

# Anticipated acquisition by Liqui-Box Inc. of the rigid and flexible packaging business of DS Smith Holdings Limited

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

**ME/6813/19**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 19 July. Full text of the decision published on 22 August.

Please note that [✂] 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.

### **SUMMARY**

1. Liqui-Box Inc. (**Liqui-Box**), a portfolio company owned by Olympus Partners, has agreed to acquire DS Smith Holdings Limited's rigid and flexible plastic packaging business (the **Target**) (the **Merger**). Liqui-Box and the Target 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 Liqui-Box and the Target is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of flexible plastic 'Bag-in-Box' (**BiB**) packaging for edible products (namely, beverages, wine, food, and dairy products) in the United Kingdom (**UK**) and in the rest of the European Economic Area (**EEA**). BiB packaging consists of a flexible plastic bag, a gland, and a fitment used both to fill the bag and by the end-user to dispense the product. Once filled, the BiB packaging is housed in a rigid box for transport to end-users.

4. The CMA has assessed the impact of the Merger in the supply of BiB packaging for edible products in the UK, whilst taking into account in the competitive assessment any differences in competition between the various product segments (see paragraph 3 above), as well as the potential constraint from suppliers not currently active in the UK.
5. The CMA has considered the potential for horizontal unilateral effects as a result of the Merger. Namely, that the Merger removes a competitor that previously provided a competitive constraint, allowing the Merged Entity profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.
6. The CMA believes that, based on the evidence available, the Parties' combined share of supply to BiB customers is significant ([40-50]%) within an already concentrated market, and that the Merger will bring about a material increment in this share of supply ([15-25]%). The CMA also believes that the Parties' combined share is even higher in the beverages and food segments, at around [70-80]% and [45-55]% respectively.
7. The CMA has found that the Merging Parties, along with Scholle IPN (**Scholle**) and Smurfit Kappa (**Smurfit**), compete closely in the UK. These four companies are the main suppliers of BiB packaging in the UK, and this number has remained stable for some years, with only very limited new entry from other alternative suppliers.
8. Accordingly, the CMA believes that the Merger would reduce the number of significant competitors in the UK from four to three (and in the beverages and wine segments, the Merger would reduce the number of significant competitors from three to two). The CMA believes that other smaller suppliers active in the UK currently impose a very limited constraint on the Parties. Taken together, the CMA believes that other BiB suppliers in the UK (including Scholle and Smurfit) will not provide a sufficient competitive constraint on the Parties post-Merger such that the Merged Entity could raise prices or reduce quality or service post-Merger. This conclusion is supported by the views of a number of the Parties' customers, who raised concerns about the effects of the Merger and the reduction in choice.
9. The CMA has considered possible entry or expansion into the supply of BiB products for customers in the UK. While the Parties put forward reasons why entry from other EEA countries into the UK might be easy, the CMA has seen little evidence that competitors active in other EEA countries would be willing or

able to enter the UK such that they would provide an effective competitive constraint on the Parties post-merger.<sup>1</sup>

10. Therefore, the CMA believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of BiB packaging for edible products in the UK.
11. The CMA has also considered whether the Merger could give rise to vertical effects in relation to: (i) Liqui-Box's supply of bag-making machines (through its subsidiary, Maverick); and (ii) the Target's supply of dispensing solutions, ie BiB taps, fitments and connectors (under the 'Worldwide Dispensers' brand). However, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in relation to vertical effects as the evidence suggests the Merging Parties would not have the ability to foreclose competitors.
12. Having found that the Merger gives rise to a realistic prospect of an SLC in the supply of BiB packaging for edible products in the UK, the CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 26 July to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

## ASSESSMENT

### Parties

13. Liqui-Box is a US-headquartered portfolio company owned by Olympus Partners. Liqui-Box supplies BiB packaging and filling machines, films, glands and fitments, and also bag-making machines through its subsidiary, Maverick. It also supplies, pouch packaging, and rigid water bottles in the US. Its European production facilities are located in the UK, where it has a sales team, and in Spain. In the UK, it supplies beverages, dairy, food and wine BiB solutions. The turnover of Liqui-Box in 2018 was approximately \$[REDACTED]m worldwide, \$[REDACTED]m in the EEA and approximately \$[REDACTED] (£[REDACTED]m) in the UK.
14. In relation to fitments, Liqui-Box currently supplies the Target in the US [REDACTED] but otherwise Liqui-Box does not make [REDACTED].
15. The Target is a US-headquartered company which develops, manufactures and distributes BiB packaging under the Rapak brand, dispensing solutions (ie BiB taps, fitments and connectors) to other suppliers under the Worldwide

