4	*	[0-5%]	[0-5%]	[0-5%]
Enablelink	1	1	0	[5 -10%]	[0-5%]	[0-5%]
Adams*	*	*	*	-	-	[0-5%]
Green Earth Recycling	1	1	*	[0-5%]	[0-5%]	[0-5%]
Ward Bros Steel Ltd	0	4	0	[5 -10%]	[0-5%]	[0-5%]
One Stop Recycling*	1	1	0	-	-	[0-5%]
B Shakespeare	1	1	0	[0-5%]	[0-5%]	[0-5%]
Sheffield Forgemasters	[X]	[X]	[X]	-	[0-5%]	[0-5%]
Ward Recycling	[X]	[X]	[X]	[0-5%]	[0-5%]	[0-5%]
Other volumes	-	-		21%	5%	6%
Total volumes				100%	100%	73%
Parties' estimated total including self-supply						100%

Source: Individual sales figures reported from the Parties' customer transaction data (2017), metal recyclers' responses to [X] of competitor questionnaire (based on their LFY) and sales total for other metal recyclers derived from response to [X] of the customer questionnaire [X] Publicly available information used to locate the sites for KA Anderson and Green Earth Recycling. No reliable publicly available information for the location of SSUK or Adams' sites.

*For these recyclers we do not know their true volumes; the figures shown are the Parties' estimates.

Note: 1. "0" values are actual 0's; "-" represent unknown values.

2. For the parties we classified all sales to UK metal traders as the volume exported.

3. "No. sites competing in West Midlands" includes the number of sites which are within 50km of one of the Parties West Midlands sites. 4. In our provisional findings, this table incorrectly listed SSUK as a competitor, whereas its estimated 2017 volumes of [X] were in fact self supply and included in the Parties' estimate of total self-supply

- 11.43 In light of the above, we consider that EMR and MWR are likely to be close competitors pre-merger. They are the two largest purchasers of NPS in the UK (meaning that they are the two recyclers with access to the largest volumes) and the two largest providers of NPS to UK customers (see Table 11. 1). As such we consider that MWR exerts an important current constraint on EMR, which is by far the largest supplier of NPS to UK customers.
- 11.44 We now consider the competitive constraint provided by other competitors. Below we consider each of the recyclers who we have been able to verify handles, including materials currently exported, over 20,000 tonnes of NPS (as shown in the 'Total volume of NPS' column of Table 11.1) – this a similar quantity to that currently supplied by MWR to UK customers (though much less than MWR handles overall). We assess the constraint that they currently provide, taking into account their current volumes and the possibility of them winning further purchase volumes, along with their ability and willingness to serve UK customers (and in particular to divert materials away from export where necessary to do so).
- 11.45 In considering the likelihood that individual rivals will divert sufficiently large quantities of NPS from intended export to the UK, we note that rivals currently have differing proportions of UK and export sales, as shown in Table 11.1. This is likely to be informative about the relative costs and benefits that they face in serving the two markets. For example, the part of the UK from which they source the metal is likely to affect the costs of transporting it to customers, whether in the UK or abroad (ie material arising or being aggregated close to a port is unlikely to be cheaply transported to UK customers). In the discussion of specific competitors below we include the comments they made to us on this point.

Sims

- 11.46 Sims was noted by several customers as an alternative supplier of large volumes. [REDACTED].⁷⁸⁶ Although it currently supplies relatively small volumes to UK customers ([0-5]% of estimated total sales of NPS to UK customers and [REDACTED]% of Sims' total NPS sales), it currently exports [REDACTED], and handles a [5-10]% share of UK volumes of NPS. It also told us that it would be willing to switch materials between export and UK sales in response to price rises. Therefore,

⁷⁸⁶ [REDACTED]

if export volumes were diverted to UK customers, this could help prevent a price rise.

11.47 Set against this, one customer told us that [REDACTED]. Nonetheless, Sims has a large overall size (with 32 sites across the UK meaning that it is in a potentially good position to win additional volumes of NPS) and already sells some volumes in the UK. For this reason, we consider that in response to a price rise in the UK, Sims could divert volumes to UK customers, and as such is likely to provide some constraint on the Parties.

GES Recycling

11.48 GES Recycling currently supplies [5-10]% of estimated sales to UK customers. It also sells additional volumes to other metal recyclers, and exports additional volumes. Overall it handles [5-10]% of UK volumes, and has a moderately sized site network meaning that although (see Chapter 10) we have not seen good evidence of it competing for large tendered contracts, it may be in a position to grow its purchases of NPS (including from smaller suppliers).

11.49 As noted above, one UK customer told us that GES Recycling [REDACTED].⁷⁸⁷ [REDACTED].⁷⁸⁸ However, given its relatively large volumes overall, and the fact that it already sells some volumes to UK customers, we consider that it exerts some constraint.

Enablelink

11.50 Enablelink currently provides [5-10]% of supply of NPS to UK customers. However, it already sells all its NPS volumes to UK customers, meaning it does not have any additional volumes that could be diverted (eg from export) to UK customers in response to a domestic price rise. In order to exert any constraint in response to a price rise, it would therefore have to compete to win further purchase volumes of NPS. Enablelink has only one site, [REDACTED], and we saw little evidence (see chapter 10) that it is a strong competitor for large sources of NPS.

Ward Bros

11.51 Ward Bros currently provides [5-10]% of supply of NPS to UK customers. However, it also does not sell into the export market and so does not have

⁷⁸⁷ [REDACTED]
⁷⁸⁸ [REDACTED]

any additional volumes to sell to UK customers in response to any domestic price rise and would therefore have to compete to win further purchase volumes of NPS in order to exert any constraint in response to a price rise. Ward Bros, although it has a moderate site network, told us that [REDACTED].⁷⁸⁹

S Norton

- 11.52 S Norton handles around a [5-10]% share of UK volumes of NPS, but makes no sales to UK customers. It told us that in principle it would shift volumes from export to UK sales in response to a price rise. However, it also said that it does not consider any UK customers attractive to sell to because of the price and payment terms they offer and the transport costs of reaching those customers from its sites and dock facilities.⁷⁹⁰
- 11.53 S Norton's current business model is to have a small number of dockside sites and to buy from other recyclers that have inland yards.⁷⁹¹ In general, S Norton told us that it is cheaper to export overseas than transport to other regions in the UK. For example, it considers that it costs more to transport scrap from Liverpool to the north-east by road than it does to ship it to Turkey.⁷⁹² Its business model is therefore geared toward export and its past behaviour indicates that it is not likely to sell domestically.
- 11.54 Furthermore, S Norton stated it normally sells overseas as it does not consider any UK customer attractive to sell to. For example, S Norton stated that the only significant UK ferrous scrap processor ([REDACTED]) offers very extended payment terms and pricing structures which, in combination, is usually unattractive commercially when compared to the export outlets.

Other metal recyclers

- 11.55 Based on 2017 data, O'Brien made [0-5]% of UK purchases of NPS, although we understand that [REDACTED]. It has a moderate site network, but it told us that [REDACTED], suggesting that it is not a strong constraint.⁷⁹³ It also [REDACTED].
- 11.56 Green Earth Recycling, although it makes [0-5%] of known NPS purchases in the UK, sells this all to other metal recyclers. [REDACTED].⁷⁹⁴ Moreover, Green Earth

⁷⁸⁹ [REDACTED]

⁷⁹⁰ [REDACTED]

⁷⁹¹ [REDACTED]

⁷⁹² [REDACTED]

⁷⁹³ [REDACTED]

⁷⁹⁴ [REDACTED]

Recycling purchases from [X]. As such, this recycler does not appear to exert any constraint on the Parties in sales of NPS to UK customers.

11.57 The Parties provided estimated purchase volumes for a small number of other recyclers with estimated NPS volumes in the region of [0-5]% of UK purchases, and many with much smaller volumes of NPS, but none sell enough to UK customers to appear in the top 5 suppliers to any of those NPS customers that we spoke to and we were unable to confirm their volumes. Given our uncertainty over the volumes purchased by these suppliers, and the barriers to selling to large volumes to UK customers that we understand to exist for small recyclers, we do not consider these recyclers likely to exert a strong constraint on the Parties in the event of a post-merger price rise.

Conclusion on the constraint from other metal recyclers

11.58 In light of the above, we consider that Sims and GES Recycling may be able to provide some additional constraint through the volumes they currently export or (in the case of GES) sell to other recyclers. However, in order to be a strong constraint, these recyclers would need to divert significant volumes for sale to UK customers, which, on balance, we consider unlikely.

11.59 Responses from Ward Bros, Enablelink and O'Brien suggest that they do not have additional volumes to provide to UK customers, meaning that although Ward Bros and Enablelink have provided some constraint in the past through their existing supply to UK customers, they could not provide any constraint on a price rise post merger.⁷⁹⁵

11.60 S Norton appears unlikely to be a reliable source of extra volumes for UK customers in response to an SLC since it faces some barriers to switching large volumes to supplying UK mills and foundries (to do so would involve a substantial reshaping of its strategy, and as such we consider that it would only be likely to occur in response to a more substantial price increase than could arise from an SLC).

11.61 Furthermore, MWR also exports more than half of its NPS volumes and more than any other metal recycler with the exception of EMR (see Table 11.1). Hence, if exports are currently constraining domestic sales, then any constraint on EMR's domestic sales from the risk that MWR could divert some of these export volumes to UK final customers will also be lost due to the merger.

⁷⁹⁵ [Merger assessment guidelines](#), paragraph 5.4.11.

11.62 Taken together, and given customers' requirement for (and current price premium paid to) large volume suppliers and the Parties' position as the two recyclers with the largest available volumes of NPS, we consider based on recyclers' existing volumes of NPS that the Parties are likely to face some constraint post-merger from Sims and GES Recycling, but these two are not sufficient to prevent an SLC.

Countervailing constraints

11.63 We also considered whether an SLC may be prevented through the negotiating power of customers, the possibility of self-supply or direct purchase from suppliers.

Negotiating power of customers

11.64 Most customers negotiate contracts on a monthly basis,⁷⁹⁶ and choose recyclers on the basis of quality, price and availability of scrap metal as well as reliability of the supplier, attitude to health and safety, and financial stability and payment terms.⁷⁹⁷ Customers make use of the published data on the Metal Bulletin⁷⁹⁸ and Steel Business Briefing (SBB) to help with negotiations, although we were told that 'how close the negotiated agreed price is to the benchmark price ultimately depends on a range of grade variables, including availability and demand from the other consumers with which [the customer] competes for the specific grades required for its processes'.⁷⁹⁹

11.65 EMR submitted that large industrial customers are sophisticated with well-developed procurement, logistics and supply-chain functions. Where a customer is also a supplier, it may choose to switch to self-supply and other customers could switch to purchasing directly from suppliers given that NPS scrap is generally not processed.⁸⁰⁰ EMR also submitted that customers do not lack negotiating power since there is significant excess capacity and oversupply of NPS scrap in the UK.⁸⁰¹

⁷⁹⁶ [REDACTED]

⁷⁹⁷ [REDACTED]

⁷⁹⁸ Metal Bulletin's methodology for reporting UK domestic ferrous scrap prices is based on a survey of a small number of market participants, typically involving [REDACTED] in any given month, so the removal of a sizeable market participant like MWR could result in fewer sources of transactions and bids feeding into these benchmark prices. [REDACTED].

⁷⁹⁹ [REDACTED]

⁸⁰⁰ [REDACTED]

⁸⁰¹ [REDACTED]

11.66 Customers told us that they do not feel that they have negotiating power. In particular:

(a) 'Downward price pressure[...] is not feasible as the quantity of product available is in demand with several end-users'.⁸⁰²

(b) [REDACTED].⁸⁰³

11.67 Outokumpu stated it is able to negotiate prices down on the basis of what other suppliers are offering such as [REDACTED]. In the past such negotiations were limited with EMR because the bulk of the material has to be purchased from EMR given its capacity advantage to meet Outokumpu's demands.⁸⁰⁴ Due to Outokumpu's ferrous consumption decreasing in recent months, EMR's share has dropped to supply less than 50% of total ferrous scrap. This means the bulk of material does not at the moment need to be bought from EMR and hence Outokumpu can negotiate with it as it would with any of its other suppliers. Outokumpu told us: 'We utilise EMR's very reactive delivery capability to manage our stocks very tightly, but it is our choice to use this strategy and we consider EMR to be a key supplier of ours.'⁸⁰⁵⁸⁰⁶

11.68 One other customer told us that it is able to negotiate prices down if suppliers wish to move greater tonnages than their normal allocation.⁸⁰⁷

11.69 Overall, we do not find that the evidence suggests that customers have significant negotiating power, particularly when they need to buy large volumes.

Self-supply

11.70 The Parties submitted that there is a strong constraint from the possibility of NPS suppliers who are also NPS customers (ie that both sell NPS to and buy NPS from metal recyclers) instead choosing to self-supply. The Parties submitted that this is relatively easy to do because NPS usually requires little processing. However, a customer disagreed, telling us that nearly all scrap metal requires some form of processing (eg shredding or baling), and that NPS is not particularly different from other scrap in this regard.⁸⁰⁸

802 [REDACTED]
803 [REDACTED]
804 [REDACTED]
805 [REDACTED]
806 [REDACTED]
807 [REDACTED]
808 [REDACTED]

11.71 We accept that there is some existing self-supply occurring (although we have not seen evidence that it is as high as the Parties' estimate of around 700,000 tonnes a year).⁸⁰⁹ Below, we present the evidence on the ability of customers to increase the extent of this self-supply in response to a price rise, since such an increase would be necessary in order for self-supply to exert a constraint.

