

# Completed acquisition by Sims Group UK Limited of Morley Waste Traders Limited, Lord & Midgley Limited and Kaystan Holdings Limited

## Decision on relevant merger situation and substantial lessening of competition

**ME/6755/18**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 24 July 2018. Full text of the decision published on 29 August 2018.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality**

### Contents

	<i>Page</i>
SUMMARY .....	1
ASSESSMENT.....	3
Parties.....	3
Transaction .....	4
Procedure .....	4
Jurisdiction .....	4
Counterfactual.....	4
Frame of reference .....	5
Competitive assessment.....	10
Third party views.....	16
Decision .....	17

### SUMMARY

1. On 7 March 2018, Sims Group UK Limited (**Sims**) acquired Morley Waste Traders Limited, Lord & Midgley Limited and Kaystan Holdings Limited (collectively **Morley Waste**) (the **Merger**). Sims and Morley Waste are together referred to as the **Parties**.

2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Sims and Morley Waste is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. In the UK, the Parties overlap in the recycling of scrap metal at all levels of the supply chain, including collecting, processing and selling scrap metal. Both Parties purchase unprocessed scrap metal from a variety of sources and sell processed scrap metal to their customers (including via export).
4. The CMA assessed the impact of the Merger in the following frames of reference:
  - (a) the purchase of scrap metal (ferrous and non-ferrous) in the Hull area;
  - (b) the purchase of shredder feed within a 150km radius of the Morley Waste Reservoir Road site;
  - (c) the supply of ferrous processed scrap metal (excluding New Production Steel (**NPS**)) in the UK; and
  - (d) the supply of non-ferrous processed scrap metal in the UK.
5. The CMA assessed the horizontal unilateral effects of the Merger in each of these frames of reference.
6. With regard to the purchasing of scrap metal in the Hull area, the CMA found that, while both Parties have sites in Hull, their competitive interaction is limited, with Sims almost entirely purchasing processed scrap metal for export and Morley Waste almost entirely purchasing unprocessed scrap metal for processing. The CMA found no evidence to indicate that, absent the Merger, this situation would have changed. The CMA also found that several alternative competitors provide an effective competitive constraint on the Parties for the purchase of both unprocessed scrap metal and processed scrap metal in the Hull area. The CMA therefore concluded that the Merger will not result in a realistic prospect of a substantial lessening of competition (**SLC**) in the purchase of scrap metal (ferrous and non-ferrous) in the Hull area.
7. With regard to the purchase of shredder feed within a 150km radius of the Morley Waste Reservoir Road site, the CMA found that the Parties have moderate shares of supply by volume and are located far apart from each other. Moreover, there are several credible competitors located between the

Parties which will continue to constrain the Parties post-Merger. The CMA therefore concluded that the Merger will not result in a realistic prospect of an SLC in the purchase of shredder feed within a 150km radius of the Morley Waste Reservoir Road site.

8. With regard to the supply of both ferrous processed scrap metal (excluding NPS) and non-ferrous processed scrap metal in the UK, the CMA found that the Parties' combined shares of supply are low. Even within narrower segments for the supply of ferrous non-NPS processed scrap metal in either the Hull area or the West Yorkshire area, the CMA found that several third parties in these areas remain to sell to UK end-customers. The CMA therefore concluded that the Merger will not result in a realistic prospect of an SLC in the supply of either ferrous (excluding NPS) or non-ferrous processed scrap metal in the UK.
9. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

10. Sims, headquartered near Stratford upon Avon, is the UK subsidiary of Sims Metal Management Limited, a global metal and electronic waste recycler listed on the Australian Stock Exchange. Sims is involved in the collection, processing and sale of ferrous and non-ferrous metals in the UK and abroad. Sims operates over 30 sites in the UK involved in the scrap metal business, including a deep-sea export dock in Hull (the **Sims Hull Dock**), waste metal processing sites in Barnsley, Aston and Manchester, and a shredding site in Nottingham. Sims' UK turnover for the financial year ending 30 June 2017 was [REDACTED], [REDACTED] of which was derived from its metals recycling business.
11. Morley Waste is also a metal waste recycler, involved in the collection, processing and sale of ferrous and non-ferrous metals. Morley Waste's activities are focused in the Yorkshire region, where it operates seven sites (Gildersome, Ripponden, Huddersfield, Dewsbury, Castleford and two sites in Leeds), and in Hull, where it operates two sites (Harrow Street and Reservoir Road) and (until March 2018) a short-sea export dock (the **Goole Dock**). Morley Waste's turnover for the financial year ending 31 January 2017 was [REDACTED], all of which was derived in the UK.

