

COMPLETED ACQUISITION BY AUSURUS GROUP LTD, THROUGH ITS SUBSIDIARY EUROPEAN METAL RECYCLING LIMITED, OF CUFE INVESTMENTS LIMITED

Notice of proposal to accept final undertakings pursuant to sections 41 and 82 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed final undertakings

Background

1. On 7 February 2018, pursuant to section 22 of the Enterprise Act 2002 (the Act), the Competition and Markets Authority (CMA) referred for an in-depth phase 2 investigation the completed acquisition by Ausurus Group Ltd (**Ausurus**) (through its subsidiary European Metal Recycling Limited (EMR)) of CuFe Investments Limited (**CuFe**), including its wholly-owned subsidiary Metal & Waste Recycling Limited (MWR) (the Transaction).
2. On 14 August 2018, pursuant to section 38 of the Act, the CMA published a report (**the Final Report**) concluding that:
 - (a) the Transaction has resulted in the creation of a relevant merger situation;
 - (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the markets for 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; the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the North East; and in sales of new production steel (**NPS**) to UK customers, which may be expected to lead to adverse effects for customers;
 - (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
 - (d) the CMA considers that the partial divestment of MWR in one or two packages including the following elements would be an effective and proportionate remedy to the SLC and the adverse effects likely to arise from it:

- (i) MWR's Hitchin site with all associated staff and plant and equipment, including the 6000hp shredder on that site. In addition, if the purchaser does not have existing feeder sites and is unable to demonstrate to the CMA that it does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East, then MWR's London sites (Edmonton and Neasden) and related administrative and commercial infrastructure in London should be divested together with the Hitchin site and associated staff and plant and equipment.
 - (ii) All sites, assets, contracts, rights and staff necessary to carry out the purchasing of ferrous and non-ferrous scrap metals under tendered contracts and the sale of NPS to UK customers in the West Midlands (Cradley, Hockley, and Telford) and the North East (Seaham), including the relevant staff at MWR's head office in Edmonton and, if the purchaser requires this to maintain commercial relationships, some commercial staff from MWR (not based at Hitchin).¹
- (e) undertakings should be given to the CMA or, where undertakings are not agreed, an order should be made to give effect to the remedy identified by the CMA in chapter 14 of the Final Report (**the Remedy**), namely, the partial divestment of MWR in one or two packages including the following:
3. The CMA has reached agreement with Ausurus, CuFe, EMR and MWR (**the Parties**) as to the terms of the Final Undertakings for the purpose of remedying, mitigating or preventing the SLC it has identified and any adverse effects arising from it. The proposed undertakings are attached to this Notice.

Notice of proposal to accept undertakings

4. The CMA now hereby gives notice of the proposed undertakings under paragraph 2 of Schedule 10 of the Act and that:
- (a) the CMA proposes to accept the annexed proposed undertakings; and
 - (b) the proposed undertakings seek to address the SLC identified in the Report and any adverse effects arising from it.

¹ The following MWR sites and assets can be excluded from the package(s): Telford Lightmore Road; Walsall; Rookes; Cox's Lane; Newport; the granulator at Edmonton; and Edmonton and Neasden if the purchaser of the Hitchin site (and all associated staff and plant and equipment) has existing feeder sites or the CMA is satisfied that the purchaser of the Hitchin site (and all associated staff and plant and equipment) is suitable and does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East.

5. The CMA invites written representation on the proposed undertakings from any person or persons who wish to comment. Representations should reach the CMA by **5pm on 23 October 2018** (15 days starting on the date of the publication of this Notice) and should be addressed to:

Dipesh Shah
EMR/MWR Merger
Competition and Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

or by email to dipesh.shah@cma.gov.uk

6. The CMA will consider any written representations made in accordance with this Notice and may make modifications to the proposed undertakings as a result. In the absence of any written representations, or in the event that the CMA decides, on consideration of representation made and not withdrawn, not to amend the proposed undertakings, the CMA proposes to accept the undertakings in their present form pursuant to section 82 of the Act. If the CMA considers that any written representation necessitates any material change to the proposed undertakings, the CMA will give notice of the proposed modifications.
7. Once accepted, the final undertakings may be varied, superseded or released by the CMA under section 82(2) of the Act.
8. This Notice and a non-confidential version of the proposed undertakings will be published on the CMA website.

Signed by authority of the CMA

Lesley Ainsworth
Inquiry Chair
9 October 2018

COMPLETED ACQUISITION BY AUSURUS GROUP LTD, THROUGH ITS SUBSIDIARY EUROPEAN METAL RECYCLING LIMITED, OF CUFE INVESTMENTS LIMITED

Final Undertakings given by Ausurus Group Ltd, European Metal Recycling Limited, CuFe Investments Limited, and Metal & Waste Recycling Limited to the Competition and Markets Authority pursuant to Section 82 of the Enterprise Act 2002

Background

1. On 25 August 2017, Ausurus Group Ltd (**Ausurus**), acting through its subsidiary European Metal Recycling Limited (**EMR**), acquired the whole of the issued share capital of CuFe Investments Limited (**CuFe**), the holding company of Metal & Waste Recycling Limited (**MWR**) (**the Merger**).
2. On 11 September 2017, the Competition and Markets Authority (**CMA**) made an Initial Enforcement Order (**the IEO**), pursuant to section 72 of the Enterprise Act, for the purposes of preventing pre-emptive action.
3. On 7 February 2018, the Merger was referred by the CMA for a phase 2 investigation pursuant to section 22 of the Act (**the Reference**) to determine, pursuant to section 35 of the Act:
 - (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 in any market or markets in the United Kingdom (**UK**) for goods or services.
4. On 23 February 2018, the CMA issued a direction, pursuant to paragraph 10 of the IEO, for the appointment of a monitoring trustee (**the Monitoring Trustee**) to monitor compliance with the IEO.
5. On 14 August 2018, the CMA published a report (**the Final Report**) concluding that:
 - (a) the completed acquisition by Ausurus of CuFe has resulted in the creation of a relevant merger situation;

- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the markets for 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; the purchasing of ferrous and non-ferrous scrap metals under tendered contracts in the North East; and in sales of new production steel (**NPS**) to UK customers, which may be expected to lead to adverse effects for customers;
- (c) the CMA should take action to remedy the SLC and the adverse effects likely to arise from it; and
- (d) undertakings should be given to the CMA or, where undertakings are not agreed, an order should be made to give effect to the remedy identified by the CMA in chapter 14 of the Final Report (**the Remedy**), namely, the partial divestment of MWR in one or two packages including the following:
 - (i) MWR's Hitchin site with all associated staff and plant and equipment, including the 6000hp shredder on that site. In addition, if the purchaser does not have existing feeder sites and is unable to demonstrate to the CMA that it does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East, then MWR's London sites (Edmonton and Neasden) and related administrative and commercial infrastructure in London should be divested together with the Hitchin site and associated staff and plant and equipment.
 - (ii) All sites, assets, contracts, rights and staff necessary to carry out the purchasing of ferrous and non-ferrous scrap metals under tendered contracts and the sale of NPS to UK customers in the West Midlands (Cradley, Hockley, and Telford) and the North East (Seaham), including the relevant staff at MWR's head office in Edmonton and, if the purchaser requires this to maintain commercial relationships, some commercial staff from MWR (not based at Hitchin).
- (e) the following MWR sites and assets can be excluded from the Divestment Package: Telford Lightmore Road; Walsall; Rookes; Cox's Lane; Newport; the granulator at Edmonton; and Edmonton and Neasden if the purchaser of the MWR Hitchin Assets has existing feeder sites or the CMA is satisfied that the purchaser of the MWR Hitchin Assets is suitable and does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East.

6. The implementation of the Remedy will be subject to the following safeguards:

- (a) EMR will be subject to regular reporting requirements.
 - (b) The Monitoring Trustee will monitor the progress of the implementation of the Remedy.
 - (c) The CMA will need to satisfy itself of the suitability of the potential purchasers of the Divestment Packages (see the Purchaser Approval Criteria in Annex 1).
 - (d) These Final Undertakings include a provision enabling the CMA to direct the appointment of a Divestment Trustee to effect the Final Disposal in accordance with the conditions set out at paragraphs 56 to 57.
7. The IEO ceases to be in force on the date of acceptance by the CMA, pursuant to section 82 of the Act, of these Final Undertakings.
8. Now Ausurus, EMR, CuFe and MWR hereby give to the CMA, severally on behalf of themselves and any entities they each control, the following Final Undertakings, pursuant to section 82 of the Act, for the purpose of remedying the SLC identified in the Final Report and any adverse effects resulting from it.

Interpretation

9. The Annexes form part of these Final Undertakings.
10. The purpose of these Final Undertakings is to give effect to the Remedy in the Final Report and they shall be construed accordingly.
11. Any word or expression used in these Final Undertakings or the recitals to these Final Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Final Report (as appropriate).
12. In these Final Undertakings, the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly. The word "severally" means separately for the entity alone and not jointly or for any other entity.
13. The headings used in these Final Undertakings are for convenience and shall have no legal effect.

14. References to any statute or statutory provision shall be construed as references to that statute or statutory provision as amended, re-enacted or modified whether by statute or otherwise stated.
15. References to recitals, paragraphs, subparagraphs, annexes and schedules are references to the recitals to, paragraphs and subparagraphs of, annexes and schedules to these Final Undertakings unless otherwise stated.
16. Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate.
17. The Interpretation Act 1978 shall apply to these Final Undertakings as it does to Acts of Parliament.

18. Further, in these Final Undertakings:

the Act	means the Enterprise Act 2002;
Affiliate	means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of section 26 of the Act;
Approved Agreement	means a binding agreement or agreements between the Vendor and an Approved Purchaser which provides for the transfer to the Approved Purchaser of all relevant key assets and rights as specified in the Divestment Package or Divestment Packages, whether by a sale of shares or assets, and which brings about Final Disposal;
Approved Purchaser	means any purchaser or purchasers approved by the CMA pursuant to the Purchaser Approval Criteria set out in Annex 1;
Approved Timetable	has the meaning given in paragraph 50;
Asset Maintenance Undertakings	means those undertakings set out in paragraphs 23 to 32;
Associated Person	means a person who is an associated person within the meaning of section 127 of the Act;

Ausurus	means Ausurus Group Limited (registered company number 09123549)
business	has the meaning given by section 129(1) and (3) of the Act;
the CMA	means the Competition and Markets Authority;
Commencement Date	means the date on which these Final Undertakings are accepted by the CMA in accordance with section 82(2)(a) of the Act;
confidential information	means business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary and non-public nature relating to the business of MWR;
control	includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;
CuFe	means CuFe Investments Limited (registered company number 08369020);
Direction	means written directions given to any or all of the Parties by the CMA as set out in paragraph 54;
Divestment Businesses	means the MWR Hitchin Business and the MWR NPS and Tendering Business;
Divestment Package	means the MWR Hitchin Business Divestment Package, or the MWR NPS and Tendering Business Divestment Package;
Divestment Packages	means the MWR Hitchin Business Divestment Package and the MWR NPS and Tendering Business Divestment Package;
Divestment Period	means a period of [X] beginning on the Commencement Date or such longer period as the CMA may approve on request;

Divestment Site	means each of the divestment sites listed in Annexes 2 and 3 individually;
Divestment Trustee	means a person appointed in accordance with paragraphs 58 to 64;
EMR	means European Metal Recycling Limited (registered company number 02954623);
Final Disposal	means the divestiture of the Divestment Package(s) to an Approved Purchaser pursuant to an Approved Agreement;
Final Undertakings	means these undertakings, including the Annexes, accepted by the CMA pursuant to section 82 of the Act;
Group of Interconnected Bodies Corporate	means a group of interconnected bodies within the meaning of section 129(2) of the Act, as constituted from time to time;
Heads of Terms	means an agreement or agreements in principle to acquire a Divestment Package or Divestment Packages and which sets out the terms of the disposal, and that is expressed by all parties to (1) be subject to contract (2) form the basis of a subsequent binding agreement;
IEO	means the Initial Enforcement Order made by the CMA under section 72 of the Act on 11 September 2017;
key staff	means staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the relevant business;
Monitoring Trustee	means the monitoring trustee appointed pursuant to the IEO, or, if different, a person appointed in accordance with paragraphs 38 to 46;
MWR	means Metal and Waste Recycling Limited (registered company number 01031503);