11.72 [REDACTED]. When deciding whether to re-use it or to sell it Tata takes into account whether it can use the scrap technically or not, depending on its type, and whether commercially it is better to sell it or keep it. If it cannot use it technically, it has to sell it. However, in terms of the scrap metal Tata purchases from EMR and MWR, it stated that it can only satisfy very little of its demand with self-supply.⁸¹⁰

11.73 [REDACTED].⁸¹¹

11.74 [REDACTED].⁸¹² Direct purchases are addressed below.

11.75 As set out in the subsequent section on direct purchasing, many other customers emphasised that they are not interested in setting up processing facilities of the kind that would also be needed for self-supply.

11.76 Overall, we note that where customers are currently self-supplying they already re-use the majority of their produced scrap metal where it is practicable to do so. Furthermore, where customers do not self-supply at the moment it would involve substantial investment to do so, and it would require significant changes in prices to justify such investment. We have identified only one example of a firm flexing between self-supply and buying or selling NPS on the open market (see paragraph 11.68) and even in that example the firm does not find it feasible to self-supply substantially more of its requirements. Therefore, we consider that the constraint from self-supply is limited.

Direct purchases from suppliers

11.77 We discussed the constraint from suppliers directly selling to end-customers in detail in Chapter 10 where we concluded that the competitive constraints on

⁸⁰⁹ The Parties argue that around 700,000 tonnes of NPS arise at UK steel works annually and suppliers regularly assess whether to re-utilise this scrap metal within their own production processes by re-loading it back into their own furnaces (ie a closed loop within their own organisation) or whether to sell this waste scrap metal to metal recyclers or other end users. Source: EMR MWR response 8 May, p.2, paragraph 1.3.

However, EMR's overestimates the total volumes of self-supply, when comparing these figures with the figures submitted by two of the largest steel mills. [REDACTED] [REDACTED]. [REDACTED].

⁸¹⁰ [REDACTED].

⁸¹¹ [REDACTED].

⁸¹² [REDACTED].

the Parties are limited. The below outlines customers' perspectives on their ability to source directly from suppliers.

- 11.78 We asked customers if they had considered purchasing directly from suppliers.
- 11.79 [X], a large customer of NPS, bid for a continuing proportion of an automotive manufacturer's⁸¹³ NPS in July 2017 following W.H Marren Limited, which had been supplying [X] since 2012, entering administration in 2017. Whilst this contract was jointly served by EMR, [X], [X], and [X] in 2017, it is now split into several parts following a tender process, with [X] taking around a third directly from the automotive manufacturer in 2018/2019. This suggests that direct supply is possible (albeit under very specific circumstances), although it is not clear whether this is possible for large volumes.
- 11.80 Another large customer confirmed that it has been bidding for a small number of contracts to buy directly from suppliers, but has only been successful once.⁸¹⁴ This customer also directly approached a supplier, as discussed in paragraph 10.122, to bid for a contract, which was ultimately awarded to EMR again. Furthermore, it stated that it has found tendered contracts difficult to win without first having acquired the necessary infrastructure and experience.⁸¹⁵
- 11.81 This customer also stated that the majority of factories producing NPS do not have the capability or resources (or incentive) to collate, collect, process and deliver the scrap to the end user.⁸¹⁶
- 11.82 Another large customer told us that:
- (a) It is possible to access scrap direct, for example where they are also its customers, or from smaller players but it is notoriously difficult due to the transport costs involved; and
 - (b) there are opportunities for it to buy material back from its own sites or its own customers, but that it is far more complicated to secure material this way and is difficult due to location, logistics and service requirements.⁸¹⁷
- 11.83 One large customer said that it had considered buying directly from source, but that limited cash flow and the necessary capital expenditure is a barrier

⁸¹³ [X].

⁸¹⁴ [X].

⁸¹⁵ [X].

⁸¹⁶ [X].

⁸¹⁷ [X].

when buying unprocessed material in the quantities it would require. The customer also highlighted the difficulties of obtaining licences and planning permissions, and that 'acquiring existing suppliers is not economic as companies often over value themselves, particularly due to the overestimated value of goodwill'.⁸¹⁸

11.84 [REDACTED]. This customer is [REDACTED]. This customer stated:

(a) [REDACTED].⁸¹⁹

(b) In relation to expansion plans more generally, [REDACTED], the customer's view is that:

(i) [REDACTED].; and

(ii) it is extremely difficult to enter on the scale that is necessary to challenge EMR, given the difficulty in finding a site of suitable size and location, with a willing landlord, and where planning permission can be obtained to process scrap metal on the scale required. [REDACTED].

11.85 Outokumpu told us that the volume and value of ferrous scrap that it purchases is very limited and that the investment and costs involved in processing NPS itself would not be worthwhile because [REDACTED].⁸²⁰ Three other customers of NPS stated they have never considered starting to process any material in order to source it more cheaply, because it is not their core business.⁸²¹

11.86 Seven customers of other ferrous (excluding NPS) and non-ferrous scrap metal also commented on the difficulties of direct purchasing, and some of the issues that they raise are also likely to be relevant to direct purchasing of NPS.⁸²² One customer stated that it is completely impractical to set up collection depots nationwide to source the material, because of the huge cost and labour required to set these up for little to no gain.⁸²³ Another stated that the scrap metal processing market has numerous barriers to entry that would make it difficult for it to start up relevant activities. These include the expense of acquiring land and machinery, the need to obtain the necessary environmental and planning consents, the expertise required, principally to

⁸¹⁸ [REDACTED].

⁸¹⁹ [REDACTED].

⁸²⁰ [REDACTED].

⁸²¹ [REDACTED].

⁸²² [REDACTED].

⁸²³ [REDACTED].

navigate the legal and environmental requirements, and the network needed to acquire the volume and quality of scrap it requires.⁸²⁴

11.87 Overall, we consider that customers' views support our finding in Chapter 10 that direct sales from suppliers to end-customers do not provide a significant competitive constraint on metal recyclers in relation to purchases from tendered suppliers or sales of NPS to UK customers.

Entry or expansion

11.88 Entry or expansion in relation to sales of (reliable, large volumes of) NPS would require substantial entry or expansion in relation to purchases of NPS.

11.89 A large proportion of NPS is purchased under tendered contracts. As set out in chapter 10, we consider there are substantial barriers to entry and expansion in relation to the purchasing of scrap metal under tendered contracts in the West Midlands and the North East. We consider that these same factors are likely to apply in relation to other regions.

11.90 Other NPS is purchased in smaller volumes from a large number of small suppliers. We consider that while expanding to purchase from one or more such suppliers is likely to be relatively easy, it would be much more difficult to secure large volumes in this way.

Conclusion on countervailing constraints

11.91 In light of customers' comments, and suppliers' willingness and ability to sell to customers discussed in chapter 10, we do not consider that the negotiating power of customers or the (threat of) the possibility of self- or direct supply are likely to be sufficient to prevent an SLC arising from the merger.

11.92 Given the difficulties involved in purchasing large additional volumes of NPS, we consider that entry and expansion will not prevent an SLC from arising as a result of the merger.

Conclusion on competition in sales of NPS to UK customers

11.93 EMR and MWR are the two largest purchasers of NPS in the UK (meaning that they are the two recyclers with access to the largest volumes) and the two largest providers of NPS to UK customers. We have estimated that the Parties combined market share of current sales of NPS to UK customers is [50-60%] (with an increment of [5-10%]). We consider that this raises a prima

⁸²⁴ [REDACTED]

facie reason for concern. The Parties' own estimate of their market share is [30-40%]. However, this estimate contains NPS scrap for self-supply and therefore we do not think that it provides a good indication of the Parties' position in the marketplace.

- 11.94 We have received concerns from several customers who argued that EMR has existing power in this market and that MWR is an important constraint.
- 11.95 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.⁸²⁵ 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 in this context.
- 11.96 Moreover, the elimination of competition from MWR is particularly important in the context of EMR's existing high share and weak constraints from elsewhere. We assessed the constraint provided by other recyclers, taking into account both the volumes that they currently supply to UK customers, and other volumes that they currently export or sell to other recyclers. We found that [X] and [X] may be able to provide a constraint on the Parties in response to a price rise, by diverting volumes from export (or sales to other recyclers) towards UK customers. However, [X], [X] and [X] have no additional volumes available to provide to UK customers. [X] site network is set up for export, and it is unlikely to provide a strong constraint on prices for UK customers. We do not consider that these constraints are likely to be sufficient to prevent an SLC in the context of such a high market share and existing evidence that high-volume recyclers get paid more.
- 11.97 We also found that the potential for increasing self supply would not be an effective constraint. Customers that already self supply are generally already re-using the majority of their produced scrap metal where it is practicable to do so and substantial investment would be required for those not currently self-supplying to start doing so.
- 11.98 We note that there is a potential constraint from customers seeking to purchase directly from suppliers, and that a few customers have an intention to do so or are doing it, but this is happening only to a limited extent at the moment and customers told us that it is difficult, particularly to achieve this on a sufficiently large scale. We consider that it is unlikely to represent a sufficiently significant competitive constraint across the whole market, as this option is likely to apply to only a small number of customers. As such, any

⁸²⁵ See paragraphs 11.15-11.24

countervailing power that this provides to particular customers does not constrain the Parties more generally.

11.99 For the above reasons, we conclude that the Transaction has resulted, or may be expected to result, in a SLC in the sale of NPS to UK customers.

12. Sales of other ferrous and non-ferrous scrap metal to UK customers

Introduction

- 12.1 This chapter sets out our assessment of competition in sales to UK customers of all grades of metal other than NPS,⁸²⁶ including a separate assessment of ferrous metal and non-ferrous metals.
- 12.2 The theory of harm that we have examined is whether, after the merger, prices of ferrous and/or non-ferrous scrap metal will be increased for UK customers.
- 12.3 This chapter first sets out the Parties' views on sales of other ferrous and non-ferrous metals. It then sets out our assessment, firstly for ferrous metals other than NPS, and then for non-ferrous metals. In making this assessment we have considered market shares and the views of the Parties and third parties.

The Parties' views

- 12.4 The Parties believe that UK customers for scrap metal will not be adversely affected by the transaction, for the reasons set out below. The Parties' observations apply to scrap metals in general; they did not draw a distinction between ferrous and non-ferrous metals.⁸²⁷ The Parties submitted that:
- (a) EMR sales to UK final customers are not high ([20-30]% of its sales of processed ferrous and non-ferrous scrap), and the increment to EMR's share of supply as a result of this Merger is small: [0-5]% of sales of processed ferrous and [0-5]% of processed non-ferrous scrap in the UK.⁸²⁸
 - (b) Many recyclers sell directly to UK foundries.⁸²⁹ ⁸³⁰ Many other metal recyclers sell more scrap metal to UK customers than MWR does.⁸³¹

⁸²⁶ This includes shredder feed, which as set out in chapter 6 (Market Definition) is from the perspective of customers broadly substitutable with other ferrous grades.

⁸²⁷ [REDACTED]

⁸²⁸ [REDACTED]

⁸²⁹ [REDACTED]

⁸³⁰ [REDACTED]

⁸³¹ [REDACTED]

- (c) There are no barriers to metal recyclers accessing domestic customers for the sale of scrap metal, and the Parties submitted that to do so it is not necessary to have sites nearby to a customer.
- (d) 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. This is because around 80% of processed UK ferrous and non-ferrous scrap metal is exported,⁸³² and export sales are predominantly concluded on a spot basis. The Parties are of the view that if, post-merger, the Parties were to attempt to raise prices or diminish service levels to customers, the processed scrap metal which is estimated to be exported would be quickly diverted and sold profitably to UK customers.

12.5 In relation to buyer power, the Parties told us that UK final customers are sophisticated purchasers - often with a centralised procurement function - who maintain relationships with multiple suppliers and exercise buyer power against metal recyclers.⁸³³ EMR provided supporting evidence of customers playing recyclers off against each other in order to obtain the best price.⁸³⁴ The Parties submitted that this is particularly the case as customers can compete to purchase the scrap metal directly from suppliers who are very often their own customers. The Parties consider that UK customers have a significant advantage over overseas buyers as the administrative and logistical burden on the scrap metal merchant is lower and there is no foreign exchange risk, and that UK final customers also have the option of acquiring processed scrap metal from traders.⁸³⁵

Our assessment of competition in sales of non-NPS ferrous metals to UK customers

- 12.6 In assessing competition in sales of non-NPS ferrous metals to UK customers we have considered market shares and the submissions we received from third parties.
- 12.7 Table 12.1 shows our estimates of the Parties' and competitors' shares of sales to UK customers. While the Parties' combined share of non-NPS ferrous sales is [20-30%], MWR's share, once NPS is excluded, is [0-5%]. Our estimates indicate that there are 11 other recyclers that sell greater volumes

832 [REDACTED]

833 [REDACTED]

834 [REDACTED]

835 [REDACTED]

to UK mills and foundries. As such, the increment arising from the Transaction is small.