## Transaction

12. Sims acquired Morley Waste pursuant to a Share Purchase Agreement entered into by the Parties on 7 March 2018.

## Procedure

13. The CMA's mergers intelligence function identified this transaction as warranting an investigation.<sup>1</sup>

## Jurisdiction

14. Each of Sims and Morley Waste is an enterprise. As a result of the Merger, these enterprises have ceased to be distinct.
15. The Parties overlap in the purchase of scrap metal in Hull. On the basis of publicly available data compiled by the Environment Agency (**EA**) for 2016, the Parties' combined share of purchase of scrap metal by volume (including internal transfers) in a 50km catchment area around Morley Waste's Reservoir Road site in Hull is [60-70]%, with an increment of [20-30]%. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
16. The Merger completed on 7 March 2018 and was made public on 8 March 2018. The four-month deadline for a decision under section 24 of the Act is 12 August 2018, following extension under section 25(2) of the Act.
17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 19 June 2018 and the statutory 40 working day deadline for a decision is therefore 13 August 2018. However, as the four month period under section 24 of the Act currently ends before this date, the deadline for the CMA to announce its decision whether to refer the Merger for a Phase 2 investigation is the final day of this four month period as extended, ie 12 August 2018.

## Counterfactual

19. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the

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<sup>1</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions that existed on 6 March 2018.<sup>2</sup>

20. In the present case, Sims submitted that the appropriate counterfactual is the pre-Merger conditions. However, Sims also submitted that Morley Waste served notice to terminate its lease of Goole Dock on 28 February 2018 in light of the imminent sale to Sims. Sims further submitted that Goole Dock ceased to receive material on 7 March 2018 and that most equipment was removed from the site on 22 March 2018.
21. The CMA believes that, absent the Merger, there is a realistic prospect that Morley Waste would not have terminated the Goole Dock lease and that the dock would have remained operational. The CMA further believes that Goole Dock remaining an operational export dock operated by Morley Waste is a more competitive counterfactual than the pre-Merger conditions.
22. For these reasons, the CMA has assessed the Merger against a counterfactual in which Morley Waste would not have terminated the Goole Dock lease, with the site remaining operational.

## **Frame of reference**

23. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>3</sup>
24. The Parties overlap in the recycling of scrap metal in Yorkshire and Hull. They operate at all levels of the supply chain, including purchasing, processing and selling scrap metal (with sales occurring both in the UK and abroad).

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<sup>2</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>3</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

25. The CMA most recently examined the market for metal recycling in the *EMR/MWR* investigation.<sup>4</sup>

### **Product scope**

#### *Purchase of scrap metal*

26. Sims submitted information to the CMA on the basis of a product frame of reference for the purchase of scrap metal (ferrous and non-ferrous), citing the CMA's approach in *EMR/SITA*<sup>5</sup> and *EMR/MWR*.
27. In the *EMR/MWR* Phase 2 PFs Report, the frame of reference adopted was the purchase of scrap metal (other than shredder feed), without further distinction between ferrous and non-ferrous scrap metal, or between unprocessed and processed scrap metal.<sup>6</sup> However, the CMA found that the conditions of competition are substantially different between the tendered contract segment and other purchases, as tendered contracts often involve relatively large volumes, and their suppliers have different characteristics and can be more difficult to serve than other scrap metal suppliers.<sup>7</sup>
28. In the present case, the CMA found that there are minimal overlaps between the Parties for tendered contracts as Morley Waste only competed in two competitive tenders for the purchase of scrap in the last two years. For this reason, the CMA did not need to consider a separate segmentation for tendered contracts.
29. In the present case, the CMA also considered whether the frame of reference for the purchase of scrap metal should be further segmented between unprocessed and processed scrap metal, recognising that no such distinction was adopted in the *EMR/MWR* Phase 2 PFs Report.
30. The CMA found that processed and unprocessed scrap are not demand-side substitutes, since unprocessed scrap is only purchased by metal recyclers, while processed scrap is ready to be sold to final customers in the UK and abroad. However, the CMA received evidence indicating that these products should be considered together based on supply-side factors.<sup>8</sup> The CMA was told by most of the Parties' competitors that they purchase both processed and unprocessed scrap metal at their yards on a regular basis. This is

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<sup>4</sup> CMA Phase 1 decision of 24 January 2018 (ME/6712-17), [Completed acquisition by European Metal Recycling Limited of CuFe Investments Limited](#) (the *EMR/MWR Phase 1 Decision*), and CMA Provisional Findings Report of 1 June 2018 (ME/6217/17), [Completed acquisition by Ausurus Group of Metal & Waste Recycling](#) (the *EMR/MWR Phase 2 PFs Report*).