MWR Excluded Assets	means the assets listed in Annex 4;
MWR Hitchin Business	means the MWR Hitchin Assets and the business carried on with them at the Commencement Date;
MWR Hitchin Assets	means the assets listed in Annex 2;
MWR Hitchin Business Divestment Package	means the MWR Hitchin Business together with the additional elements listed in Annex 5.
MWR Tendering and NPS Business	means the MWR Tendering and NPS Assets and the business carried on with them at the Commencement Date by MWR;
MWR Tendering and NPS Assets	means the assets listed in Annex 3;
MWR Tendering and NPS Business Divestment Package	means the MWR Tendering and NPS Business together with the additional elements listed in Annex 5;
ordinary course of business	means a party's customary commercial transactions and practices in the day-to-day supply of its services;
Parties	means Ausurus, EMR, CuFe and MWR, and Party shall mean any one of them;
Purchaser Approval Criteria	means the criteria set out in Annex 1;
Related Person	means any Subsidiary, Affiliate, Associated Person or Group of Interconnected Bodies Corporate;
SLC	means a substantial lessening of competition pursuant to section 22 of the Act;
specified period	means the period beginning on the Commencement Date and terminating with the Final Disposal;

subsidiary	unless otherwise expressly stated, has the meaning given by section 1159 of the Companies Act 2006;
Trustee Divestment Period	means a period of up to [30] (or such longer period as the CMA may direct) for the Divestment Trustee to meet the Trustee Obligation commencing from the date of appointment of the Divestment Trustee;
Trustee Obligation	means bringing about the Final Disposal, and includes the performance of all ancillary tasks as are necessary or desirable for the purpose of effecting the Final Disposal promptly and, in any event, within the Trustee Divestment Period and such obligation shall include: (a) to seek to limit in a customary manner the liability of the Vendor under the relevant Approved Agreement; and (b) not to impose any restriction on EMR or Ausurus or any of their subsidiaries to operate as they did before the Merger or to compete with the Divestment Businesses in the future; and (c) not to transfer under an Approved Agreement any asset of EMR or Ausurus or any of their subsidiaries that was not owned by CuFe or its subsidiaries before the Merger.;
The Vendor	EMR, CuFe or MWR, as appropriate;
Working Day	means a day other than a Saturday or Sunday or a public holiday in England, Wales or Scotland, and any reference in these Final Undertakings to 'days' means calendar days; and
written consent	shall include consent given by e-mail.

Commencement

19. These Final Undertakings will come into force on the Commencement Date in accordance with section 82(2) of the Act.

Divestment Undertakings

20. Ausurus, EMR and CuFe give the following undertakings:
- (a) To implement the Final Disposal within the Divestment Period having due regard to the findings in the Final Report.
 - (b) To comply with any Directions given by the CMA under these Final Undertakings, in particular the appointment of a Divestment Trustee, in the event that:
 - (i) Final Disposal does not take place within the Divestment Period; or
 - (ii) the CMA otherwise directs as a result of breach by the Parties of these Final Undertakings.
 - (c) To procure that any Related Person to Ausurus, EMR, or any Related Person will not, for a period of ten years from the date of Final Disposal, bring under common ownership or control (as defined in section 26 of the Act) in whole or in part either Divestment Package or any asset of the Divestment Packages without the prior written consent of the CMA. The obligation to “procure” on Ausurus, EMR, or any Related Person under this paragraph shall bind Ausurus, EMR, or any Related Person only to the extent that it is able to control any Related Person. Nothing in this clause 20(c) shall prohibit the purchase by Ausurus, EMR or any Related Person of scrap metal from the Divestment Package or any Approved Purchaser(s) in the ordinary course of business.
21. MWR will cooperate with EMR and take all reasonable steps in their power as are required to assist EMR to comply with these Divestment Undertakings, including complying with any Directions given by the CMA. EMR will keep MWR reasonably updated on the steps taken and its plans under these Divestment Undertakings.
22. Subject to complying with the requirements of Annexes 2, 3 and 4, the precise configuration of each Divestment Package shall be agreed between the Vendor and any Approved Purchasers, and then approved by the CMA before the Final Disposal (such approval not to be unreasonably withheld).

Asset Maintenance Undertakings

23. Except with the prior written consent of the CMA (which, for the avoidance of doubt, includes any derogations already granted by the CMA under the IEO, which will remain applicable during the specified period), the Parties shall not,

during the specified period, take any action which might prejudice the Final Disposal, including any action which might:

- (a) lead to the integration of either Divestment Package with any business controlled by Ausurus or EMR;
- (b) transfer the ownership or control of any element of either Divestment Package; or
- (c) otherwise impair the ability of the Divestment Businesses to compete independently in any of the markets affected by the Merger.

24. Further and without prejudice to the generality of paragraph 23, the Parties severally shall at all times during the specified period take all reasonable steps in their power to procure that, except with the prior written consent of the CMA (which includes any previously granted derogations under the IEO):

- (a) the Divestment Sites are maintained in working order, including the recommissioning of the Hockley site;
- (b) the staff of the Divestment Businesses continue to receive any training necessary to maintain their professional diligence and competence;
- (c) no action is taken by EMR to encourage or require CuFe or MWR to transfer customers or staff from the Divestment Businesses to any other of EMR's sites. For the avoidance of doubt, neither EMR nor MWR is prohibited from competing generally in the market for new customers, including seeking to entice or solicit such customers to transact with EMR or the Divestment Business respectively in the ordinary course of business;
- (d) the Divestment Businesses are carried on separately from the EMR business and the separate sales or brand identity of the Divestment Businesses is maintained;
- (e) the Divestment Businesses are maintained as going concerns and sufficient resources are made available for the development of the Divestment Businesses, on the basis of their respective pre-Merger business plans;
- (f) no action is taken which might otherwise impair the ability of the Divestment Businesses to compete independently or that may significantly and adversely impact on their operations save that EMR shall continue to be free to compete with the Divestment Businesses;

- (g) except in the ordinary course of business, no substantive changes are made to the operating policies, organisational structure of, or the management responsibilities within, the Divestment Businesses;
- (h) the nature, description, range and quality of services supplied in the UK by each of the Divestment Businesses are maintained and preserved;
- (i) except in the ordinary course of business for the separate operation of the Divestment Businesses at the Divestment Sites or for the purpose of restructuring the Divestment Businesses pursuant to an Approved Agreement;
 - (i) all of the assets of Divestment Businesses are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the Divestment Businesses are disposed of;
 - (iii) no interest in the assets of the Divestment Businesses is created or disposed of; and
 - (iv) there is no further integration of information technology between EMR and the Divestment Businesses, and the software and hardware platforms of the Divestment Businesses shall remain essentially unchanged, except for routine changes and maintenance or changes that are necessary for the purposes of preparing for the Final Disposal of the Divestment Businesses.
- (j) the customer and supplier lists of the Divestment Businesses shall be operated and updated separately from EMR and any negotiations with any existing or potential customers and suppliers in relation to the Divestment Businesses will be carried out by the respective Divestment Business alone, and, for the avoidance of doubt, the EMR business will not negotiate on behalf of either Divestment Business (and vice versa) or enter into any joint agreements with either Divestment Business (and vice versa);
- (k) all existing contracts of either Divestment Business shall continue to be serviced by the business to which they were awarded;
- (l) no changes are made by the Parties to key staff of either Divestment Business;
- (m) no key staff are transferred between either Divestment Business and EMR save that any MWR key staff currently employed by EMR may be transferred to either Divestment Business;