12.8

Table 12.1: Competitors for ferrous sales to UK customers

	<i>Total volume of ferrous sales</i>	<i>Volume of ferrous sales to UK customers</i>	<i>Share of ferrous sales to UK customers (%)</i>	<i>Volume of non-ferrous ferrous sales to UK customers</i>	<i>Share of ferrous non-ferrous sales to UK customers (%)</i>
EMR	[REDACTED]	[REDACTED]	[30-40%]	[REDACTED]	[20-30%]
MWR	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
<i>Parties Combined</i>	[REDACTED]	[REDACTED]	[30-40%]	[REDACTED]	[20-30%]
Enablelink	[REDACTED]	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
ELG Haniel Metals	[REDACTED]	[REDACTED]	[5-10%]	[REDACTED]	[5-10%]
Ward Bros Steel Ltd	[REDACTED]	[REDACTED]	[5-10%]	[REDACTED]	[0-5%]
Benfleet	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
GES Recycling	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Sims	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Van Dalen	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
B Shakespeare	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Ward Recycling	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Amphill	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
A Goodman	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Charles Muddle	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
H Ripley & Co	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Nationwide	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Sackers	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
S Norton	[REDACTED]	[REDACTED]	[0-5%]	[REDACTED]	[0-5%]
Other sites	-	688,793	34%	688,793	[30-40%]39%
Total	7,834,788	2,000,000	100%	1,749,845	100%

Source: Parties' and competitors' submissions, [REDACTED].

Notes:

1. Includes some sites for EMR and Sims which are outside of overlap areas.
2. "Total volume of ferrous sales" includes all known sales of ferrous material provided to the CMA by competitors.
3. Assumes a total size of UK ferrous sales to be [REDACTED] tonnes and UK non-ferrous sales to be [REDACTED] tonnes.
4. "Volume of ferrous sales to UK customers" excludes sales to traders by applying a proportion of [REDACTED] for EMR and [REDACTED] for MWR for ferrous and [REDACTED] for EMR and [REDACTED] for MWR for non-ferrous ([REDACTED]).

12.9 Some recyclers also export substantial volumes and they may have the capacity to divert export volumes to supply UK customers.⁸³⁶ Given MWR's small share of UK sales, it would only require competitors to divert a small proportion of their export volumes back to the UK in response to a post-

⁸³⁶ S Norton exports 100% of its ferrous sales which consists of over 1,000,000 tonnes of ferrous metal. Sims exports [REDACTED] of its sales which consists of approximately [%] tonnes of metal. Within Table 12.1 there are 11 other recyclers who export more than 10,000 tonnes of ferrous metal, exporting a combined 918,000 tonnes of ferrous metal.

Transaction price rise in order to replicate the competitive constraint currently exercised by MWR.⁸³⁷

- 12.10 We heard from competitors that some switch materials between export and UK sales in response to price changes, although this depends on whether they have the necessary infrastructure and relationships in place, on UK customers' prices and payment terms, and on whether the relevant scrap arises in a location from which it is easier to export than to reach a UK customer.⁸³⁸
- 12.11 As discussed earlier in relation to NPS, from competitors and customers we heard that the potential barriers to serving UK customers can include:
- (a) Having reliable access to the necessary volumes. This in turn will depend on the recycler's UK wide facilities for processing, and access to suppliers,⁸³⁹
 - (b) Technical specifications. Customers highlighted that some suppliers cannot meet their technical specifications, while some competitors argued that customers can be risk averse about using new suppliers because of concerns over technical specifications;⁸⁴⁰ and
 - (c) Payment terms. Several competitors indicated that the 60-day payment terms used by UK customers make them unattractive customers, and for that reason some competitors opt to sell via other recyclers.⁸⁴¹
- 12.12 Most customers told us that they purchase from multiple recyclers, and most other customers did not raise concerns that are specific to non-NPS ferrous metals. We did hear from some competitors and some customers that it can be difficult for customers to find large volumes when necessary, and that as a result the larger recyclers have some pricing power.⁸⁴² However, given that MWR's market share for sales of non-NPS ferrous metal is so small, we do not consider that this concern arises from or is impacted by the Transaction.
- 12.13 Assessing this evidence in the round, we have found that it is not likely that the merger has resulted, or may be expected to result, in an SLC in the sale to UK customers of non-NPS ferrous metals.

⁸³⁷ This contrasts with NPS where MWR's share is higher, and other recyclers' overall volumes lower, meaning that a much greater diversion would be needed to replicate the constraint that MWR currently provides

⁸³⁸ [REDACTED], [REDACTED]

⁸³⁹ [REDACTED], [REDACTED]

⁸⁴⁰ [REDACTED]

⁸⁴¹ [REDACTED]

⁸⁴² [REDACTED]

Our assessment of competition in sales of non-ferrous metal to UK customers

- 12.14 In assessing competition in sales of non-ferrous metals to UK customers we have considered market shares and the submissions we received from third parties.
- 12.15 Table 12.2 shows our estimates of the Parties' and competitors shares of non-ferrous sales to UK customers. It shows a low overall share for the Parties ([20-30]% combined) and a small increment of [0-5]%. At least five other competitors have a scale comparable to or greater than MWR. Further, the market appears to be fragmented, with numerous other sites accounting for over half of the share of supply.
- 12.16 Moreover, the shares figures do not take account of the volumes of potentially significant competitors [X] and [X]. These have estimated total purchase volumes which together are similar to EMR's UK non-ferrous sales, and are non-ferrous specialists. They have not been included in this table due to the lack of accurate information regarding the proportion that they sell to UK customers and the proportion they export.

Table 12.2: Competitors in non-ferrous sales to UK customers

	<i>Volume of non-ferrous sales to UK customers</i>	<i>Share of non-ferrous sales (%)</i>
EMR	[X]	[20-30%]
MWR	[X]	[0-5%]
<i>Parties Combined</i>	[X]	[20-30%]
Sims	[X]	[10-20%]
Benfleet	[X]	[0-5%]
Ward Bros Steel Ltd	[X]	[0-5%]
H Ripley & Co	[X]	[0-5%]
Amphill	[X]	[0-5%]
Charles Muddle	[X]	[0-5%]
S Norton	[X]	[0-5%]
Enablelink	[X]	[0-5%]
Ward Recycling	[X]	[0-5%]
B Shakespeare	[X]	[0-5%]
Other sites	[X]	[50-60%]
Total	[X]	100%

Source: Parties' and competitors' submissions, [X]

Notes:

1. Includes some sites for EMR and [X] which are outside of overlap areas

2. [X]

3. "Volume of ferrous sales to UK customers" excludes sales to traders and metal recyclers

12.17 Several customers told us that the Parties are the two biggest suppliers of various non-ferrous metals (in contrast with the true data shown in the table above):

- (a) A non-ferrous metal manufacturer submitted that the larger EMR becomes the stronger its negotiating position is, making it more likely to have the upper hand in price negotiations, although the acquisition of MWR alone would not make a large difference.⁸⁴³
- (b) A non-ferrous metal manufacturer said that the Transaction could enhance EMR's position, and that competition might suffer through the closure of some of the Parties' sites.⁸⁴⁴
- (c) A non-ferrous foundry told us that the Parties are two among the few suppliers that can supply large volumes, and as such EMR can significantly influence prices due to the volumes they control. This customer further submitted that other than [REDACTED], who can compete in securing manufacturer-sourced scrap through its own scale and infrastructure, other suppliers are geographically focused and primarily owner-managed businesses.

12.18 However, most non-ferrous customers were not concerned about the merger, either because they do not depend on the Parties and/or because they typically have multiple other existing suppliers.⁸⁴⁵ For example, one specialist metal recycler told us that 'metal markets in the UK are liquid, open and highly competitive'.⁸⁴⁶ A user of copper submitted that the Parties are just two of approximately [REDACTED] suppliers in its portfolio, and competitive market rates are driven from foreign markets.⁸⁴⁷

12.19 One large customer of aluminium and copper did raise concerns about the effect of the merger on sales in non-ferrous metals. This customer currently sources from both Parties, as well as from at least 8 other suppliers. It expressed a concern that the Transaction will give the Parties a strong position in sales of non-ferrous metals for the following reasons:⁸⁴⁸

- (a) The Parties have site networks in the West Midlands and London where scrap arises, giving them a strong position in purchasing non-ferrous

843 [REDACTED]

844 [REDACTED]

845 [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]

846 [REDACTED]

847 [REDACTED]

848 [REDACTED]

scrap, which in turn puts them in a strong position for sales (especially in the West Midlands);

- (b) The Parties' size and national presence gives them access to contracts with large nationwide businesses with significant volumes of high-quality, homogeneous scrap metal (eg BT, Network Rail);
- (c) The customer considers that the Transaction reduces from 3 to 2 (including the Parties and Sims) the number of competitors able to provide non-ferrous metals. The customer estimates that EMR has around a 60% share of non-ferrous scrap metal.
- (d) Sims is focussed on ferrous grades and export, and is weaker in the supply of non-ferrous grades.
- (e) Smaller recyclers often cannot provide the right quality, occasionally renege on supply contracts, and only offer limited competition from single sites.
- (f) The majority of non-ferrous scrap only travels about 50km, so competition is limited geographically.

12.20 This customer also submitted that it believes that EMR aggressively targets competitors by outbidding them on scrap purchases, paying above-market prices and absorbing the losses elsewhere, until the relevant competitor is driven out of business.

12.21 However, we disagree with this customer's submission that the Transaction would reduce the number of copper suppliers from three to two. That customer's purchase data reveals that it has two additional sizeable copper suppliers. Moreover, despite the customer's view that [REDACTED], we consider [REDACTED] to be a credible supplier as it purchased £[REDACTED] worth of copper across the UK, of which only £[REDACTED] was sold to the customer in question. Therefore, the suggestion that there is a lack of suppliers in the copper market does not appear to be supported by the evidence we have received.

12.22 Assessing this evidence in the round, we have found that it is not likely that the merger has resulted, or may be expected to result, in an SLC in the sale of non-ferrous metals to UK customers.

13. Conclusions

13.1 As a result of our assessment, we have found:

- (a) that the Transaction has resulted in the creation of a relevant merger situation;
- (b) that the Transaction has resulted, or may be expected to result, in an SLC in the following markets:
 - (i) Purchasing of shredder feed in the South East
 - (ii) Purchasing of ferrous and non-ferrous scrap metals from tenders in the West Midlands
 - (iii) Purchasing of ferrous and non-ferrous scrap metals from tenders in the North East
 - (iv) Sales of NPS to UK customers

14. Remedies

- 14.1 Having decided that the Transaction has resulted, or may be expected to result, in an SLC, we are required to decide whether action should be taken to remedy, mitigate or prevent the SLC or any adverse effect which may be expected to result from the SLC.⁸⁴⁹
- 14.2 In this section, we set out our final decision on whether, and what, action should be taken for the purpose of remedying, mitigating or preventing the SLC that we have identified. In reaching our final decision, we have consulted with the Parties, a number of the Parties' suppliers and customers, and other stakeholders.⁸⁵⁰
- 14.3 This chapter is set out as follows:
- (a) CMA's framework for assessing remedies.
 - (b) Remedy options.
 - (c) The Parties' and third parties' views on remedies.
 - (d) Assessment of the effectiveness of the remedy options.
 - (e) Assessment of the proportionality of those remedies that we consider to be effective.
 - (f) Remedy implementation.
 - (g) Decision on remedies.

CMA remedies assessment framework

- 14.4 The Act requires that the CMA, when considering possible remedial actions shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.⁸⁵¹ To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will then select the least costly and intrusive remedy that it considers to be

⁸⁴⁹ [Merger Remedies: Competition Commission Guidelines \(CC8\)](#), adopted by the CMA Board, paragraph 1.6.

⁸⁵⁰ We consulted with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

⁸⁵¹ Sections 35(4) of the Act.

effective.⁸⁵² The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁸⁵³

- 14.5 The CMA may also have regard, in accordance with Section 36(4) of the Act, to the effect of any remedial action on any relevant customer benefits arising from the merger.⁸⁵⁴

Remedy options

- 14.6 In our notice of possible remedies (Remedies Notice),⁸⁵⁵ we set out our provisional view that full divestiture (ie the divestiture of CuFe Investments Limited and MWR) would represent a comprehensive solution to all aspects of the SLC and had few risks in terms of practicability or effectiveness.
- 14.7 We also requested views on whether partial divestiture (ie a smaller package or packages of divestitures in each of the areas where an SLC had been found) would be effective and practicable. Our provisional view was that any package or packages must include the following elements:
- (a) Purchasing of shredder feed in the South East: divestiture of MWR's Hitchin site with all associated plant and equipment, including the 6000hp shredder on that site.
 - (b) Purchasing of ferrous and non-ferrous scrap metals in the London region: divestiture of MWR's sites at Edmonton and Neasden, including all associated plant and equipment and the licence for Pinns Wharf.
 - (c) Purchasing of ferrous and non-ferrous scrap metals from tendered contracts in the West Midlands and the North East: divestiture of all sites, assets, contracts, rights and staff necessary to carry out this business as currently undertaken by MWR in the West Midlands and the North East.
 - (d) Sale of NPS to UK customers: divestiture of all sites, assets, contracts, rights and staff necessary to carry out this business as currently undertaken by MWR.
- 14.8 As we have decided that the Transaction does not result in an SLC in the purchasing of ferrous and non-ferrous scrap metals in the London region (in contrast to the position set out in our Provisional Findings), we are no longer

⁸⁵² CC8, paragraphs 1.7.

⁸⁵³ CC8, paragraphs 1.7 to 1.13.

⁸⁵⁴ CC8, paragraphs 1.14 to 1.20.