<sup>5</sup> Office of Fair Trading decision of 7 March 2014 (ME/6240/13), [Completed acquisition by European Metal Recycling Limited of five sites and certain assets of SITA Metal Recycling Limited](#) (*EMR/SITA*).

<sup>6</sup> *EMR/MWR* Phase 2 PFs Report, paragraphs 6.46(a), 9.28(c) and 9.51(c).

<sup>7</sup> *EMR/MWR* Phase 2 PFs Report, paragraphs 6.48-57.

<sup>8</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17.

consistent with *EMR/MWR* which found that most metal recyclers accepted (and, in many cases, collected) all grades of ferrous and non-ferrous metal and that most purchasers of scrap metal can process unprocessed scrap (ie they have the necessary processing equipment).

31. On the basis of this evidence, and consistent with *EMR/MWR*, the CMA has considered the purchase of processed and unprocessed scrap metal (other than shredder feed) within the same frame of reference, taking relevant differences into account where appropriate in its competitive assessment.

#### *Purchase of shredder feed*

32. Sims submitted information to the CMA on the basis of a separate frame of reference for the purchase of shredder feed, citing the CMA's approach in *EMR/MWR*.<sup>9</sup>
33. In the present case, the CMA has not found any evidence to indicate that this frame of reference is not appropriate and has therefore assessed the effects of the Merger in the purchase of shredder feed.

#### *Supply of processed scrap metal*

34. Sims submitted information to the CMA on the basis of separate frames of reference for the supply of ferrous processed scrap metal and the supply of non-ferrous processed scrap metal, citing the CMA's approach in *EMR/SITA* and *EMR/MWR*.
35. In the present case, the CMA has not found any evidence to indicate that this approach is not appropriate and has therefore distinguished as separate frames of reference the supply of ferrous processed scrap metal and the supply of non-ferrous processed scrap metal.
36. In the *EMR/MWR* Phase 2 PFs Report,<sup>10</sup> the CMA considered that sales of NPS should form a separate product frame of reference within the supply of ferrous processed scrap metal as some customers cannot substitute NPS for other grades of ferrous metal, and only a limited set of metal recyclers can access the main sources of NPS.
37. In the present case, the CMA therefore considered whether the product frame of reference for the supply of ferrous processed scrap metal should be segmented further on the basis of metal grade. However, the CMA found that the overlap between the Parties in the supply of NPS is minimal as Morley Waste only purchased around [§] tonnes of NPS per annum in the last two

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<sup>9</sup> *EMR/MWR* Phase 1 Decision, paragraph 43.

<sup>10</sup> *EMR/MWR* Phase 2 PFs Report, paragraph 6.70.

years.<sup>11</sup> For this reason, and consistent with *EMR/MWR*, the CMA found that the narrowest plausible frame of reference in which the Parties overlap is the supply of non-NPS ferrous processed scrap metal. The supply of NPS is not considered further in this decision.

38. Therefore, and on a cautious basis, the CMA assessed the effects of the Merger in the supply of (i) ferrous processed scrap metal (excluding NPS) and (ii) non-ferrous processed scrap metal.

#### *Conclusion on product scope*

39. For the reasons set out above, the CMA has assessed the impact of the Merger in the following product frames of reference:

- the purchase of scrap metal (ferrous and non-ferrous);
- the purchase of shredder feed;
- the supply of ferrous processed scrap metal (excluding NPS); and
- the supply of non-ferrous processed scrap metal.