- (n) all reasonable steps are taken to encourage all key staff to remain with the Divestment Businesses; and
 - (o) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either Divestment Business shall pass, directly or indirectly, from MWR (or any of its employees, directors, agents or affiliates) to EMR (or any of its employees, directors, agents or affiliates), except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations), it being understood and agreed that EMR and its subsidiaries have information relating to the Divestment Businesses by virtue of being a customer of the Divestment Businesses.
- 25. MWR will cooperate with EMR and take all reasonable steps in their power as are required to assist EMR to comply with these Asset Maintenance Undertakings.
- 26. Notwithstanding the provisions of paragraphs 33 to 37, the Parties will severally ensure that, subject to derogations granted to the IEO:
 - (a) they will continue to provide necessary transitional support services to the Divestment Businesses for the specified period, as are provided at the time that these Final Undertakings are accepted by the CMA, on the basis that:
 - (i) any of EMR's employees with access to confidential information (excluding any MWR key staff that are currently EMR employees) shall execute non-disclosure agreements in respect of any confidential information received in connection with the provision of such services;
 - (ii) the Parties severally maintain sufficient working capital for themselves only and any additional capital required to meet the pre-merger business plans of the Divestment Businesses to the extent still reasonably achievable;
 - (iii) the Divestment Businesses continue to operate under the same brand name as prior to the Merger; and
 - (iv) the Divestment Businesses can use any other intellectual property which belongs to MWR which they used prior to the Merger.
- 27. The Parties severally undertake that until Final Disposal, they will keep the CMA informed of any material developments (and with the consent of the

CMA such updates may be provided through the Monitoring Trustee in accordance with paragraph 46 of these Undertakings) relating to the Divestment Businesses, which include but are not limited to:

- (a) details of key staff who leave or join the Divestment Businesses;
 - (b) any interruption of the Divestment Businesses (including, without limitation, procurement, processing, logistics, sales and employee relations arrangements) that has prevented operation in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for any of the Divestment Businesses including any substantial changes in customers' demand
 - (d) substantial changes in contractual arrangements or relationships with key suppliers at the Divestment Businesses; and
 - (e) substantial changes in the financial position and/or performance of the Divestment Businesses.
28. The Parties severally undertake that within a period of five Working Days from the Commencement Date, they will provide a written statement to the CMA confirming their compliance with these Asset Maintenance Undertakings (subject to any granted derogations) and setting out any details of material developments for the purposes of paragraph 2728 of these Final Undertakings of which they are severally aware. Thereafter, the Parties will provide similar compliance statements to the CMA on a monthly basis until Final Disposal, with the first such monthly statement to be submitted to the CMA no later than one month from the first written statement.
29. The Parties undertake to notify the CMA when Final Disposal has taken place.
30. The Parties severally undertake to keep their respective customers informed of the divestment plans by including updates on their respective websites upon the achievement of relevant key milestones in the Approved Timetable.
31. The Parties severally undertake to inform the CMA, without delay, of any developments of which they become aware that would risk the Final Disposal within the Divestment Period.
32. Nothing in these Final Undertakings shall restrict the Parties from taking action to ensure that the MWR Excluded Assets are separated from the Divestment Packages.

Procedure for consent and notification

33. The Parties undertake that any application by them for the CMA's consent or approval shall make full disclosure of every material fact and matter within their respective knowledge that they believe is relevant to the CMA's decision.
34. The Parties recognise that where the CMA grants consent or approval on the basis of misleading or incomplete information and such information materially affects its consent or approval, the consent or approval is voidable at the election of the CMA.
35. In the event that one of the Parties discover that an application for consent or approval has been made without full disclosure to the CMA in accordance with paragraph 33, the Parties severally undertake to:
 - (a) inform the CMA in writing identifying the information that it omitted to include in the application for consent within two Working Days of becoming aware that the relevant information is misleading or incomplete; and
 - (b) at the same time or not later than two Working Days starting with the date on which it has informed the CMA of the omission in accordance with paragraph 33(a) above, provide to the CMA an application for consent that includes the missing information.
36. The Parties shall severally use all reasonable endeavours to make each application or to procure that each application for consent or approval is made so that it is received by the CMA at least five Working Days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of these Final Undertakings.
37. The CMA will use all reasonable endeavours to grant or refuse any consent or approval within the five-Working-Day period referred to in paragraph 36 above. This provision is without prejudice to the CMA's duties under the Act.

Monitoring Trustee

38. EMR undertakes that it shall secure the appointment or retention of an independent Monitoring Trustee to perform the functions in paragraph 45 on behalf of the CMA. Provided that the other conditions set out in paragraphs 39 to 46 are complied with, the Monitoring Trustee may be the same as already appointed pursuant to the direction issued by the CMA on 23 February 2018.
39. The Monitoring Trustee must possess appropriate qualifications and experience to carry out his or her functions. The Monitoring Trustee must act

on behalf of the CMA and be under an obligation to the CMA to carry out his or her functions to the best of his or her abilities. The Monitoring Trustee must neither have nor become exposed to a conflict of interest that impairs the Monitoring Trustee's objectivity and independence in discharging his or her duties under these Final Undertakings, unless it can be resolved in a manner and within a time frame acceptable to the CMA. EMR shall remunerate and reimburse the Monitoring Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Monitoring Trustee's independence or ability to effectively and properly carry out his or her functions.