⁸⁵⁵ The Remedies Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and resulting adverse effects identified in the Provisional Findings. The Remedies Notice was published on 1 June 2018 and can be found on [the CMA's website](#).

of the view that partial divestiture must include the divestiture of MWR's sites at Edmonton and Neasden, including all associated plant and equipment and the licence for Pinns Wharf.

- 14.9 Our provisional view was that all of MWR's industrial and tendered supplier business in the West Midlands and the North East, including the sale of NPS, would need to be included in a single package, as MWR's sites in the West Midlands and the North East accounted for a large proportion of MWR's purchases from tendered contracts, as well as its sales of NPS to UK customers.
- 14.10 Our provisional view was that multiple small divestitures to different purchasers would be unlikely to be effective in comprehensively remedying the SLC.
- 14.11 We also thought that a behavioural remedy was unlikely to be an effective remedy.

Main and third parties' views on remedies

- 14.12 In this section, we summarise the views of the Parties and third parties on the remedy options that we proposed in our Remedies Notice, as well as their views on potential purchasers of the proposed divestitures.
- 14.13 We consulted on remedies prior to and following our decision that the Transaction does not result in an SLC in the purchasing of ferrous and non-ferrous scrap metals in the London region. The Parties' views submitted to us prior to our decision on London include references to the divestiture of MWR's London operations. We have retained these views in the section below both for completeness and because some of their observations may still have implications for the remedies in respect of the markets where we have found an SLC.

Behavioural remedy

EMR

- 14.14 EMR submitted that a behavioural remedy in the form of an open access agreement is effective and is more proportionate than a divestiture in relation to the SLCs found in the purchase of ferrous and non-ferrous waste scrap metal under tendered contracts and the sale of NPS.⁸⁵⁶

⁸⁵⁶[REDACTED]. [REDACTED]

14.15 EMR submitted that given the specific nature of the servicing of tendered contracts, which forms a small part of the Parties' businesses, site divestments are disproportionate to the SLC identified. EMR proposed a remedy involving an arm's length service agreement (ie a tolling arrangement) under which EMR provides third parties with access to all necessary facilities of MWR (but not EMR), including MWR's transport fleet and an appropriate number of skips and bins, and EMR will, if necessary, conduct processing on behalf of third parties seeking to bid for tendered contracts.⁸⁵⁷ EMR submitted that access can be made available to either competing metal recyclers or to end customers (ie steel producers, such as Liberty or Tata),⁸⁵⁸ and that this will enable bidders for tendered contracts to utilise EMR's scale and efficiency to their own advantage and to compete on the same basis as EMR.

14.16 EMR also submitted that, if required by the CMA, it will provide an undertaking not to bid for tendered contracts that are currently serviced by MWR when these are due for renewal.⁸⁵⁹

14.17 EMR claimed that this remedy would be effective, because:

- (a) it gives recyclers access to sites and facilities in the West Midlands and the North East, enhancing their capabilities and addressing the CMA's concerns that a network of sites 'in area' and infrastructure is required to compete to win tendered contracts, and the support of EMR's efficient operations will help to 'level the playing field' and restore rivalry;⁸⁶⁰
- (b) an undertaking not to bid for certain tendered contracts (if required) will ensure that the volumes of ferrous and non-ferrous waste scrap metal previously handled by MWR will become available and contestable; and
- (c) giving customers (as well as competing recyclers) access to this arrangement will widen the pool of bidders for contracts, and by allowing customers to source NPS directly, this will address the SLC in relation to the sale of NPS, as well as the SLC in relation to purchases from tendered contracts.⁸⁶¹

14.18 [REDACTED]⁸⁶² [REDACTED].

⁸⁵⁷ [REDACTED]

⁸⁵⁸ [REDACTED]

⁸⁵⁹ [REDACTED]

⁸⁶⁰ [REDACTED]

⁸⁶¹ [REDACTED]

⁸⁶² [REDACTED] For more discussion, see chapter 10, paragraph 10.126.

14.19 EMR submitted that this behavioural remedy is proportionate and practicable, because:

- (a) only a relatively small proportion of the volumes handled by MWR's sites in the West Midlands relates to formally tendered contracts.⁸⁶³ EMR submitted that divestment of MWR sites in the West Midlands will overreach the SLC provisionally identified in relation to tendered contracts; and
- (b) an access remedy will be practical to implement. EMR submitted that it has previously provided logistics services to steel producers and such experience will be readily transferable. It submitted that implementation of such a remedy will be speedier and less costly to implement than a divestment of all or some of the MWR business, and that EMR will be committed to putting into place any appropriate monitoring mechanism that may be required.

MWR

14.20 MWR submitted that it has not considered behavioural remedies.⁸⁶⁴

Third parties

14.21 None of the third parties we spoke to believe behavioural remedies are likely to be effective.⁸⁶⁵

14.22 [REDACTED] told us that this remedy is unattractive, as it is not very different from current options and will enable EMR to know [REDACTED] costs and to use that information when bidding against it.

14.23 [REDACTED] told us that a behavioural remedy will not be effective.⁸⁶⁶

14.24 [REDACTED] told us that EMR's proposed behavioural remedy will not be a workable arrangement, as:

- (a) independent metal recyclers who are of a size to bid for national contracts will find it impossible to put controls in place within the EMR/MWR yards that will give them comfort that the yields and operating costs that they are being quoted are truly competitive and that they have adequate control over product quality;

⁸⁶³ We note that the figure is around [REDACTED]% for MWR's site at Seaham in the North East.

⁸⁶⁴ [REDACTED]

⁸⁶⁵ [REDACTED], [REDACTED] [REDACTED], [REDACTED]

⁸⁶⁶ [REDACTED].

- (b) EMR will have access to the details of these contracts, which will make them much more competitive in the next bidding cycle; and
- (c) the offer of the use of former MWR skips and wagons will be of no interest, as wagons and skips can be contracted easily anywhere in the UK.⁸⁶⁷

Full divestiture

EMR

- 14.25 EMR submitted that full divestment will be effective, but that the individual SLCs can also be effectively addressed by three separate divestments in relation to each of London, Hitchin, and the West Midlands and the North East.⁸⁶⁸
- 14.26 EMR argued that a number of sites should be excluded from any divestment, either because there is no SLC in the area they operate in or because they have little value and might burden a purchaser. EMR submitted that it is not necessary to include in any divestment package any of the following:⁸⁶⁹
- (a) The sites that MWR have already mothballed prior to the Transaction (Walsall and Rookes).
 - (b) MWR's non-metal waste site (Cox's Lane).
 - (c) MWR's Telford site (Telford Lightmoor Road), which has been permanently closed due to noise complaints.
- 14.27 EMR originally submitted that the MWR site in Newport should not be included, as no SLC had been found in Wales. However, in its response hearing, EMR stated [REDACTED].⁸⁷⁰
- 14.28 EMR considered that Pinns Wharf has little value to a purchaser, as shown by the infrequent use of it by MWR over recent years (only [REDACTED] in 2017⁸⁷¹).⁸⁷² It noted that MWR has no security of tenure and if it wishes to continue using

867 [REDACTED]
868 [REDACTED]
869 [REDACTED]
870 [REDACTED]
871 [REDACTED]
872 [REDACTED]

the site it will have to come to an arrangement with the landlord when the lease expires ([REDACTED]). EMR stated that it [REDACTED].⁸⁷³

- 14.29 EMR submitted that MWR's granulator should not be included in any remedy package involving Edmonton (or, indeed, at all), as cable granulation did not form part of MWR's pre-Transaction operations and therefore cannot possibly be relevant to any SLC nor any divestment package designed to address such an SLC.⁸⁷⁴

MWR

- 14.30 MWR submitted that full divestment is an appropriate remedy to resolve the SLCs.⁸⁷⁵

- 14.31 MWR told us that absent the Transaction, it would not have looked to reopen the Walsall or Rookes sites, nor the site on Telford Lightmoor Road. In addition, it stated that the [REDACTED].⁸⁷⁶

- 14.32 MWR stated that [REDACTED] had been set up to reduce transport costs and that it was a location at which scrap was bulked and sent to [REDACTED] for processing. [REDACTED].⁸⁷⁷

- 14.33 MWR's Hockley site was also closed by EMR following the acquisition, and plant and equipment, employees and contracts which were dealt with at the site were transferred to EMR sites. When asked what was needed in the event of divesting the contracts previously serviced there, MWR stated that, [REDACTED].⁸⁷⁸

Third parties

- 14.34 One third party told us that some buyers (particularly those without a current presence in the UK) will only be interested in buying the entire business.⁸⁷⁹

- 14.35 [REDACTED] told us that the competition issues identified can only be overcome if there is a sale of the whole business or a significant part of it to one or possibly two strong companies able to replicate the impact that MWR had on EMR's ability to dominate the market.⁸⁸⁰

873 [REDACTED]
874 [REDACTED]
875 [REDACTED]
876 [REDACTED]
877 [REDACTED]
878 [REDACTED]
879 [REDACTED]
880 [REDACTED]

Partial divestiture

14.36 Much of the evidence we received from the Parties and third parties related to the divestitures necessary to remedy the SLC in the following two packages:

- (a) Divestiture of all sites, assets, contracts, rights and staff necessary to carry out the purchasing of shredder feed in the South East and the purchasing of ferrous and non-ferrous scrap metals in the London region as currently undertaken by MWR.
- (b) Divestiture of all sites, assets, contracts, rights and staff necessary to carry out the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East and the sale of NPS to UK customers as currently undertaken by MWR.

14.37 Therefore, we present the parties' views in the following order:

- (a) General views on the feasibility of partial divestiture.
- (b) Views on partial divestiture to remedy the SLC in the purchasing of shredder feed in the South East.
- (c) Views on partial divestiture to remedy the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East and the sale of NPS to UK customers.

Feasibility of partial divestiture

EMR

14.38 EMR submitted that the SLC could be remedied through three separate divestitures:

- (a) SLC in the purchasing of shredder feed in the South East: MWR's Hitchin shredding operation.
- (b) SLC in the purchasing of ferrous and non-ferrous waste scrap metal in London: MWR's Neasden site, but not the Edmonton site.
- (c) SLCs in the purchase of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and North and the sale of NPS to UK customers: one EMR or MWR site in each of the North East and West

Midlands 'capable of servicing these contracts', along with relevant staff, contracts and associated assets.^{881,882}

14.39 EMR submitted that composition risk will not be greater in the sale of several packages than it will be in the sale of MWR as a whole, because:

- (a) there will be a sufficient pool of purchasers for each individual package;
- (b) divestment of several packages to several purchasers can potentially result in a more competitive situation in each area where an SLC has been provisionally identified than the divestment of the whole MWR business to one purchaser; and
- (c) EMR has significant experience of running sale processes and its legal team is headed by a corporate solicitor with significant experience as a partner in a law firm.⁸⁸³

MWR

14.40 MWR submitted that divestment of MWR through smaller packages will involve substantial practical difficulties and risks to the business. MWR emphasised the importance (for maintaining the strength of the business and the staff team) of an orderly and prompt divestment process.⁸⁸⁴

14.41 When asked about the feasibility of the sale of the various MWR sites as separate divestiture packages, MWR told us [REDACTED].⁸⁸⁵ It submitted that it will be possible, if necessary, to split the business up. [REDACTED]⁸⁸⁶

14.42 Prior to our decision that the Transaction does not result in an SLC in the purchasing of ferrous and non-ferrous scrap metals in the London region, MWR gave the following reasons [REDACTED]:

(a) [REDACTED].⁸⁸⁷

(b) [REDACTED].⁸⁸⁸ [REDACTED]:

⁸⁸¹ This compares with MWR's 1 site in the North East and 3 active sites in the West Midlands prior to the Merger.

⁸⁸² [REDACTED]

⁸⁸³ [REDACTED]

⁸⁸⁴ [REDACTED]

⁸⁸⁵ [REDACTED]

⁸⁸⁶ [REDACTED]

⁸⁸⁷ [REDACTED]

⁸⁸⁸ [REDACTED]

- (i) [REDACTED].⁸⁸⁹
- (ii) [REDACTED] [REDACTED].⁸⁹⁰
- (iii) [REDACTED].⁸⁹¹
- (c) [REDACTED],⁸⁹² [REDACTED].⁸⁹³ [REDACTED].⁸⁹⁴ [REDACTED].⁸⁹⁵
- (d) [REDACTED]⁸⁹⁶ [REDACTED].⁸⁹⁷
- (e) [REDACTED].⁸⁹⁸
- (f) [REDACTED].⁸⁹⁹
- (g) [REDACTED].⁹⁰⁰

14.43 In light of the above issues, [REDACTED].⁹⁰¹ [REDACTED].⁹⁰²

14.44 Following our revised provisional decision on London, MWR told us that if the Edmonton and Neasden sites remained with EMR, MWR considered that, in this context, Hitchin is a sufficiently stand-alone site that could be sold separately and independently for the following reasons:

- (a) It is not factory based.
- (b) Hitchin is accounted for separately and has its own distinct staff, equipment and assets, which could be easily identified and separated.
- (c) Hitchin will require back office support, but an appropriate purchaser would have that support.

889 [REDACTED]
 890 [REDACTED]
 891 [REDACTED]
 892 [REDACTED]
 893 [REDACTED]
 894 [REDACTED]
 895 [REDACTED]
 896 [REDACTED]
 897 [REDACTED]
 898 [REDACTED]
 899 [REDACTED]
 900 [REDACTED]
 901 [REDACTED]
 902 [REDACTED]

- (d) While Hitchin receives some material supplied from Edmonton and Neasden, the amounts are a small proportion of the material brought into Hitchin, and Hitchin does not rely on that material.⁹⁰³

Third parties

14.45 Some third parties thought that it is possible to separate MWR's operations in Hitchin and London from those in the West Midlands and North East, and divest them separately.⁹⁰⁴ However, they commented on the increased difficulty, time and risk of divesting the two operations separately.⁹⁰⁵

(a) [REDACTED].