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<sup>1</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 5.8.12

Dispensers brand, and rigid plastic and cardboard packaging. In the UK, the Target supplies beverages, dairy, food, wine and chemical BiB packaging under the Rapak brand. The Target also supplies rigid plastic packaging, urn-liners, and filling machines. It produces BiB packaging in Germany and Bulgaria for distribution in the UK. The turnover of the Target in 2018 was approximately €[REDACTED]m worldwide, €[REDACTED]m in the EEA, and approximately €[REDACTED]m (£[REDACTED]m) in the UK, of which UK turnover from BiB packaging was approximately £[REDACTED]m.

16. While the Target supplies some BiB packaging for non-food uses in the UK and the EEA, such as chemicals and detergents, Liqui-Box does not supply BiB packaging for these end uses and therefore the CMA does not consider these non-food products further in this Decision as the Merger does not result in any overlap between the Parties.

## Transaction

17. On 5 March 2019, Liqui-Box entered into a sale and purchase agreement to acquire the Target for approximately \$449 million.
18. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in the US and Germany. The CMA understands that the Merger has been cleared by the competition authority in Germany. Completion of the Merger is conditional on US merger control approval.
19. The Parties submitted that the rationale of the Merger was to create a “stronger and more differentiated value proposition for the employees and customers of the combined businesses” with the intent to “exploit cost savings through economies of scale and rationalising un-utilised capacity”. Liqui-Box said that this was because it was “[REDACTED] for some years due to competition and input cost”. Liqui-Box submitted that: “This may include [REDACTED] in Liqui-Box’s UK facility, [REDACTED].”<sup>2</sup> Costs savings would mainly arise from plant consolidation, raw material savings and selling, and general and administrative headcount savings. Savings across both businesses were estimated to be between \$[REDACTED]m to \$[REDACTED]m per annum.

## Procedure

20. The Merger was considered at a Case Review Meeting.<sup>3</sup>

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<sup>2</sup> DS Smith has no UK manufacturing base, as it transferred its manufacturing to Eastern Europe in 2013-2014.

<sup>3</sup> See [Mergers: Guidance on the CMA’s jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

## Jurisdiction

21. Each of Liqui-Box and the Target is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
22. The Parties overlap in the supply of BiB packaging for edible products, with a combined share of supply of [40-50]% in the UK, and an increment of [15-25]% (measured by sales value) (see Table 1 below). The share would be even higher, around [70-80]% and [45-55]% in the UK in the individual beverages and food segments, respectively, after the Merger. The CMA therefore believes that the share of supply test in section 23 of the Act is met.
23. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 24 May and the statutory 40 working day deadline for a decision is therefore 22 July.

## Counterfactual

25. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing 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.<sup>4</sup>
26. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments for an alternative counterfactual. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

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<sup>4</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).

## Background

### *Manufacture*

27. BiB packaging consists of a flexible plastic bag, a gland<sup>5</sup> and a fitment used to dispense the fill. In a BiB production facility, the plastic bag and the glands are sealed together, and the fitment is positioned on the gland. Customers then fill the bag with specific filling machines and insert them into a rigid cardboard box (these are normally sourced separately by customers).
28. BiB packaging is used for a number of different edible products:
- a) Beverages – which can be potentially further segmented into:
    - i. Post-mix syrup;
    - ii. Juice;
    - iii. Smoothies; and
    - iv. Other beverages.
  - b) Dairy – which can be potentially further segmented into:
    - i. Aseptic dairy<sup>6</sup>; and
    - ii. Non-aseptic dairy.
  - c) Food – which includes liquid egg, edible oils, condiments, fruit concentrate, etc.; and
  - d) Wine.
29. The evidence available shows that BiB packaging for different edible fills is generally manufactured on the same production lines. Switching production generally requires only changing films and fitment sizes/types (these are often specific according to the edible fill they are intended for), and adjusting temperature and welding parameters, and takes place in no more than a few hours.<sup>7</sup>

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<sup>5</sup> The gland (sometimes called a 'spout' or 'flange') is a component that links the bag to the fitment.