40. The appointment of the Monitoring Trustee and their terms and conditions must be approved by the CMA. The Parties must inform the CMA as soon as is reasonably practicable and in any event by no later than two Working Days after the Commencement Date of the identity of the Monitoring Trustee that the Parties propose to appoint and provide the CMA with draft terms and conditions of appointment. Once the Monitoring Trustee has been approved by the CMA and appointed by EMR, EMR must provide the CMA with a copy of the agreed terms and conditions of appointment.
41. If the proposed Monitoring Trustee is rejected by the CMA, EMR shall submit the names of at least two further persons within two Working Days starting with the date on which they were informed of the rejection, in accordance with the requirements and the procedures set out in paragraphs 39 and 40 above.
42. The provisions of paragraph 43 below shall apply if:
 - (a) EMR fails to nominate persons in accordance with paragraphs 40 or 41 above; or
 - (b) those further persons nominated by EMR in accordance with paragraphs 40 or 41 above are rejected by the CMA; or
 - (c) EMR is unable for any reason to conclude the appointment of the Monitoring Trustee within the time limit specified by the CMA.
43. The CMA shall nominate one or more persons to act as Monitoring Trustee, and EMR shall appoint or cause to be appointed such Monitoring Trustee within two Working Days starting with the date of such nomination under the term of a Monitoring Trustee mandate approved by the CMA.
44. The Monitoring Trustee's mandate shall specify that the Monitoring Trustee will carry out the functions set out below and that the Monitoring Trustee will monitor the compliance of the Parties with their obligations under these Final Undertakings. The mandate shall provide that the Monitoring Trustee shall

take such steps as he or she reasonably considers necessary to carry out his or her functions effectively and that the Monitoring Trustee must comply with any reasonable requests made by the CMA for the purpose of carrying out his or her functions under these Final Undertakings.

45. The Monitoring Trustee's functions, as set out in this paragraph, are to monitor and review compliance with these Final Undertakings and progress towards Final Disposal, and shall, in particular, include:
- (a) monitoring compliance by the Parties with the Asset Maintenance Undertakings set out in paragraphs 23 to 3231 above; and
 - (b) monitoring the progress made by the Vendor against the Approved Timetable towards Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings, including:
 - (i) the steps that have been taken towards the preparation of agreements for disposal of the Divestment Packages and the persons to whom such agreements have been distributed;
 - (ii) where the Monitoring Trustee reasonably deems necessary, requesting and reviewing copies of communications (save where those communications are subject to legal privilege) between the Vendor and its financial or other advisers and possible purchasers or their financial or other advisers in connection with the disposal process; and
 - (iii) in instances where the Monitoring Trustee reasonably considers there to be a risk that the Vendor will not meet a step in the Approved Timetable, the Monitoring Trustee may attend meetings between the Vendor and possible purchasers in connection with the disposal process.
46. The Monitoring Trustee will promptly inform the CMA of any material developments arising from the operation of his or her functions and will provide a written report to the CMA every two weeks, the first report to be submitted not later than two weeks from the Commencement Date.

Monitoring Trustee – duties and obligations of the Parties

47. The Parties and each of their subsidiaries and their employees, officers, directors, advisers and consultants (provided under the control of a Party) must cooperate fully with the Monitoring Trustee, in particular by providing the Monitoring Trustee with all cooperation, assistance and information as the

Monitoring Trustee may reasonably require in order to discharge his or her functions, including but not limited to:

(a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of:

(i) the Parties, which relate(s) to the Divestment Businesses; and

(ii) the Divestment Package,

as the Monitoring Trustee may reasonably require (excluding any material properly the subject of legal privilege); and

(b) the provision of such office and supporting facilities as the Monitoring Trustee may reasonably require.

48. If any of the Parties or any of their Related Persons are in any doubt as to whether any action or communication would infringe the requirements of the Monitoring Trustee as set out above, that Party is required to contact the Monitoring Trustee for clarification.

49. If any of the Parties or any of their Related Persons have any reason to suspect that the requirements of the Monitoring Trustee may have been breached, that Party must notify the Monitoring Trustee and the CMA immediately.

Divestment reporting obligations

50. EMR agrees to undertake that within the period of five Working Days from the Commencement Date they will provide a written report to the CMA setting out the timetable that they propose to adopt, subject to the CMA's approval, to ensure the Final Disposal (the **Approved Timetable**). The report will outline the progress that EMR has made towards the Final Disposal, and the steps that have otherwise been taken to comply with these Final Undertakings, and shall, in particular, report on:

(a) the status of any discussions that have been held with potential purchasers of the Divestment Packages;

(b) the progress that has been made towards agreeing Heads of Terms (if applicable);

(c) the steps that have been taken towards reaching an Approved Agreement and the persons to whom any agreement has been distributed;

(d) the progress on obtaining any necessary regulatory approvals; and

- (e) such other matters as may be directed by the CMA from time to time.
51. Thereafter, EMR will provide similar reports to the CMA every two weeks, or at such other interval as agreed with the CMA, until Final Disposal. The reports will include an update on the progress that has been made against the Approved Timetable and, with the consent of the CMA, such reports may be provided through the Monitoring Trustee in accordance with paragraph 46 of these Final Undertakings.
52. EMR undertakes that in the report to the CMA, pursuant to paragraphs 50 and 51, they shall, among other things, provide to the CMA:
- (a) the total number of persons who have lodged a formal bid with the Vendor for the acquisition of a Divestment Package or the Divestment Packages, as appropriate, since the publication of the CMA's Final Report;
 - (b) the name, address, email address, contact point and telephone number of each person who has lodged a formal bid with the Vendor for the acquisition of a Divestment Package or the Divestment Packages, as appropriate, since the publication of the CMA's Final Report and subsequently been short-listed by the Vendor as a preferred purchaser for the Divestment Packages; and
 - (c) details of the efforts taken by the Vendor and its financial advisers to solicit purchasers for the Divestment Packages.
53. In the event that the Vendor does not meet a step as set out in the Approved Timetable, or are otherwise delayed in implementing the divestment required pursuant to these Final Undertakings, the Vendor undertakes to inform the CMA in writing of the occurrence and the reasons for the failure promptly, but not later than two Working Days from becoming aware that a step in the Approved Timetable has not been met.

Directions

54. The Parties severally agree to comply with such written Directions as the CMA may from time to time issue to them, which are in accordance with these Final Undertakings, and will take such steps as may be specified or described in the Directions for complying with these Final Undertakings.
55. Any delay by the CMA in making a written Direction shall not affect the obligations of the Parties at such time as the CMA makes any written Direction under paragraph 54.

Conditions for the appointment of a Divestment Trustee

56. Without prejudice to the CMA's order-making power under section 83 of the Act, EMR undertakes that it shall, at the written Direction of the CMA, appoint a Divestment Trustee in accordance with paragraphs 58 to 64 give effect to the Trustee Obligation.
57. The Divestment Trustee shall fulfil the Trustee Obligation and shall undertake such matters preparatory to giving effect to the Trustee Obligation or part thereof as the CMA may specify in the written Direction referred to in paragraph 54 above.