(b) [REDACTED] told us that the divestment would ideally be one sale, although it is possible to split the shredder and associated sites (in the London area) from the West Midlands/North East parts of MWR.

(c) [REDACTED] told us that an asset sale is more complicated and riskier than a business sale. It also stated that the ability of sites and assets to be operated independently critically depended on the degree to which they currently operate as discrete business units or are directly reliant on management, services and infrastructure that are common to the MWR business as a whole.⁹⁰⁶

Partial divestiture to remedy the SLC in the purchasing of shredder feed in the South East

EMR

14.46 EMR submitted that the divestiture of the MWR Hitchin site on a standalone basis is a comprehensive solution to the SLC found in shredder feed in the South East.⁹⁰⁷ Its proposed package comprises the MWR Hitchin site, shredder, all associated staff (technical and commercial) and assets that are necessary to conduct the shredding operation.⁹⁰⁸

14.47 EMR submitted that no other assets or administrative infrastructure are necessary, as the most likely purchasers (metal or general waste recyclers) will already have access to other necessary assets or administrative staff and

⁹⁰³ [REDACTED]

⁹⁰⁴ [REDACTED], [REDACTED]

⁹⁰⁵ [REDACTED], [REDACTED]

⁹⁰⁶ [REDACTED]

⁹⁰⁷ [REDACTED]

⁹⁰⁸ [REDACTED]

there is nothing special about shredding which requires other MWR staff.⁹⁰⁹ In addition, EMR submitted that no other sites are needed, including feeder sites, such as Neasden and Edmonton, as these are not necessary for the running of a shredder operation, as demonstrated by S Norton, which operate without feeder sites. EMR further submitted that there is no significant relationship between Hitchin and the other MWR London sites that requires their divestment as one package. It argued that the amount of shredder feed supplied by MWR's London sites to Hitchin is limited and shredder feed could easily be sourced from other metal recyclers.⁹¹⁰

14.48 EMR submitted that, in practical terms, divestiture will, in principle, be achieved by selling the site lease and associated assets, whilst employees will move across to the purchaser under a TUPE transfer.⁹¹¹

MWR

14.49 Prior to our decision that the Transaction does not result in an SLC in the purchasing of ferrous and non-ferrous scrap metals in the London region, [REDACTED].

14.50 [REDACTED]:

(a) [REDACTED].⁹¹²

(b) [REDACTED].

(c) [REDACTED].

14.51 MWR told us that Neasden used to have a shear so it could, in principle, house one again. It also stated that planning permission would be unlikely to be awarded for a shredder at Edmonton.⁹¹³

14.52 Following our decision on London, MWR told us that Hitchin is a sufficiently stand-alone site that could be sold separately and independently (see paragraph 14.434).⁹¹⁴

⁹⁰⁹ [REDACTED]

⁹¹⁰ [REDACTED]

⁹¹¹ [REDACTED]

⁹¹² [REDACTED]

⁹¹³ [REDACTED]

⁹¹⁴ [REDACTED]

Third parties

14.53 We received a mixed response from third parties.⁹¹⁵

14.54 One third party ([REDACTED]) told us that it will be necessary to sell Hitchin with the other London locations, in order to provide the purchaser with an outlet for baled or shredder feed material arising in London. It views North London as one area. It believes the London area plus Hitchin could be sold on its own as a standalone business unit. It did split out the West Midlands though, consider that the purchaser will require access to port facilities, as London is an export market (ie it is difficult to reach UK customers from London due to transport costs).⁹¹⁶

14.55 Another third party (LCM) told us that it will be an advantage for a purchaser to acquire Hitchin in any package, as it will provide the purchaser with more options, as it will have the ability to process more types of scrap metal.⁹¹⁷

14.56 [REDACTED] told us that the shredder at Hitchin could be an effective operation as a standalone unit without feeder sites.

14.57 [REDACTED] told us that the sale of the shredder at Hitchin on its own is not attractive, because:

- (a) the yard is not well located, as it has no easy route to port facilities;
- (b) it is relatively small in terms of storage area, so it will not be possible to accumulate a good volume of feed or output product on site in the event of a breakdown or other interruption to business;
- (c) it is surrounded by residential accommodation;
- (d) the shredder is old and will need to be replaced fairly soon; and
- (e) the facility needs to be associated with other feeder yards to provide the volume of input material required to keep the shredder busy.⁹¹⁸

⁹¹⁵ Not all third parties that responded felt they could adequately comment on London and Hitchin as they had no prior knowledge of the area or the MWR business in the area.

⁹¹⁶ [REDACTED]

⁹¹⁷ [REDACTED]

⁹¹⁸ [REDACTED]

Partial divestiture to remedy the purchase of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East and the sale of NPS to UK customers

EMR

14.58 EMR submitted that any remedy which appropriately addresses the SLC identified with respect to upstream tendered contracts will solve the SLC identified with respect to the downstream sale of NPS.⁹¹⁹ It proposes a divestiture package including:⁹²⁰

- (a) relevant commercial and logistics staff (to the extent required by a potential purchaser);
- (b) supplier/customer contracts where formal contracts exist (although the majority of sales of NPS to UK customers are concluded on a spot basis (eg 77% of MWR sales));⁹²¹
- (c) either an MWR or EMR site capable of servicing these contracts in each of the West Midlands and the North East; and
- (d) any necessary assets, including transportation and environmental licences attached to the site and additional equipment required to service suppliers (eg skips and bins).

14.59 EMR submitted that it is not necessary to include all MWR sites in the West Midlands and North East in the divestiture package, as Telford and Hockley each represent very small proportions of MWR's purchases of waste scrap metal under tendered contracts and, indeed, sales of NPS.⁹²²

14.60 EMR submitted that commercial staff will need to be included in any remedy package for it to be suitably attractive to a number of purchasers. EMR submitted that bidding and purchasing under large tendered contracts is usually a centralised function, as is the sale of NPS onwards to end customers. EMR submitted that whilst a purchaser established in the UK is likely to already have such staff, these are easily segregated within the MWR business.⁹²³

919 [REDACTED]
920 [REDACTED]
921 [REDACTED]
922 [REDACTED]
923 [REDACTED]

14.61 EMR submitted that metal recyclers providing services under tendered contracts are often providing a logistics service or, where they are purchasing and selling the scrap metal onwards, have minimal need to process the scrap metal at a processing site. Indeed, to the extent that a proximate site is necessary, it is typically for aggregation and onward transport reasons and not for processing.⁹²⁴

14.62 EMR submitted that, as the CMA has found an SLC only in relation to tendered contracts, and not in relation to the 'core' scrap metal business of MWR in the affected regions of the West Midlands and North East, the tendered contract business can be segregated from the core scrap metal business of MWR. It submitted that this can be done by divesting, as well as the relevant contracts, staff and assets:

- (a) MWR's one site in the North East (Seaham), which services tendered contracts and does not generally engage in the purchase of metal other than from tendered contracts;⁹²⁵ and
- (b) an EMR or MWR site capable of serving MWR's West Midlands contracts. EMR submitted that the divestment of all three of MWR's West Midlands sites is not proportionate, because although those sites all receive metal from tendered contracts, they all also receive metal from suppliers that are not under tendered contracts.⁹²⁶

14.63 EMR also submitted that, in principle, the North East and West Midlands packages can be separated,⁹²⁷ and that EMR sites can, in principle, be divested in place of MWR sites (in particular, given that some EMR sites [redacted]).⁹²⁸

MWR

14.64 [redacted].

Third parties

14.65 One third party ([redacted]) told us that it is not possible to split out the West Midlands from the North East, as contracts tend to be linked to multiple sites/locations.

924 [redacted]

925 [redacted]

926 [redacted]

927 [redacted]

928 [redacted]

- 14.66 Two third parties ([REDACTED], [REDACTED]) consider that the business, and not just the assets, will need to be sold, as the contracts are held by the business.
- 14.67 One third party ([REDACTED]) submitted that the effectiveness of a remedy in this area will depend on the scope and specification of the divestment package and the identity of the purchaser.
- 14.68 Other third parties ([REDACTED], [REDACTED], [REDACTED], [REDACTED]) told us that the divestiture package will need to include a variety of different elements, including contracts, employees (including key staff involved in the tendering and NPS business), infrastructure, all sites used for both servicing tendered contracts and selling NPS, haulage, skips and other assets used in the business.⁹²⁹ In addition, it will be necessary to include dock facilities for exporting ([REDACTED] and [REDACTED]).

Potential purchasers

EMR

14.69 EMR submitted that the following types of businesses should be considered as suitable purchasers for the whole or parts of MWR:

- (a) Financial investors with current (or additional) management support.
- (b) Other UK metal recyclers, including large national operators, as well as strong regional competitors.
- (c) Overseas metal recyclers.
- (d) Waste companies and specialist recyclers.⁹³⁰

14.70 [REDACTED].⁹³¹

14.71 EMR submitted that potential purchasers for the London and South East divestitures could include existing London-based competitors or national competitors (with or without a presence in London), all of whom will have existing centralised management functions. It argued that sale to an existing metal recycler will have the benefit of not only solving the SLC, but will also be comprehensive in that it will create a regional competitive force, which will be

⁹²⁹ 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). [REDACTED]

⁹³⁰ [REDACTED].

⁹³¹ [REDACTED].

stronger than MWR currently is.⁹³² In addition, EMR submitted that there will be other interested purchasers who will meet the CMA's criteria, eg waste companies, overseas metal recyclers, steel producers and financial investors (provided that appropriate management structures are maintained).⁹³³

14.72 In relation to the West Midlands and North East, EMR submitted that national metal recyclers will be interested and will be able to increase their overall presence by acquiring this business. Equally, it stated, there are a number of other options, including waste companies, potential overseas entrants, including specialists in these contracts, or investors with an appropriate management team.⁹³⁴

14.73 EMR submitted that, as MWR was previously owned by financial investors (who had no particular experience or presence in the industry), existing presence or experience is not be a pre-requisite for any purchaser of the full business (or any variant of it), nor for smaller divestiture packages, provided that sufficient management resource is provided in the package.⁹³⁵

14.74 EMR submitted that as MWR had no dock facilities (other than access to Pinns Wharf and the dock at its North East site in Seaham) prior to the Transaction, it would not be in line with the pre-merger constraint imposed by MWR on EMR to require divestment to a purchaser which has dock facilities.⁹³⁶

MWR

14.75 MWR submitted that a purchaser with industry expertise will be the most suitable, and preferable, purchaser of the MWR business, but that if the whole of MWR is divested, it is not essential that the purchaser possesses any specific additional factors, such as existing presence, level of expertise in the market or access to dock facilities.⁹³⁷

14.76 MWR submitted that there will be a range of purchasers with a strong interest in purchasing all of the MWR business, potentially including: [redacted], [redacted], [redacted] and [redacted]. [redacted].⁹³⁸

⁹³² [redacted].

⁹³³ [redacted].

⁹³⁴ [redacted].

⁹³⁵ [redacted].

⁹³⁶ [redacted].

⁹³⁷ [redacted].

⁹³⁸ [redacted].

14.77 MWR submitted that a private equity buyer will need to show that it can provide the security and investment needed to continue to operate as an effective competitor in the future, especially in light of the challenging circumstances that the business has faced during the CMA's merger investigation and the associated hold separate arrangements.⁹³⁹

14.78 [REDACTED]. MWR is of the view that overseas entrants will most likely need the divestment to be the whole of the MWR business.⁹⁴⁰

Third parties

14.79 [REDACTED].⁹⁴¹ [REDACTED]. [REDACTED] also stated that the purchaser will need to be of a certain size to handle the large volume of material from the contracts and the geographic scope of MWR's operations.

14.80 [REDACTED] told us that it sees the UK as an interesting market. [REDACTED] said it would be interested in purchasing MWR, but only as a whole business. The need for scale is important for a business such as [REDACTED], as it does not currently have a presence in the UK. It believes that competing with EMR will be difficult, given EMR's UK scale and geographical presence, which will make it difficult to increase MWR's scale. [REDACTED] thought that it would also need access to ports, although it did not comment on whether this included the need to retain the Pinns Wharf licence.

14.81 [REDACTED] told us that it would be interested in the London sites and the Hitchin shredder. The key issues for it will be access to dock facilities, [REDACTED]. It considers that any buyer will need dock facilities, and that overseas buyers will also need access to employees who know the suppliers and the material in the area. [REDACTED].

14.82 [REDACTED] told us that it would potentially be interested in the West Midlands and the North East. In regard to the divestment, it considers that the buyer will need to be large, as it will need to be able to compete with EMR. It thinks that financial buyers will not be a good fit. [REDACTED] submitted that the business will need significant working capital due to the difference in payment terms between suppliers (short) and buyers (long).

14.83 [REDACTED] submitted that the size of EMR means that if MWR is split into more than two packages, it will likely mean that purchasers will still be reliant on EMR in those particular areas – mainly as a buyer of material/exporter. [REDACTED] submitted

⁹³⁹ [REDACTED].

⁹⁴⁰ [REDACTED].