#### ***Geographic scope***

##### *Purchase of scrap metal*

40. Sims submitted shares of supply for the purchase of scrap metal within 50km catchment areas around overlapping Sims and Morley Waste sites, in line with previous cases,<sup>12</sup> while noting that a significant proportion of purchases were made over a wider area.
41. Based on the Parties' site locations, the Parties compete for the purchase of scrap metal in the West Yorkshire and Hull areas. The CMA has therefore considered the purchase of scrap metal in these two areas, both within 50km catchment areas around Morley Waste's sites and, on a cautious basis, over larger distances. In the present case the CMA has not had to conclude on the precise geographic frame of reference as there is no competitive harm on any plausible basis.
42. With regard to the West Yorkshire area, the CMA estimated shares of supply using EA data on the volume of purchases reported by each recycler. The CMA found that the Parties have combined shares of purchases ranging from

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<sup>11</sup> The *EMR/MWR* Phase 2 PFs Report estimates that the total known volumes of NPS in the UK were around 1.1 million tonnes in 2017 (*EMR/MWR* Phase 2 PFs Report, Table 10.1).

<sup>12</sup> *EMR/SITA*, *EMR/MWR* Phase 1 Decision and *EMR/MWR* Phase 2 PFs Report.



[5-10]% to [5-10]% in the 50km catchment areas around each of the seven Morley Waste sites in West Yorkshire.<sup>13</sup> The CMA also found several credible competitors in these areas with equivalent or higher market shares than the Parties (including EMR, S. Norton and CF Booth). On the basis of this evidence, the CMA did not identify any competition concerns in the purchase of scrap metal in the West Yorkshire area and this frame of reference is not considered further in this decision.

#### *Purchase of shredder feed*

43. Morley Waste operates one shredder at its Reservoir Road site where it carries out all of its shredding work. The nearest Sims shredder site is in Nottingham, 109km from Morley Waste's Reservoir Road site.
44. In the *EMR/MWR* Phase 2 PFs Report, the CMA adopted a geographic frame of reference based on the 80% catchment area around a shredder site.<sup>14</sup>
45. In the present case, the Parties submitted that the 80% catchment area for the Sims Nottingham site is around [150-200km] and for the Morley Waste Reservoir Road site is around [150-200km].<sup>15</sup>
46. On the basis of this evidence, and on a cautious basis, the CMA has assessed the purchase of shredder feed within a 150km catchment area around the Reservoir Road site, but has also considered wider and smaller areas. In the present case, the CMA has not had to conclude on the precise geographic frame of reference, as there is no competitive harm on any plausible basis.

#### *Supply of ferrous (excluding NPS) and non-ferrous processed scrap metal*

47. Sims submitted that the frames of reference for the supply of ferrous processed scrap metal and non-ferrous processed scrap metal are at least UK wide.
48. In the *EMR/MWR* Phase 2 PFs Report, the CMA adopted a nationwide frame of reference for the sale of both ferrous and non-ferrous processed scrap metal, but took transport costs into account when assessing the closeness of competition between suppliers.<sup>16</sup>

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<sup>13</sup> These shares were calculated on the basis of data reported to the EA in a 50km straight line catchment area around each Morley Waste site in West Yorkshire, excluding, on a cautious basis, recyclers that only purchase end of life vehicles.

<sup>14</sup> *EMR/MWR* Phase 2 PFs Report, paragraph 6.99.

<sup>15</sup> Sims submitted that, with respect to the Reservoir Road site, it did not have sufficient supplier data to calculate the 80% catchment area. As such, Sims estimated the catchment area of the site using the furthest away of the site's largest 20 suppliers.

<sup>16</sup> *EMR/MWR* Phase 2 PFs Report, paragraph 6.124.

49. In the present case, most third-party evidence did not indicate a narrower geographic segmentation, with most competitors indicating that they routinely sell processed scrap metal to various exporters and to end-customers across the UK. One domestic customer of the Parties submitted that its catchment area for the purchase of processed scrap metal (including non-NPS ferrous processed scrap metal) is [140-160 km], while another indicated that it purchases non-NPS processed scrap metal from across the whole of the UK.
50. On the basis of this evidence, the CMA has assessed the impact of the Merger on the supply of ferrous (excluding NPS) processed scrap metal and the supply of non-ferrous processed scrap metal within a UK frame of reference. The CMA has considered within its competitive assessment the Parties' positions in West Yorkshire and Hull.