Divestment Trustee – appointment procedure

58. The Parties recognise and acknowledge that the CMA may direct the appointment of a Divestment Trustee at any time after the expiry of the Divestment Period, or prior to the expiry of the Divestment Period where the CMA, upon reasonable grounds, considers that the Vendor has not complied with the Approved Timetable in such a way that Final Disposal may not be expected to take place within the Divestment Period.
59. EMR severally undertakes that on the Direction of the CMA, and in accordance with such Directions as are given by the CMA as to the timing for taking these steps, EMR shall submit to the CMA for approval a list of two or more persons from whom they propose to appoint a Divestment Trustee. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirement set out in paragraph 60 below and shall include among other things:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Divestment Trustee to fulfil the Trustee Obligation; and
 - (b) a schedule of the steps to be taken to give effect to the mandate.
60. Each person on the list referred to in paragraph 59 shall be independent of and unconnected to the Parties, possess the qualifications necessary for the performance of the mandate and shall on appointment and thereafter be free of any conflict of interest, including any conflict of interest that might arise by virtue of the terms of remuneration.
61. The CMA may approve or reject any or all of the proposed Divestment Trustees (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the

Divestment Trustee to fulfil the Trustee Obligation. If only one name is approved, EMR shall use its best endeavours to appoint, or cause to be appointed, the individual or institution concerned as Divestment Trustee in accordance with the mandate approved by the CMA. If more than one name is approved, EMR shall be free to choose the Divestment Trustee to be appointed from among the names approved. EMR undertakes to appoint the Divestment Trustee within two Working Days from the CMA's approval and on the terms of the mandate approved by the CMA.

62. If all the proposed Divestment Trustees are rejected by the CMA, EMR shall submit the names of at least two further persons within two Working Days starting with the date on which it was informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 59 and 60 above.
63. The provisions of paragraph 64 below shall apply only if:
 - (a) EMR fails to nominate persons in accordance with paragraph 59 above; or
 - (b) those further persons nominated by EMR in accordance with paragraph 62 above are rejected by the CMA; or
 - (c) EMR is unable for any reason to conclude the appointment of the Divestment Trustee within the time limit specified by the CMA.
64. The CMA shall nominate one or more persons to act as a Divestment Trustee, and EMR shall appoint or cause to be appointed such Divestment Trustee within two Working Days starting with the date of such nomination under the terms of a Divestment Trustee mandate approved by the CMA.

Divestment Trustee – functions

65. The Parties severally undertake to enable the Divestment Trustee to carry out the Trustee Obligation.
66. The Parties recognise and acknowledge that:
 - (a) the CMA may, on its own initiative or at the request of the Divestment Trustee, give written Directions or instructions to the Divestment Trustee in order to assist it in the discharge of the Trustee Obligation to bring about the Final Disposal;
 - (b) the Divestment Trustee may include in such agreements, deeds, instruments of transfer and other instruments and documents as are

necessary for the performance of the Trustee Obligation such terms and conditions as the CMA considers appropriate; and

(c) the Divestment Trustee shall protect the legitimate financial interests of the Parties subject to the Divestment Trustee's overriding obligations to give effect to the Trustee Obligation.

67. The Parties recognise and acknowledge that the Divestment Trustee shall take such steps and measures as it considers necessary to discharge the Trustee Obligation and to that end, the Divestment Trustee may give written directions to any of the Parties, as applicable. The Parties undertake to comply with such directions or to procure compliance with such directions as are within their respective powers and to take such steps within their respective competence as the Divestment Trustee may specify.
68. The Parties recognise and acknowledge that in the performance of the Trustee Obligation, the Divestment Trustee shall act solely on the instructions of the CMA and shall not be bound by any instruction of any of the Parties. The Parties undertake that they shall not seek to create or vary the obligations and duties of the Divestment Trustee except with the CMA's prior written consent.

Divestment Trustee – duties and obligations of the Parties

69. The Parties severally undertake to provide the Divestment Trustee with such cooperation, assistance and information relating to the Divestment Businesses as the Divestment Trustee may reasonably require in the discharge of the Trustee Obligation. This includes the production of financial or other information, whether or not such information is in existence at the time of the request, known to a relevant Party, relevant to the Final Disposal of the Divestment Packages, but excludes any material properly the subject of legal privilege or which a Party is excluded from having or receiving under these Final Undertakings.
70. The Parties recognise and acknowledge that the Divestment Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of the Trustee Obligations (save where material is properly the subject of legal privilege) and the Parties severally undertake to provide the Divestment Trustee, upon reasonable request, with copies of any such items in their respective possession.

71. On the reasonable request of the Divestment Trustee, the Parties severally undertake to grant comprehensive powers of attorney, duly executed, to the Divestment Trustee to enable it to discharge the Trustee Obligation, including by the appointment of advisers to assist with the disposal process. The Parties undertake that, upon the reasonable request of the Divestment Trustee, the Parties shall execute the documents required to give effect to the Trustee Obligation.
72. EMR undertakes to hold the Divestment Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Trustee Obligation. The Parties recognise and acknowledge that the Divestment Trustee, its employees, agents or advisers shall have no liability to the Parties or any of their subsidiaries for any liabilities arising out of the proper performance of the Trustee Obligation, except to the extent that such liabilities result from the wilful default, breach of contract, recklessness, negligence or bad faith of the Divestment Trustee, its employees, agents or advisers.
73. EMR undertakes that, at its expense, the Divestment Trustee may appoint advisers (in particular, for corporate finance or legal advice) if the Divestment Trustee reasonably considers the appointment of such advisers necessary or appropriate in the discharge of the Trustee Obligation, provided that any fees and other expenses incurred by the Divestment Trustee are reasonably incurred. Before appointing any such advisers, the Divestment Trustee will consider using the advisers already appointed by the Parties. Should EMR refuse to approve the advisers proposed by the Divestment Trustee, the CMA may, after consulting with EMR, approve and direct the appointment of such advisers.
74. The Parties severally undertake to make no objection to the Final Disposal of any Divestment Package save on the grounds of either bad faith by the Divestment Trustee or failure of the Divestment Trustee to reasonably protect the legitimate financial and business interests of the Parties, subject to the Trustee Obligation. Where the Parties wish to make an objection on the grounds of bad faith by the Divestment Trustee or failure of the Divestment Trustee reasonably to protect the legitimate financial and business interests of the Parties, they shall submit to the CMA a notice setting out their objections within two Working Days from the day on which they became aware of the fact or facts giving rise to their objection.
75. The Parties severally undertake to make available to the Divestment Trustee one or more offices on its premises, and ensure personnel, where necessary, are available for meetings (called on reasonable notice), in order to provide the Divestment Trustee with all information reasonably necessary for the

performance of the Trustee Obligation, subject in each case to the Divestment Trustee's compliance with the Parties' internal policies.