⁹⁴¹ [REDACTED]

that smaller players will be able to buy the smaller packages, but will not recreate the pre-Transaction competitive position. [REDACTED] is concerned that if MWR is sold in small packages, it will lead to ‘friendly’ buyers for EMR. [REDACTED] believes that there will be a small pool of potential buyers.

14.84 LCM told us that it would be interested in the Hitchin and London sites. It also thinks that overseas businesses will be interested. It thinks that MWR will be too large for some UK recyclers, as it will be a large step change in their activity levels. LCM thinks that there will be specialist interest in NPS. [REDACTED].

14.85 [REDACTED] submitted 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. It submitted that certain scrap metal recyclers are heavily focussed on the export market (eg [REDACTED]) and that it is very unlikely that the acquisition of MWR assets by an export-focussed scrap merchant will address the CMA's competition concerns. [REDACTED].

14.86 Castings told us that the sale of MWR's West Midlands operations to a foreign or unknown third party with no vested interest in local foundry steel scrap supply will in effect be just as serious as the adverse impact on competition caused by the Transaction. Castings told us that the West Midlands operations should be sold to another Midlands scrap merchant who currently holds a smaller market share than EMR.⁹⁴²

14.87 [REDACTED].⁹⁴³

14.88 [REDACTED] told us that an external investor or an overseas buyer will not create a true competitor, as they lack the understanding and experience required to succeed instantly in the UK market.⁹⁴⁴

14.89 A number of third parties ([REDACTED], Hall and Pickles, [REDACTED], [REDACTED], Recycling Lives and [REDACTED]) told us that the potential purchaser should have the ability to sell scrap metal in the UK and export abroad.

Assessment of effectiveness of remedies

14.90 In this section, we set out our assessment of the effectiveness of the following remedy options:

⁹⁴² [REDACTED].

⁹⁴³ [REDACTED].

⁹⁴⁴ [REDACTED].

- (a) Behavioural remedy: EMR submitted that a behavioural remedy in the form of an open access agreement would be effective and was more proportionate than a divestiture to address the SLCs found in the purchase of ferrous and non-ferrous waste scrap metal under tendered contracts and the sale of NPS.^{945,946}
- (b) Full divestiture: the divestiture of CuFe Investments Limited and MWR.
- (c) Partial divestiture: the divestiture of the following in one or a limited number of discrete packages:
 - (i) MWR's Hitchin site with all associated plant and equipment, including the 6000hp shredder on that site.
 - (ii) Divestiture of all sites, assets, contracts, rights and staff necessary to carry out MWR's tendering and NPS operations in the West Midlands and the North East.

14.91 In assessing the effectiveness of the potential remedies, we have considered the following factors:

- (a) Impact on the SLC and its resulting adverse effects: normally, the CMA seeks to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.
- (b) Appropriate duration and timing: the CMA prefers remedies that quickly address competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.
- (c) Practicality: remedies should be capable of effective implementation, monitoring and enforcement.
- (d) Acceptable risk profile: the CMA will seek remedies that have a high degree of certainty.⁹⁴⁷

14.92 We also note that divestitures may be subject to a variety of risks that may limit their effectiveness:

- (a) Composition risk arises if the scope of a divestiture package is too constrained or not properly configured to attract a suitable purchaser or does not allow the purchaser to operate as an effective competitor.

⁹⁴⁵ [REDACTED].

⁹⁴⁶ [REDACTED].

⁹⁴⁷ CC8, paragraph 1.8.

- (b) Asset risk arises if the competitive capability of the asset to be divested deteriorates before the completion of the divestiture.
- (c) Purchaser risk arises if a suitable purchaser is not available or if the merger parties dispose to a weak or otherwise inappropriate purchaser.⁹⁴⁸

Behavioural remedy

- 14.93 EMR proposed a behavioural remedy to address the SLC in relation to the purchasing of ferrous and non-ferrous scrap metals from tenders in the West Midlands and the North East and the sale of new production steel to UK customers. EMR proposed to set up an arm's length service agreement (ie a tolling arrangement) under which EMR would provide to third parties access to MWR's transport fleet and an appropriate number of skips and bins, and would, if necessary, conduct processing on behalf of a third party seeking to bid for tendered contracts.
- 14.94 EMR originally also proposed a behavioural remedy to address the SLC in the purchasing of shredder feed in the South East, but, on further consideration, concluded that it would not be effective and withdrew its proposal. Therefore, we have not considered this remedy in our assessment below.

Impact on the SLC and its resulting adverse effects

- 14.95 The CMA normally seeks to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.⁹⁴⁹
- 14.96 The behavioural remedy proposed by EMR aims to provide logistics and other necessary services to other recyclers and to final customers (eg steel producers) so that third parties can bid in tenders knowing that the logistical and processing facilities are available to them in order to fulfil the contract if needed. We assume that, in some cases, this would be in direct competition with EMR.
- 14.97 Having consulted with metal recyclers and suppliers during the course of our investigation, we understand that to secure tendered contracts, a bidder requires a track record of reliability, good relationships with account managers, sites and infrastructure, the ability to scale up operations quickly, financial security and the ability to ensure the secure destruction of materials.

⁹⁴⁸ CC8, paragraph 3.3.

⁹⁴⁹ CC8, paragraph 1.8.

14.98 The remedy proposed by EMR could provide rivals with the necessary sites, transport and equipment to compete for tendered contracts, but it does not address the need for a bidder to demonstrate their reliability and the strength of their relationships with account managers. Therefore, our view is that the proposed remedy may not enable rivals to effectively bid and secure tendered contracts, in order to comprehensively address the SLC.

Appropriate duration and timing

14.99 The CMA prefers remedies that quickly address competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.⁹⁵⁰

14.100 The SLC that we have found in relation to the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East and the sale of new production steel to UK customers is not time limited (ie we have not found that the adverse effects of the merger in these markets will endure for only a specific period of time). Therefore, the proposed behavioural remedy would need to remain in place, and remain effective, for an indefinite period. We consider that the proposed remedy is missing a number of features to enable it to remain effective over time and that these features would be difficult to put in place. For example, the proposed remedy does not include a commitment to keep the relevant MWR sites in operation; keep the necessary processing equipment on those sites; maintain a minimum number of vehicles; and ensure convenient opening times or efficient throughput of third parties on site. Therefore, our view is that this remedy is subject to significant specification risk (ie the risk that the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance), as outlined below.

Practicality

14.101 Remedies should be capable of effective implementation, monitoring and enforcement.⁹⁵¹

14.102 We consider that this remedy is subject to significant specification risk (ie the risk that the form of conduct required to address the SLC or its adverse effects cannot be specified with sufficient clarity to provide an effective basis for monitoring and compliance).⁹⁵² The framework for the proposed remedy would extend beyond a traditional tolling arrangement, as it would need to

⁹⁵⁰ CC8, paragraph 1.8.

⁹⁵¹ CC8, paragraph 1.8.

⁹⁵² CC8, paragraph 4.2.

cover, for example, the terms of access to individual sites; how conflicting demands for access would be resolved; and what arrangements would apply in respect of major one-off events, such as the need to clear a large amount of scrap from a factory at very short notice. In addition, the framework would need to provide for the circumstances where competing parties require use of the same assets.

14.103 EMR submitted that the price it will charge for its services will be based on arm's length terms. As the services covered by the remedy do not represent a standard activity, it is not clear to us the basis on which the price will be set for the access arrangement either now or in the future. Our guidance on merger remedies states that a commitment to permit access 'on fair and reasonable' terms may create significant specification risk, as the provision may be insufficiently specific to allow effective enforcement.⁹⁵³ We consider that it would be difficult to put in place price-setting and service-level arrangements sufficiently comprehensive and flexible to account for differing tender requirements (eg fleet size, sites, delivery and pick-up times and one-off arrangements).

14.104 EMR submitted that it will commit to put into place any monitoring mechanism that may be required. Our view is that setting up and maintaining such mechanisms would be costly and not without risk in relation to monitoring and enforcement. In resolving any disputes between EMR and the third party requiring access under the terms of the remedy, there would be a substantial asymmetry of information between EMR and third parties, some of whom may not have their own sites and processing equipment with which they could compare the price and service offered by EMR. Furthermore, given that tenders are frequent and the tender process is often short, the price setting mechanism would need to be particularly robust, so that any uncertainty or dispute over price and service level could be addressed efficiently, in order to allow third parties to meet the tender deadline.

14.105 We are also concerned that the remedy would enable EMR to have access to a competitor's confidential and/or commercial information, and this could enable EMR to distort the market by using this information to price below its competitors or provide inferior sites or service for the competitor. We were told by one third party ([REDACTED]) that such a remedy is not attractive, because it will give EMR transparency about its costs when bidding against it. The implementation of a firewall arrangement to mitigate this risk would be

⁹⁵³ CC8, paragraph 4.2.

challenging, as the scheduling of transport, processing and so on would need to be coordinated around the use of equipment for EMR's own contracts.⁹⁵⁴

Acceptable risk profile

14.106 The CMA seeks remedies that have a high degree of certainty.⁹⁵⁵

14.107 The effectiveness of EMR's proposed remedy is dependent on third parties using the arrangement to access the market. However, no third party that we have consulted with thought that behavioural remedies would be effective. Even if one or more third parties expressed an interest in using the arrangement, we have concerns about whether they would do so consistently and over time, particularly when compared to a divestiture remedy, where the purchaser would be keen to earn a return on its capital investment. We think that the proposed remedy may not succeed or sustain over time to replace the competitive constraint imposed by MWR prior to the Transaction.

Conclusion

14.108 We do not consider that the behavioural remedy proposed by EMR would achieve as comprehensive a solution as is reasonable and practicable to address the SLC in relation to the purchasing of ferrous and non-ferrous scrap metals from tenders in the West Midlands and the North East and the sale of new production steel to UK customers.

14.109 We do not think that the remedy will restore the competitive constraint imposed by MWR on EMR prior to the Transaction immediately or over time. We also think that the remedy would be difficult to implement, monitor and enforce.

Full divestiture

14.110 The main and third parties all considered that full divestiture would be an effective remedy.

14.111 We think that full divestiture would restore competitive rivalry through re-establishing the structure of the market expected in the absence of the Transaction and would represent a comprehensive remedy to the SLC.⁹⁵⁶

⁹⁵⁴ Please refer to [CC8, paragraphs 4.20 to 4.22](#), for guidance on the CMA's approach to firewall measures.

⁹⁵⁵ [CC8](#), paragraph 1.8.

⁹⁵⁶ [CC8](#), paragraph 1.8.

14.112 We consider that there is some risk that the business could deteriorate under certain remedy arrangements. We note that since the Transaction:

- (e) MWR has experienced staff losses, including senior management; and
- (f) its financial performance has deteriorated.

14.113 We think that full divestiture reduces the continuing risk of asset deterioration to as low a level as possible, as it reduces the risk of further disruption to the MWR business and minimises the time required to implement the remedy.

14.114 We note that, since there was a full sale process, including a comprehensive data room, of MWR undertaken by Bain Capital Credit LLP in 2017, there already exists a substantial amount of the basic information required for due diligence by potential purchasers. Although this information will require updating, its availability will reduce the time and complexity of the divestment process.

14.115 [REDACTED], we understand that Bain Capital Credit LLP received offers from a number of third parties and EMR did not suggest that there would be insufficient interest for a full divestiture package.

14.116 In our view, full divestiture would be an effective remedy. It would immediately re-establish the structure of the market expected in the absence of the Transaction and will not require ongoing monitoring and enforcement.

Partial divestiture

14.117 In assessing the effectiveness of partial divestiture, we first consider whether the divestiture of MWR's Hitchin site with all associated plant and equipment, including the 6000hp shredder on that site, would be effective in addressing the SLC in relation to the purchasing of shredder feed in the South East. We then consider whether the divestiture of all sites, assets, contracts, rights and staff necessary to carry out the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East, and the sale of NPS to UK customers, would be effective in addressing the SLC in those markets. Finally, we consider whether these packages would be effective if sold separately.

Purchasing of shredder feed in the South East

14.118 We assess the effectiveness of the divestiture of MWR's Hitchin operations by considering the composition of the divestiture package, the

potential adverse impact of the divestiture process on MWR's assets and the likely purchasers of the operations.

Composition risk

14.119 The main issue in relation to the composition of a divestiture remedy to address the purchasing of shredder feed in the South East is whether it is necessary to include MWR's London business in the divestiture package.

14.120 EMR submitted that the divestment of the Hitchin site, assets and its site employees will effectively remedy the SLC in relation to the purchasing of shredder feed in the South East. EMR submitted that shredder sites do not need feeder sites to operate effectively, as demonstrated by S Norton's business model.

14.121 [REDACTED].⁹⁵⁷

14.122 Prior to our decision to re-consult on the existence of an SLC in the purchasing of ferrous and non-ferrous scrap metals in the London region, [REDACTED].⁹⁵⁸ [REDACTED].⁹⁵⁹

14.123 In relation to the transfer of material between sites, MWR told us that it had opened and operated feeder sites to provide shredder material from London to its Hitchin operation, and it had increased the size of its shredder as a result of the volume of feed it was processing through feeder and direct routes. MWR told us that there had been a decline in the proportion of its shredder feed coming from feeder sites [REDACTED].