### ***Conclusion on frame of reference***

51. For the reasons set out above, the CMA has assessed the impact of the Merger in the following frames of reference:
- the purchase of scrap metal (ferrous and non-ferrous) in the Hull area;
  - the purchase of shredder feed within a 150km radius of the Morley Waste Reservoir Road site;
  - the supply of ferrous processed scrap metal (excluding NPS) in the UK; and
  - the supply of non-ferrous processed scrap metal in the UK.

## **Competitive assessment**

### ***Horizontal unilateral effects***

52. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>17</sup> In purchasing markets, the CMA considers whether businesses, local authorities and individuals might be paid less by the merged entity for their products. Horizontal unilateral effects are more likely when the merging parties are close competitors.

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<sup>17</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

53. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the frames of reference set out above.

*Purchase of scrap metal (ferrous and non-ferrous) in the Hull area*

*Closeness of competition*

54. Sims and Morley Waste overlap in the purchase of scrap metal (ferrous and non-ferrous) in the Hull area, where Sims operates the Sims Hull Dock, and Morley Waste operates two scrap metal waste recycling sites,<sup>18</sup> as well as Goole Dock. However, the CMA has found that the Parties' competitive interaction for the purchase of scrap metal is very limited. Sims submitted that, in 2017, [90-100]% of scrap metal purchases by the Sims Hull Dock were of processed scrap metal, while [90-100]% of Morley Waste's purchases in the Hull area were of unprocessed scrap metal.
55. Sims submitted that it only received incidental volumes of unprocessed scrap at the Sims Hull Dock (a total of [X] tonnes in 2017), representing only [0-10]% of its purchases by volume. Sims submitted that the Sims Hull Dock had no fixed processing equipment, only utilising a hired mobile shear every two to three months to process very small amounts of unprocessed scrap metal. It therefore had very limited capacity to process scrap metal in the Hull area. Sims told the CMA that the purpose of the Sims Hull Dock is as an export facility for processed scrap.
56. The CMA understands that Sims' nearest site with processing facilities is located in Lincolnshire (60km from the Sims Hull Dock and 62km from the Reservoir Road site). The CMA found no evidence to indicate that, absent the Merger, Sims would have begun to process scrap metal in the Hull area.
57. The CMA also received evidence that the Parties' suppliers in Hull differ, with one third party telling the CMA that, prior to the Merger, Sims was unable to buy unprocessed scrap in Hull, instead having to rely on the supply of processed material from other merchants.
58. By contrast, Morley Waste only purchases very limited amounts of processed scrap metal in the Hull area. In 2017, [90-100]% of Morley Waste's purchases in the Hull area were for unprocessed scrap metal, which it then processed at its two sites in Hull, with the remaining [0-10]% including products such as metal turnings (ie pieces of metal that are the debris or waste resulting from

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<sup>18</sup> The Morley Waste sites in Hull are the Reservoir Road site, which processes around [X] tonnes of ferrous and [X] tonnes of non-ferrous metal per annum, and the Harrow Street site, which processes around [X] tonnes of non-ferrous metal per annum.

manufacturing processes). Sims submitted that apart from Goole Dock, in 2017, Morley Waste did not purchase any processed scrap metal from third parties in Hull.

59. Morley Waste's Goole Dock site purchases almost entirely inter-company processed scrap metal from Morley Waste's processing sites, both those in Hull and in West Yorkshire. In 2017, Goole Dock purchased only around [REDACTED] tonnes of processed scrap metal from third parties (out of a total of [REDACTED] tonnes).<sup>19</sup> Sims submitted that [REDACTED].
60. Sims also submitted that, prior to its closure, Morley Waste's Goole Dock was operating near its maximum capacity ([REDACTED] tonnes per annum), entirely serving its own inter-company demand for export. Goole Dock therefore had very limited capacity through which Morley Waste could seek to export processed scrap from other metal recyclers. In support of this view, the CMA has found no evidence that Morley Waste was seeking to purchase processed scrap for export or that it had plans to do so.
61. Since Sims' activities in the Hull area consist almost entirely of the purchase of processed scrap metal for export, while Morley Waste's purchases are almost entirely of unprocessed scrap metal for processing, and the CMA has found no reason to believe this situation is likely to change, the CMA believes that the Parties are not close competitors in the purchase of scrap metal in the Hull area.