Divestment Trustee – replacement, discharge and reappointment

76. The Parties acknowledge that if the Divestment Trustee ceases to perform the Trustee Obligation, or for any other good cause, including the exposure of the Divestment Trustee to a conflict of interest, the CMA may, after consulting the Divestment Trustee, require EMR to replace the Divestment Trustee.
77. If the Divestment Trustee is removed under paragraph 76 above, the Divestment Trustee may be required to continue in its post until a new Divestment Trustee is in place to whom the Divestment Trustee has effected a full handover of all relevant information. The new Divestment Trustee shall be appointed in accordance with the procedure contained in paragraphs 58 to 64 above.
78. The Parties recognise and acknowledge that, other than in accordance with paragraph 76 above, the Divestment Trustee shall cease to act as Divestment Trustee only after the CMA has discharged it from its duties at a time at which all the obligations with which the Divestment Trustee has been entrusted have been met.

Additional Undertakings to protect the divestment of the Divestment Package

79. The Parties shall severally procure, so far as they each have the power to so, that all senior management who have been employed by CuFe or MWR and who have or will be transferred to Ausurus or EMR and who have knowledge of the Divestment Businesses' operations and customer details sign non-disclosure agreements.
80. The Parties severally agree not to seek to recruit the staff that are included in the Divestment Packages for a period of 12 months after the Final Disposal.
81. The Parties will be required to use their best endeavours to sell the Divestment Packages with the benefit of all the existing customer contracts held by the relevant Divestment Business at the end of the Divestment Period to the extent such existing customer contracts are freely transferrable.

Variations to these Final Undertakings

82. The terms of these Final Undertakings may be varied with the prior written consent of the CMA in accordance with sections 82(2) and 82(5) of the Act.

83. Where a request for consent to vary these Final Undertakings is made to the CMA by any of the Parties jointly or separately, the CMA will consider any such request in light of the Final Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request and to its statutory duties.
84. The consent of the CMA shall not be unreasonably withheld.

General obligation to provide information to the CMA

85. The Parties severally undertake that they shall promptly provide to the CMA such information as the CMA may reasonably require for the purpose of performing any of its functions under these Final Undertakings or under sections 82, 83, 93(6) and 94 of the Act.
86. The Parties severally undertake that should they at any time become aware that they are in breach of any provision of these Final Undertakings, they will notify the CMA within two Working Days starting with the date they become aware of the breach to advise the CMA that there has been a breach and of all the circumstances of that breach.
87. Where any person, including a Monitoring Trustee or Divestment Trustee, must provide information in relation to the Parties to the CMA under or in connection with these Final Undertakings, whether in the form of any notice, application, report or otherwise, the Parties undertake that they will take reasonable steps within their power to procure that that person shall hold all information provided to it as confidential and shall not disclose any business-sensitive information of the Parties to any person other than to the CMA, without the prior written consent of both the CMA and the Parties.

Acceptance of Service

Ausurus and EMR

88. Ausurus and EMR hereby authorise [✂], [✂] or [✂] (or any partner) of Eversheds Sutherland (International) LLP, whose address for service is One Wood Street, London, EC2V 7WS to accept on their behalf service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to Ausurus and EMR in connection with proceedings in court in the United Kingdom).
89. Unless EMR informs the CMA that Eversheds Sutherland has ceased to have authority and has informed the CMA of an alternative to accept and

acknowledge service on their behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on Ausurus and EMR if it is served on Eversheds Sutherland at its registered office for the attention of [X], [X] or [X], or via email to [X], [X] or [X], and service or receipt shall be deemed to be acknowledged by Ausurus and EMR if it is acknowledged by email from a partner in or employee of Eversheds Sutherland to the CMA.

90. Paragraph 88 has effect irrespective of whether, as between Ausurus, EMR and Eversheds Sutherland, Eversheds Sutherland has or continues to have any authority to accept and acknowledge service on behalf of Ausurus or EMR (unless EMR informs the CMA that Eversheds Sutherland has ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by Eversheds Sutherland (including a failure to notify Ausurus and EMR of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

CuFe and MWR

91. CuFe and MWR hereby authorise [X], [X] or [X] (or any partner) of DLA Piper UK LLP, whose address for service is 160 Aldersgate Street, London, EC1A 4DD to accept on their behalf service of all documents, orders, requests, notifications or other communications connected with these Final Undertakings (including any such document which falls to be served on or sent to CuFe and MWR in connection with proceedings in court in the United Kingdom).
92. Unless MWR informs the CMA that DLA Piper has ceased to have authority and has informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, order, request, notification or other communication connected with these Final Undertakings shall be deemed to have been validly served on MWR or CuFe if it is served on DLA Piper at its registered office for the attention of [X], [X] or [X] or via email to [X], [X] or [X] and service or receipt shall be deemed to be acknowledged by CuFe and MWR if it is acknowledged by email from partner in or an employee of DLA Piper to the CMA.
93. Paragraph 91 has effect irrespective of whether, as between the CuFe, MWR and DLA Piper, DLA Piper has or continues to have any authority to accept and acknowledge service on behalf of CuFe or MWR (unless MWR informs the CMA that DLA Piper has ceased to have authority to accept and acknowledge service on its behalf), and no failure or mistake by DLS Piper

(including a failure to notify CuFe and MWR of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of these Final Undertakings, including any proceeding or judgment pursuant to these Final Undertakings.

Effect of invalidity

94. The Parties severally undertake that should any provision of these Final Undertakings be contrary to law or invalid for any reason, the Parties shall continue to observe the remaining provisions.

Extension of time

95. The Parties recognise and acknowledge that the CMA may, where it considers it appropriate, in response to a written request from any of the Parties showing good cause, or otherwise at its own discretion, grant an extension of any period specified in these Final Undertakings within which the Parties, the Monitoring Trustee and/or the Divestment Trustee (as the case may be) must take action.

Governing law

96. These Final Undertakings shall be governed by and construed in all respects in accordance with English law.
97. Disputes arising concerning these Final Undertakings shall be subject to the jurisdiction of the courts of England and Wales.