14.124 Following our supplementary provisional decision on London, MWR told us that if the Edmonton and Neasden sites remain with EMR, in this context, Hitchin is a sufficiently stand-alone site that can be sold separately and independently.⁹⁶⁰

14.125 We consider that, at a minimum, the divestiture package should include MWR's Hitchin site and the on-site assets and personnel connected with the site. We also consider that the package may need to include some commercial staff from MWR (not based at Hitchin) if these are required to maintain commercial relationships, especially with suppliers (see also asset risk and purchaser risk below).

⁹⁵⁷ [REDACTED], [REDACTED], [REDACTED].

⁹⁵⁸ [REDACTED]

⁹⁵⁹ [REDACTED]

⁹⁶⁰ [REDACTED]

14.126 We consider that the inclusion of MWR's feeder sites of Edmonton and Neasden, including any related administrative and commercial infrastructure, will only be necessary if the purchaser does not have existing feeder sites in London and is unable to demonstrate that it does not require a feeder site to be an effective competitor.

14.127 In those circumstances, the inclusion of MWR's London operations will be necessary for the following reasons:

- (a) For a divestiture package to be deemed effective, it must comprehensively address the SLC by re-establishing the structure of the market expected in the absence of the merger and it must be appropriately configured to attract a suitable purchaser and allow that purchaser to operate as an effective competitor. [REDACTED].
- (b) There are clear links between Hitchin and the London feeder sites in terms of the transfer of material between them and their joint use to serve suppliers of mixed metal types, as well as the integration of the sites' transport, financial performance, and staff (particularly the commercial teams).
- (c) Prior to the Transaction, MWR's effectiveness was in part due to its vertical integration of sites and the diversity of operations. However, we consider that the divestiture of MWR's Hitchin operations to a purchaser with existing feeder sites in London could replicate the efficiency and competitive position of MWR. We are aware of a number of standalone operators of shredder sites in the South East and East of England, who do not have feeder sites, although these metal recyclers all operate shredders that are significantly smaller than those operated by the Parties'. The lower capacity at these sites may explain why those operators do not require feeder sites.⁹⁶¹

14.128 To the extent that MWR's London operations are required to be included in the divestiture package, we do not think that it is necessary for this to include the granulator at Edmonton, as the granulator was mothballed prior to the Transaction and only started to operate after the Transaction due to the provision of technical assistance and granulator feed (on commercial terms) from EMR.⁹⁶²

⁹⁶¹ [REDACTED].

⁹⁶² [REDACTED].

Asset risk

14.129 We consider that there is relatively limited risk of deterioration of the Hitchin site and the shredder during the divestiture process due to the existing monitoring arrangements already in place pursuant to the initial enforcement order.

14.130 We understand that the Hitchin operations are relatively separate from the rest of MWR's operations and that most relevant staff are based on site. We consider that the standalone nature of the Hitchin operations would be strengthened by the inclusion of MWR commercial staff in the divestiture package.

Purchaser risk

14.131 The main and third parties told us that there would be a sufficiently large buyer pool for MWR's Hitchin operations. Therefore, we do not consider that there is a high degree of purchaser risk in relation to the divestiture of MWR's Hitchin operations.

Conclusion

14.132 Our view is that the divestiture of MWR's Hitchin site with all associated plant and equipment and personnel connected to the site, as well as the commercial staff from MWR (not based at Hitchin) required to maintain commercial relationships, would be an effective package. However, we think that the purchaser would require a feeder site network or be able to demonstrate that it did not require a feeder site to be an effective competitor. If the purchaser does not have a network or is unable to demonstrate that it does not require a network, the divestiture package would also need to include MWR's London business, excluding the the granulator at Edmonton.

Purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and North East and the sale of NPS to UK customers

14.133 In this section, we assess the effectiveness of the divestiture of all sites, assets, contracts, rights and staff necessary to carry out the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East, and the sale of NPS to UK customers, by considering the composition of the divestiture package, the potential adverse impact of the divestiture process on MWR's assets and the likely purchasers of these operations.

Composition risk

14.134 The main issues in relation to the composition of a divestiture remedy to address the SLC in relation to the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and North East, and the sale of NPS to UK customers, are:

- (d) the appropriate MWR sites in the North East and West Midlands to be included in the package;
- (e) whether it would be acceptable to include EMR sites in place of MWR sites;
- (f) whether the Telford Lightmoor Road site, the mothballed Walsall site and/or the non-metal site at Cox's Lane should be included in the package;
- (g) whether the Newport site in Wales should be included (specifically to address the SLC in the sale of NPS to UK customers);
- (h) the staff, equipment and other assets that must be included; and
- (i) whether the divestiture should represent one package or separate packages for the West Midlands, North East, and the sales of NPS.

14.135 EMR proposed a divestiture remedy comprising one EMR or MWR site in each of the West Midlands and the North East, as well as relevant staff, supplier contracts and necessary assets (eg skips, transport and bins plus licences).

- *MWR sites*

14.136 We consider that to restore the competitive constraint imposed on EMR by MWR prior to the Transaction, the divestiture package should include all MWR staff and assets that served MWR's tendered contracts in the West Midlands (Cradley, Hockley, and Telford) and the North East (Seaham), as well as the contracts themselves.

- *North East*

14.137 Seaham is MWR's only site in the North East and it is responsible for [§] % of MWR's tendered business (see Appendix A, Table 3). Therefore, we consider it a necessary part of the divestiture package.

- *West Midlands*

14.138 Cradley is responsible for [REDACTED]% of MWR's tendered business (see Appendix A, Table 3), and therefore, we consider it a necessary part of the divestiture package. We note that tendered contracts are only [REDACTED] of the site's volumes (see Appendix, Table 3). However, we were unable to identify any practical method of separating the tendered contract business (and associated assets and staff) from the rest of the MWR business at the Cradley site (and neither was such a method proposed to us by the main parties or third parties).

14.139 Telford and Hockley both process small volumes and receive a low proportion of MWR's material from tendered contracts (see Appendix A, Table 3). However, we consider that both sites represent a necessary part of the divestiture package for the following reasons:

- (j) A number of suppliers and competitors stressed to us the need for metal recyclers to have multiple sites in the West Midlands, in order to provide flexibility and allow easy collection from multiple locations in the region.⁹⁶³
- (k) We also understand that Hockley was essential for serving the requirements of [REDACTED], as the site was used to keep materials separated from the metals on other sites, in order to avoid contamination.

- *NPS sales*

14.140 We note that MWR's sites in the West Midlands and North East account for over [REDACTED]% of MWR's purchases of NPS and over [REDACTED]% of its sales of NPS to UK customers. Therefore, we do not think it is necessary to include any other MWR sites in the divestiture package to address the SLC in relation to the sale of NPS to UK customers.

14.141 We consider that all of MWR's West Midlands sites should be included in the divestiture package for the following reasons:

- (a) Over [REDACTED]% of Cradley's volumes are NPS, accounting for almost [REDACTED]% of MWR's purchases of NPS and [REDACTED]% of its sales of NPS to UK customers (see Appendix A, Table 3).
- (b) Although Telford accounts for [REDACTED]% of MWR's purchases of NPS and [REDACTED]% of MWR's sales of NPS to UK customers and Hockley does not process NPS, we consider that multiple sites will enable the purchaser to

⁹⁶³ [REDACTED], [REDACTED], [REDACTED]

offer the flexibility expected by customers and suppliers in the West Midlands. Further, Hockley was used to keep materials separate from the metals on other sites, in order to avoid contamination.

- *Divestiture of EMR sites in place of MWR sites*

14.142 EMR proposed that it would be equally valid to include an EMR or MWR site in any divestiture package.

14.143 Our merger remedies guidelines state that a divestiture of a mixture of assets from both merger parties (a 'mix-and-match' approach) may create additional composition risks such that the divestiture package will not function effectively.⁹⁶⁴

14.144 We consider that composition risk will be increased by requiring EMR sites to serve the contracts currently served by the MWR sites, given the complexity of carving out the appropriate sites from the EMR business and integrating them into a new business structure. Therefore, we think that the divestiture package should only include MWR sites.

- *Telford Lightmoor Road, Walsall and Cox's Lane sites*

14.145 We think that it is not necessary to include the Telford Lightmoor Road, Walsall and Cox's Lane sites in the divestiture package.

14.146 We understand that Telford Lightmoor Road has been permanently closed by MWR due to noise complaints, the Walsall site was mothballed by MWR prior to the Transaction, and Cox's Lane is a non-metal site.

- *Newport site*

14.147 We did not find an SLC in relation to the purchasing of ferrous and non-ferrous scrap metals from tendered contracts in Wales. Therefore, we do not think that the Newport site should be included in the divestiture package unless mutually agreeable to EMR and the purchaser.

- *Staff, equipment and other assets*

14.148 We think that the divestiture package should include the staff, assets and other equipment involved in bidding for and serving MWR's tendered contracts in the West Midlands and the North East, as well as the contracts themselves. The package should also include the relevant staff based at

⁹⁶⁴ CC8, paragraph 3.12.

MWR's head office in Edmonton. We consider that this will effectively re-establish the structure of the market expected in the absence of the Transaction.

14.149 We understand that few staff are based in Wales and, as noted above, only small volumes of NPS pass through the Newport site. Therefore, we do not consider that it is necessary for the staff and assets at the Newport site to be included in the divestiture package.

- *Combined or separate West Midlands and North East divestiture packages*

14.150 We do not think that the divestiture of MWR's West Midlands and North East operations in two separate packages would be an effective remedy.

14.151 MWR's North East operation is not a standalone business. It does not have its own commercial team or administrative support, as it is commercially integrated with the West Midlands operations. Therefore, there are significant risks that it would not be attractive to purchasers as a standalone business on its own.

14.152 Further, our SLC finding in relation to the sale of NPS to UK customers concerned the loss of a competitor able to provide large volumes to customers, which could not be replicated by either the West Midlands or North East operations as standalone businesses. Therefore, divesting the North East and West Midlands operations separately would not re-establish the constraint imposed by MWR on EMR in the sale of NPS prior to the Transaction.

14.153 Our view is that the West Midlands and North East operations should be divested together in one package.

Asset risk

14.154 We consider the main risk to be the time it takes to divest MWR's West Midlands and North East operations and the adverse impact this may have on securing new contracts and maintaining existing contracts. We think that the divestiture of the operations in one package reduces this risk, although a residual risk remains in relation to the uncertainty caused by maintaining these operations, including staff and infrastructure, separate from the remaining MWR business during the divestiture process.

Purchaser risk

14.155 We think that the pool of potential purchasers may be small, given the regional nature of the business. However, we do not think the small size of the purchaser pool presents a risk to the effectiveness of the remedy. We consider that the divestiture package as described above would attract sufficient interest from purchasers, particularly those purchasers within the UK. [[X]] and [X]] told us that they would be interested in acquiring these operations. A number of respondents considered that the package would be too small to be of interest to foreign purchasers. However, EMR and one third party told us of possible specialist overseas interest.

Conclusion

14.156 We think that the divestiture of all staff, assets, contracts, and sites involved in bidding for and serving MWR's tendered contracts in the West Midlands and North East (prior to the Transaction) would represent an effective package.

Effectiveness of multiple packages

14.157 Having assessed the effectiveness of the divestiture packages in relation to the SLC in the purchasing of shredder feed in the South East, the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the West Midlands and the North East and the sale of NPS to UK customers, we now consider whether these packages would be effective if sold separately.

Composition Risk

14.158 As MWR is currently operated as one business with many integrated and overlapping elements, the divestiture of the business in several packages carries the risk that one or more of these packages will be too constrained or not properly configured to attract a suitable purchaser or may not allow the purchaser to operate as an effective competitor. However, we consider that there are likely to be a number of interested parties for each of the divestiture packages separately and the risk of one or both of the packages remaining unsold upon expiry of the divestiture period is low.

Asset Risk

14.159 MWR told us that, in its view, there already exists asset risk, given the post-Transaction integration that occurred prior to the imposition of the IEO. It stated that a long sale process will not provide the business with the certainty

it needs, given the impact that the hold separate arrangements have already had on its relationships with customers, suppliers and staff.⁹⁶⁵

14.160 Although the Parties are subject to hold separate arrangements and these arrangements are subject to oversight by a Monitoring Trustee, we consider that there is some risk of asset degradation during our investigation and the subsequent remedy implementation period for the following reasons:

- (a) Complexity: splitting the business into separate divestiture packages will divert senior management attention away from running the business, which may adversely impact MWR's trading performance.
- (b) [REDACTED].⁹⁶⁶ [REDACTED]
- (c) [REDACTED].
- (d) Financial performance of MWR: the uncertainty caused by an extended divestiture period may impact the financial and commercial strength of the business.

14.161 We consider that asset risk is somewhat mitigated by the following considerations:

- (a) The separation of MWR's Hitchin and London operations and divestiture of MWR's Hitchin operations and tendering and NPS operations in the West Midlands and the North East in two divestiture packages is not significantly more complex than full divestiture.
- (b) Supplier and customer relationships will transfer with the divested MWR operations and the relevant MWR employees.
- (c) There remain in place staff incentivisation schemes within MWR. Further, there is no significant additional uncertainty created by the divestiture of two packages compared to full divestiture.
- (d) EMR is required under the hold separate arrangements to maintain MWR as a viable business.

⁹⁶⁵ [REDACTED].

⁹⁶⁶ [REDACTED].

Purchaser risks

14.162 We do not consider that there is a high degree of purchaser risk in relation to either of the divestiture packages described above. We believe that there would be a number of interested parties in each of the packages.

Conclusion

14.163 We consider that partial divestiture is an effective remedy. We consider that the partial divestiture of MWR in either one or two packages are both feasible.