#### *Alternative purchasers*

62. With regard to the purchase of unprocessed scrap metal, two third parties told the CMA that there were no credible buyers in the Hull area other than the Parties;<sup>20</sup> however, most third-parties identified at least one alternative to the Parties, including EMR, John Brocklesby and Ward Recycling. Although some of these potential buyers are located just outside the 50km catchment areas around the Parties' sites, the CMA believes that these buyers will constrain the Parties to some extent post-Merger, particularly in light of submissions from the Parties and some third parties that some of their purchases of unprocessed scrap metal are from further than 50km away.
63. With regard to the purchase of processed scrap metal, the CMA considered the alternatives available to a seller of processed scrap in the Hull area. The CMA noted that, in relation to export facilities, another deep-sea dock started

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<sup>19</sup> Morley Waste entered into the lease for Goole Dock in December 2016. As set out above, notice to terminate the lease was served in February 2018.

<sup>20</sup> One of these third parties, however, also said that it only sold around [REDACTED] of its unprocessed scrap metal to the Parties' sites in Hull.

operating in Immingham (13km from the Sims Hull Dock) in April 2018. Furthermore, the CMA received evidence that the catchment area for the purchase of processed scrap metal exceeds 50km:

- (a) Sims' data showed that more than [50-60]% of its purchases at the Hull dock were made from further than 50km away. Indeed, Sims submitted that the Hull dock purchases (non-intercompany) processed scrap from some merchants located more than [150-200km] away.
- (b) Some competing buyers of processed scrap metal confirmed that they regularly purchase processed scrap metal from further than 50km away. For example, [X] submitted that its catchment area for processed scrap metal exceeds [70-90km]; [X] submitted that it regularly purchases processed scrap metal from [120-140km] away; and [X] submitted that it purchases processed scrap metal from [150-170km] away. Some buyers such as [X] and [X] submitted that they purchase processed scrap metal on a nationwide basis.
- (c) Two third-party suppliers of processed scrap metal said that, from their sites in the area, they regularly sell their processed scrap metal into both Hull and Liverpool.

- 64. On the basis of this evidence, the CMA believes that the Parties will be constrained in their purchase of processed scrap metal to some extent by export docks outside of the 50km catchment area (such as those located in Tyne, Teesport and Liverpool).
- 65. Some suppliers of processed scrap metal also said that they used, or would consider, alternative routes to market, such as container exports or domestic sales to UK end-customers.
- 66. Most third parties named several competitors to the Parties for the purchase of processed scrap metal in the Hull area, including EMR, Ward Recycling, Metal and Waste Recycling, S. Norton, Ron Hull and CF Booth.
- 67. For these reasons, the CMA believes that alternative competitors provide an effective competitive constraint on the Parties for the purchase of both unprocessed scrap metal and processed scrap metal in the Hull area.

*Conclusion on the purchase of scrap metal (ferrous and non-ferrous) in the Hull area*

- 68. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the purchase of scrap metal in the Hull area.

### *Purchase of shredder feed*

69. Morley Waste operates a shredder at its Reservoir Road site in Hull. Sims' only shredder within a 150km catchment area of this site is in Nottingham, 109km away. This considerable distance between the Parties' shredder sites suggests that they are not particularly close competitors for the purchase of shredder feed.
70. Sims submitted a list of competing metal processors with a shredder within a 150km radius of Morley Waste's Reservoir Road site. Based on EA data<sup>21</sup> for 2016, the CMA estimated that the Parties' shares in the purchase of shredder feed in this catchment area are around [10-20]% for Sims and [5-10]% for Morley Waste.
71. The CMA also found that there are number of credible competing shredder sites (including EMR in Leeds and CF Booth in Rotherham) located closer to Morley Waste's Reservoir Road site than Sims' shredder site in Nottingham. The CMA believes that these competitors will constrain the merged entity post-Merger.
72. While some third parties expressed concerns that the Merger would increase concentration in the shredder market, third parties generally indicated that there were several credible alternatives available in the area, including EMR, Mettalis, Briggs Metal, Ward Recycling and BW Riddle.
73. Given the Parties' moderate combined share of supply, the relatively large distance between their shredder sites and the constraints imposed on the Parties by other competitors post-Merger, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the purchase of shredder feed within a 150km radius of the Reservoir Road site.

### *Supply of ferrous (excluding NPS) and non-ferrous processed scrap metal in the UK*

74. The CMA found that its competitive assessment of the effects of the Merger in the supply of ferrous (excluding NPS) and non-ferrous processed scrap metal did not differ materially between these two frames of reference. It therefore presents these assessments together.