Termination and release

98. These Final Undertakings shall remain in force until the date on which the obligation on the Parties under paragraph 20(c) expires.
99. The variation, release or supersession of these Final Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

FOR AND ON BEHALF OF Ausurus

Signature

Name

Title

Date

FOR AND ON BEHALF OF EMR

Signature

Name

Title

Date

FOR AND ON BEHALF OF CuFe

Signature

Name

Title

Date

FOR AND ON BEHALF OF MWR

Signature

Name

Title

Date

Annex 1

Purchaser Approval Criteria

These Purchaser Approval Criteria are to be construed as consistent with, and giving effect to, paragraph 14.197 of the Final Report.

Independence

At the time of the Final Disposal, the Approved Purchaser must have no significant connection (for example financial, ownership or management links)² to EMR or any Associated Person or Affiliate of EMR or its Group of Interconnected Bodies Corporate that may compromise the purchaser's incentives to compete with EMR.

Capability

The Approved Purchaser must have access to appropriate financial resources, expertise and assets to be an effective competitor in the relevant market. This access should be sufficient to enable the relevant Divestment Package to continue to develop as an effective competitor in the relevant market. The Approved Purchaser must be able to demonstrate an ability to provide continuity of business. The Approved Purchaser must have, or be able to obtain without undue delay, all necessary licences and consents from any regulatory or other authority to purchase and operate the relevant Divestment Sites.

Commitment to the relevant market

The Approved Purchaser must demonstrate to the satisfaction of the CMA that it has commitment and credible plans to continue providing the services currently provided by MWR at the relevant Divestment Sites. This could be demonstrated by (among other things) a suitable business plan (including managerial capability, operational capability and technical capability or such other evidence as the CMA considers appropriate) to maintain and operate the relevant Divestment Package as a viable and active business in competition with EMR and other competitors in the relevant market so as to remedy the SLC and any adverse effect arising from it.

Absence of competitive or regulatory concern

In considering whether to give consent to any Approved Agreement, the CMA shall consider whether the terms of the agreement (and any other agreements or arrangements ancillary or connected to the agreement) would give rise to a material

² This can include, for example, an equity interest, shared directors, reciprocal trading relationships or continuing financial assistance. [Merger Remedies: Competition Commission guidelines \(CC8\)](#), adopted by the CMA board, paragraphs 3.15 and 3.18.

risk that the sale of the relevant Divestment Package would not remedy the relevant SLC and any adverse effects likely to arise from it. In addition, the acquisition of the relevant Divestment Package by the Approved Purchaser must not raise further competition concerns in the relevant market or markets. The CMA shall also take into account any concerns relating to the proposed purchaser's ability to obtain, without undue delay, all necessary licences and consents from any regulatory or other authority to purchase and operate the relevant Divestment Sites or Divestment Package.

Annex 2

MWR Hitchin Assets

Site	Location
Hitchin shredder site (to include MWR's Hitchin site with all associated staff and plant and equipment, including the 6000hp shredder on that site)	
<i>If the purchaser does not have existing feeder sites and the CMA is not satisfied that the purchaser does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East:</i> MWR's London sites (Edmonton and Neasden) (to include related administrative and commercial infrastructure in London)	

Annex 3

MWR NPS and Tendering Assets

Site	Location
Cradley (to include all associated staff, plant and equipment)	
Hockley (to include all associated staff, plant and equipment, including any staff, plant and equipment that requires transferring from EMR to Hockley)	
Telford (to include all associated staff, plant and equipment)	
Seaham (to include all associated staff, plant and equipment)	
All other assets, contracts, rights and staff necessary to carry out the MWR Tendering and NPS Business in the West Midlands and the North East, including the relevant staff at MWR's head office in Edmonton	
<i>At the option of the purchaser:</i> Commercial staff from MWR (not based at Hitchin) to the extent required by the Purchaser to maintain commercial relationships relevant to the MWR tendering and NPS business	

Annex 4

MWR Excluded Assets

The following MWR sites and assets are excluded from the Divestment Packages

Site	Location
Telford Lightmore Road	
Walsall	
Rookes	
Cox's Lane	
Newport	
Granulator at Edmonton	
Quality Row, Byker, Newcastle (and associated sub-lease)	
Edmonton (if the purchaser of the MWR Hitchin Assets has existing feeder sites or if the CMA is satisfied that the purchaser does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East)	
Neasden (if the purchaser of the MWR Hitchin Assets has existing feeder sites or if the CMA is satisfied that the purchaser does not require a feeder site to be an effective competitor in the purchasing of shredder feed in the South East)	

Annex 5

Elements to be included in each Divestment Package at the option of the Approved Purchaser

The Vendor shall offer to include in each Divestment Package the following core elements relating to each relevant Divestment Site to the extent that it is legally able to do so and any relevant contract so permits:

1. Freehold site or (if leasehold) rights to the lease it being understood and agreed that the Parties may not legally be able to obtain any required landlord consent to an assignment or transfer.
2. Physical facilities and assets related to the provision of the relevant services provided at the Divestment Site.
3. Transfer of skilled staff and other staff required for to day-to-day running and future growth of business at the Divestment Site. This will include the removal of any obligations on those staff (eg non-compete clauses), which impede them from the effective day-to-day running and future growth of business at the Divestment Site.
4. Rights to use the relevant site name (without the name of the relevant Party).
5. Transfer of all relevant customer data and records for the purposes of ensuring continuity of business and to enable the purchasers to discharge their statutory and regulatory obligations.
6. Transfer of other site-related records held or maintained by MWR, to include:
 - (a) Staff records, including training;
 - (b) Fire risk assessments;
 - (c) Health and safety records;
 - (d) Serious incident reports including action taken; and
 - (e) Maintenance schedules to adhere to building regulations.
7. Transfer of rights to receive services and utilities currently being provided at the Divestment Site, to include, as relevant, gas, electricity, water and sewerage, building access and services.

8. Necessary transitional services (at reasonable cost) depending on the requirements of the Approved Purchasers, for a period to be approved by the CMA, which may include:
 - (a) access to relevant training for staff; and
 - (b) provision of central support services such as finance, procurement, HR, and IT.
9. All liabilities (including historical liabilities).
10. The Vendor shall use best endeavours (working with the Approved Purchaser) to novate all customer contracts and supply agreements to the extent relevant under the relevant Approved Agreement.
11. The Vendor shall use best endeavours to transfer existing contracts with all staff working in the Divestment Businesses to the extent consistent with the Transfer of Undertakings Regulations and relevant to the structure of the Approved Agreement.
12. It is understood that certain contracts and information may relate to both Divestment Businesses. These contracts may not transfer with a Divestment Package unless it or they relate exclusively to that Divestment Package. This information will transfer will both Divestment Packages.