Conclusion on effectiveness of remedies

14.164 We have assessed the effectiveness of partial divestiture, full divestiture and the behavioural remedy proposed by EMR. We have concluded that full divestiture and partial divestiture are both effective remedies.

Assessment of the proportionality of effective remedies

14.165 We have concluded that full divestiture and partial divestiture would both be effective in addressing the SLC and any resulting adverse effects.

14.166 Having identified the two remedy options that would be effective in addressing the SLC, we must consider the costs of these remedies.⁹⁶⁷ In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that imposes the least cost or that is least restrictive.

14.167 Since the cost of divestiture is, in essence, avoidable (as it is open to merger parties to make merger proposals conditional on competition authorities' approval), the CMA will not, in the absence of exceptional circumstances, take account of costs or losses that will be incurred by the Parties as a result of a divestiture remedy.⁹⁶⁸ The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁹⁶⁹ If remedies extinguish any relevant customer benefits that may

⁹⁶⁷ CC8, paragraphs 1.9.

⁹⁶⁸ CC8, paragraphs 1.10.

⁹⁶⁹ CC8, paragraphs 1.11.

arise from the Transaction, then the amount of any benefits foregone may be considered to be a relevant cost of the remedy.⁹⁷⁰

Parties' views

14.168 EMR told us that the divestment of all (or substantially all) of MWR is not appropriate, because the CMA has not found an SLC in relation to the purchase of ferrous and non-ferrous scrap metal in the London region, and it is therefore not necessary for the CMA to consider remedial action with respect to any of MWR's London sites and assets (including Pinns Wharf).⁹⁷¹

14.169 EMR told us that any remedy package requiring the divestment of MWR's London sites and assets will be entirely disproportionate in terms of a distortion to market outcomes, compliance costs, the costs to the CMA and costs to third parties.⁹⁷²

14.170 EMR told us that the divestment of all MWR sites in the West Midlands and North East will be disproportionate, as MWR's purchases under tendered contracts account for only a small proportion of MWR's total purchases, and only a relatively small proportion of the volumes handled at MWR's sites in the West Midlands and North East relate to tendered contracts.⁹⁷³

14.171 MWR told us that as the CMA has not found an SLC in London, it would be appropriate for Edmonton and Neasden to be kept by EMR and not included in any divestiture package.⁹⁷⁴

14.172 MWR told us that its tendered business is a small part of MWR and a remedy that requires EMR to sell all sites in the North East and the West Midland will be disproportionate.⁹⁷⁵

Our view

14.173 We consider that partial divestiture would be less intrusive and hence a more proportionate remedy than full divestiture, as full divestiture would necessarily require the sale of MWR's London operations even though we have not found an SLC in this market.

⁹⁷⁰ CC8, paragraphs 1.10.

⁹⁷¹ [REDACTED].

⁹⁷² [REDACTED].

⁹⁷³ [REDACTED].

⁹⁷⁴ [REDACTED].

⁹⁷⁵ [REDACTED].

14.174 We consider that the level of intervention implied by a partial divestiture is justified, given the nature and extent of the SLC that we have found. We took this view for the following reasons:

- (a) We think that the likely detriment resulting from the SLCs that we have identified would be large - the merged entity will, by some margin, be the largest metal recycler in the UK and have large market shares in the markets where the SLCs have been found.
- (b) Divestiture is the usual approach to remedying SLC findings arising from anti-competitive mergers.
- (c) We do not think that there is a smaller divestiture package that would effectively address the SLCs that we have identified.
- (d) There is no evidence that relevant customer benefits would be lost by divestiture. Neither EMR nor MWR submitted that there were any RCBs which we should take into account when assessing remedies.
- (e) We consider that the divestiture of all of MWR's operations in the West Midlands and the North East is proportionate for the following reasons:
 - (i) In the North East, Seaham is responsible for [X] % of MWR's tendered business.
 - (ii) In the West Midlands, Cradley is responsible for [X] % of MWR's tendered business. Although Telford and Hockley both process small volumes and receive a low proportion of MWR's material from tendered contracts, we consider that both sites represent a necessary part of the divestiture package, as they will provide the purchaser with the necessary flexibility to effectively service the region.
 - (iii) The divestiture of all MWR's operations in the regions re-establishes the competitive conditions in the market prior to the Transaction.
 - (iv) The separation of MWR's tendered and non-tendered operations is not feasible.

Remedy Implementation

14.175 In this section, we outline the key considerations in relation to the implementation of partial divestiture.

14.176 An effective divestiture process should protect the competitive potential of the divestiture package and enable a suitable purchaser to be secured in

an acceptable timescale. The process should also allow prospective purchasers to make an appropriately informed acquisition decision.⁹⁷⁶

Preparation for divestiture

14.177 [REDACTED].

14.178 [REDACTED]. We consider that the following issues need to be addressed prior to divestiture:

(a) [REDACTED].

(b) EMR has decommissioned Hockley – we will require that this site is re-commissioned.

14.179 In addition, MWR is currently dependent upon EMR's IT systems head office functions (eg Legal, HR and Finance), and MWR no longer has any debt facilities in place to manage working capital.⁹⁷⁷ We will expect any purchaser to be able to demonstrate to us that it is able to provide these functions, although a transitional support agreement from EMR may be needed.

14.180 Also, as part of the terms of the Transaction, certain employees were subject to non-compete clauses (over and above those contained in their employment terms). Some of these clauses may need to be varied or removed and we will consider this as part of the final terms of the divestiture.

14.181 We consider the most effective method of implementing the divestiture of the tendering and NPS business in the West Midlands and North East will be to carve out of that business everything that is not being divested so that the smaller MWR business contains only the divestiture package. This will reduce the risk that any elements of the business (eg staff or customer contracts) are not transferred to the new owner.

Divestiture timetable

14.182 The CMA's guidance on *Merger Remedies* (CC8) states that the CMA will state in its final report the period in which the parties should achieve effective disposal of a divestiture package to a suitable purchaser (ie the 'initial divestiture period'). However, this period may be excised from the report if it is considered that disclosure to third parties may undermine the divestiture process. The length of this period will depend on the

⁹⁷⁶ CC8, paragraph 3.20.

⁹⁷⁷ [REDACTED]

circumstances of the merger but will normally have a maximum duration of 6 months. The CMA, when determining the initial divestiture period, will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence. The initial divestiture period may be extended by the CMA where this is necessary to achieve an effective disposal.⁹⁷⁸

14.183 EMR submitted that a realistic timescale for divestment will be between 9 and 12 months. In the hearing, it stated that the divestment process will take [REDACTED].

14.184 MWR submitted that divestment will take around 6 months.⁹⁷⁹ It stated that there is already the necessary documentation and infrastructure (eg virtual data room) in place from the original sales process, which simply needs updating. MWR did not consider that there will need to be a significant due diligence process or any regulatory issues that could delay the process. It did, however, submit that it will need around 3 months to get the business ready for sale.⁹⁸⁰

14.185 One third party ([REDACTED]) told us that an appropriate divestment period could be 3-6 months.

14.186 We consider that a period of [REDACTED] following agreement of Final Undertakings is sufficient to ensure an effective divestiture process.

14.187 We note that there has been some integration which needs to be reversed, but that this has already happened to an extent under the IEO and processes are in place to continue this. We also note that a full sales process was undertaken by Bain Capital Credit LLP and as such, a data room with a significant amount of the necessary sales data is already in existence. Furthermore, some of the parties who were originally interested in acquiring MWR may well still be interested in the divestiture package(s) and so already have some knowledge of the business.

⁹⁷⁸ CC8, paragraph 3.24.

⁹⁷⁹ [REDACTED]

⁹⁸⁰ [REDACTED]

Protecting the divestiture package

14.188 The parties to a merger may have significant incentives to run down or neglect the business or assets of a divestment package in order to reduce future competitive impact.⁹⁸¹

14.189 To protect against asset risk, the CMA will generally seek undertakings from the relevant parties which impose a general duty to maintain the divestiture package in good order and not to undermine the competitive position of the package. The CMA will also generally require ‘hold-separate’ undertakings to mitigate asset risk. These will require the divestiture package to be held and managed separately from the retained business. The appointment of a ‘hold-separate’ manager or management team may also be required to manage the assets/business to be divested so as to maintain their competitiveness and separation from the retained assets.⁹⁸²

14.190 Since the start of the CMA investigation, the Parties have been subject to an IEO intended to keep the businesses separate and prevent asset degradation. Since February 2018, the Parties’ compliance with the IEO has been overseen by a Monitoring Trustee, acting on behalf of the CMA.

14.191 MWR told us that that the IEO will need to be kept and reviewed during the divestiture process. EMR did not see any need to change the Monitoring Trustee’s duties or the IEO.

14.192 [X] told us that that it is important that the Monitoring Trustee takes active steps to ensure that the Parties continue to operate as separate entities, maintain existing relationships with suppliers and that equipment is not allowed to degrade.⁹⁸³

14.193 Given the material risk of asset deterioration, we consider that the IEO and the Monitoring Trustee should be retained throughout the divestiture process. The Monitoring Trustee will also report to the CMA on EMR’s progress in organising and effecting the remedies.

Divestiture trustee

14.194 If the merger parties cannot procure divestiture to a suitable purchaser within the initial divestiture period, then, unless this period is extended by the CMA, an independent divestiture trustee may be mandated to dispose of the

⁹⁸¹ CC8, paragraph 3.21.

⁹⁸² CC8, paragraph 3.22.

⁹⁸³ [X].

package within a specified period, subject to prior approval by the CMA of the purchaser and the divestiture arrangements.⁹⁸⁴

14.195 If the CMA has reason to expect that the merger parties will not procure divestiture to a suitable purchaser within the initial divestiture period, the CMA may require that a divestiture trustee is appointed before the end of the initial divestiture period, or in unusual cases, at the outset of the divestiture period.⁹⁸⁵

14.196 We consider that it is appropriate that EMR is allowed to implement the remedy in the first instance. However, we reserve the right to appoint a divestiture trustee within the divestiture period to ensure that the remedy is implemented correctly and on a timely basis.

Assessment of purchaser suitability

14.197 The CMA requires the divestiture to a suitable purchaser based on the following criteria:

- (a) Independence: the purchaser should have no significant connection to the Parties that may compromise the purchaser's incentives to compete with the merged entity;
- (b) Capability: the purchaser must have access to appropriate financial resources, expertise and assets to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package to continue to develop as an effective competitor. The purchaser of MWR's Hitchin operations will be required to demonstrate to us that it has access to existing feeder sites in London or does not require feeder sites to be an effective competitor in the South East. If EMR is unable to demonstrate this, we will require EMR to include MWR's London sites (Edmonton and Neasden) and related administrative and commercial infrastructure in London in the divestiture package.
- (c) Commitment to relevant market: the CMA will wish to satisfy itself that the purchaser has an appropriate business plan and objectives for competing in the relevant market(s). While we would expect a suitable purchaser to be committed to sales in the UK we do not intend to restrict the volume that it exports.

⁹⁸⁴ CC8, paragraph 3.26.

⁹⁸⁵ CC8, paragraph 3.26.

(d) Absence of competitive or regulatory concerns: divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.⁹⁸⁶

14.198 We intend to consider the suitability of each potential purchaser on its own merits and on a case-by-case basis during the divestiture process.

14.199 Following our consultation on remedies with the Parties and third parties, our view is that there is a likely to be a number of potential purchasers interested in acquiring those parts of the MWR business included in the divestiture package.

14.200 We consider that existing presence and expertise and access to dock facilities in the market is desirable but not essential.

Further requirements

14.201 We also require the following to ensure an effective divestiture process:

- (a) Any conditions precedent to completion of the purchase agreement to be limited and not dependent on the discretionary action of any person (including the Parties).
- (c) The CMA to confirm that the final divestiture proposed by the Parties, including the identity of the purchaser(s), is effective in addressing the SLC and any adverse effects.

14.202 As we have decided that partial divestiture can be effected by EMR in one or two packages, to the extent that EMR chooses to divest the relevant MWR operations in two packages, we reserve the right to:

- (a) require divestiture in one package; and
- (b) include other assets up to and including all of MWR;

14.203 if we consider that EMR is not making sufficient and timely progress during the remedy implementation period. This includes where we consider that one or more of EMR's selected purchasers do not meet our purchaser suitability criteria set out above.

⁹⁸⁶ CC8, paragraph 3.15.

Decision on remedies

14.204 We have decided that partial divestiture of MWR in one or two packages is an effective and proportionate remedy to address the SLC we have found, and that the divestiture package should include the following:

- (a) MWR's Hitchin site with all associated staff and plant and equipment, including the 6000hp shredder on that site.
- (b) All sites, assets, contracts, rights and staff necessary to carry out the MWR tendering and NPS business in the West Midlands (Cradley, Hockley, and Telford) and the North East (Seaham), including the relevant staff at MWR's head office in Edmonton.

14.205 We have decided that the package must include:

- (a) some commercial staff from MWR (not based at Hitchin) if the purchaser requires this to maintain commercial relationships in the South East; and
- (b) MWR's London sites (Edmonton and Neasden) and related administrative and commercial infrastructure in London if the purchaser does not have existing feeder sites and is unable to demonstrate that it does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East.

14.206 We have decided that the following sites and assets can be excluded from the divestiture package:

- (a) Telford Lightmore Road.
- (b) Walsall.
- (c) Rookes.
- (d) Cox's Lane.
- (e) Newport.
- (f) Granulator at Edmonton.