#### *National supply*

75. Sims submitted that, in *EMR/MWR*, the CMA found that Sims had a share of supply of between 0% and 5% for each of ferrous processed and non-ferrous

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<sup>21</sup> While the EA data does not distinguish between the purchase of shredder feed and other scrap metal, the CMA considers that these shares of supply are indicative of the size of the Parties' activities.

processed scrap metal in the UK.<sup>22</sup> Sims further noted that Morley Waste did not feature in the CMA's analysis in *EMR/MWR*, and that Morley Waste is a smaller business than Sims.

76. In *EMR/MWR*, the CMA estimated the total market size for ferrous sales (excluding NPS) to UK customers to be 1,749,762 tonnes.<sup>23</sup> On this basis, Sims' and Morley Waste's national shares of supply would be [0-5]% and [0-5]% respectively. With regard to the market for non-ferrous sales to UK customers, the CMA estimated that the total market size was [X] tonnes and, on this basis, Sims' and Morley Waste's share of supply would be [10-20]% and [0-5]% respectively.
77. The CMA found that around [0-5]% of Sims' and around [10-20]% of Morley Waste's sales of ferrous (excluding NPS) processed scrap metal were to end customers in the UK, with the rest being exported or sold to other merchants.
78. The CMA found that around [20-30]% of Sims' and [60-70]% of Morley Waste's sales of non-ferrous processed scrap metal were to end customers in the UK, with the rest being exported or sold to other merchants. The CMA noted that, although Morley Waste sells a comparatively higher proportion of its non-ferrous scrap metal in the UK, it nonetheless achieves less than [X] of Sims' revenues from non-ferrous scrap metal sales in the UK due to its considerably smaller size.
79. The CMA believes that, in light of the Parties' low shares of supply, and the small increment arising from the Merger, sufficient competitors will remain to constrain the merged entity post-Merger in the supply of both ferrous (excluding NPS) and non-ferrous processed scrap metal in the UK.

*Supply of ferrous non-NPS processed scrap metal in each of the Hull and West Yorkshire areas*

80. Given some limited evidence of a possible narrower frame of reference for the supply of ferrous non-NPS processed scrap metal (see paragraph 49), on a cautious basis the CMA also considered a narrower segment for this supply locally in the Hull and West Yorkshire areas.
81. One third party submitted that it purchased [X]% of its non-NPS processed scrap metal from the Parties. This third party expressed the concern that the Merger would [X]. This third party, which is based in [X], submitted that it purchased processed scrap metal in a catchment area of [X]. No other third party raised concerns about the supply of ferrous processed scrap metal,

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<sup>22</sup> *EMR/MWR* Phase 1 decision, Table 7 and Table 8.

<sup>23</sup> *EMR/MWR* Phase 2 PFs Report, Table 12.1.

including non-NPS processed scrap metal, in either the Hull or West Yorkshire areas.

82. The CMA found that there are other suppliers of ferrous non-NPS processed scrap metal in the Hull and West Yorkshire areas, including, for example, [X]. A number of competitors also confirmed that they had sold or would consider selling processed scrap metal to UK end-customers, such as [X], in the Hull and West Yorkshire areas.

*Conclusion on the supply of ferrous (excluding NPS) and non-ferrous processed scrap metal in the UK*

83. For the reasons set out above, the CMA believes that the Parties' combined shares of supply of both ferrous processed scrap metal (excluding NPS) and non-ferrous processed scrap metal in the UK are low; and even within narrower segments for the supply of ferrous non-NPS processed scrap metal in either the Hull area or the West Yorkshire area, several third parties remain to sell to UK end-customers. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of ferrous (excluding NPS) processed scrap metal or non-ferrous processed scrap metal in the UK.

**Barriers to entry and expansion**

84. Entry, or the expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.<sup>24</sup>
85. In the present case, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

**Third party views**

86. The CMA contacted suppliers, customers and competitors of the Parties.
87. Third party comments have been taken into account where appropriate in the competitive assessment above.

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<sup>24</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.



## **Decision**

88. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets in the UK.
89. The Merger will therefore **not be referred** under section 22(1) of the Act.

**Andrew Wright**  
**Director of Mergers**  
**Competition and Markets Authority**  
**24 July 2018**