<sup>6</sup> Aseptic packaging requires an irradiation process that ensures the packaging is free from any contaminants.

<sup>7</sup> The Parties explained that within the dairy segment, some customers demand aseptic packaging, which has been through an irradiation step such that it is free from any contaminants (paragraph 218 of the Merger Notice). However, the CMA understands that aseptic packaging is sometimes also required in other segments such as food.

## **Customers**

30. BiB packaging customers are generally suppliers of food and beverages, who use the BiB packaging to deliver their products to either wholesalers or end users. End users include fast-food chains, pubs, clubs, cinemas, etc. Sometimes, though, BiB manufacturers sell their products to distributors, who in turn supply BiB customers.
31. A few very large customers (eg [X] or [X] in beverages, and [X] in dairy) choose their BiB suppliers through tenders. Depending on the customers, such tenders can happen every two or three years, or can be more infrequent, and are generally complex and lengthy processes. These customers would normally invite a number of potential BiB suppliers to submit an initial response to an invitation to tender. Final bids are then submitted by a smaller group of suppliers. Finally, successful suppliers are selected.
32. However, the majority of customers source BiB solutions through bilateral negotiations and the majority of customers have a single supplier, although some large customers multi-source their supplies of BiB packaging.
33. Evidence from customers generally indicated that the key factors when choosing a BiB packaging supplier were (in order of importance):
  - a) Quality;
  - b) Supply reliability; and
  - c) Price.
34. Some customers also attached some importance to the geographical proximity of the supplier. In particular, such customers suggested that geographical proximity can improve logistic efficiency and costs, and reduce the customers' carbon footprint. A small number of other customers multi-sourced for surety of supply. However, most of the customers only had one or two suppliers, in many cases, one or both being only the Merging Parties.

## **Frame of reference**

35. 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>8</sup>

36. The Parties overlap in the supply of BiB packaging for edible products, including beverages, dairy, food and wine, in the UK and in the rest of the EEA.

### **Product scope**

37. The Parties submitted that they consider that the relevant product market is not narrower than BiB packaging for edible products.<sup>9</sup> While the Target supplies some BiB packaging for non-food uses in the UK, Liqui-Box does not.

38. The Parties further explained that segmentation by end-use as illustrated in paragraph 28 above would be inappropriate due to supply-side substitutability. In particular, the Parties noted that:<sup>10</sup>

- a) BiB packaging for different edible fills is generally manufactured on the same production lines (this point was confirmed by the Parties' competitors);
- b) The manufacturing process does not significantly differ by segment, and switching production only takes up to a few hours (these points were confirmed by the Parties' competitors);
- c) Procuring segment specific films and fitments is easy (eg from third parties or in-house);
- d) Most of the Parties' main competitors in Europe are active in all segments; and
- e) There are examples of competitors expanding from some segments to others (eg Aran expanding from wine, dairy and food to beverages and Smurfit Kappa (**Smurfit**) expanding from wine to dairy).

39. However, during its investigation the CMA has also noted from third party evidence and internal documents that:

- a) BiB packaging for different segments is not substitutable on the demand side as films and fitments are specific for each end-use;
- b) Although switching production is easy once a company has the right bag-making machines and has access to the necessary technology, films and fitments, some smaller competitors of the Parties told the CMA that they do

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<sup>8</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>9</sup> Paragraph 160 of the Merger Notice.

<sup>10</sup> Paragraphs 151-159 of the Merger Notice.



not operate in some specific segments because they do not have the right films, fitments and, in the case of aseptic packaging, they do not have access to the irradiation technology required (the CMA notes that these competitors are not among the largest BiB suppliers, either in the UK or in the EEA); and

- c) Although the Parties, Scholle IPN (**Scholle**) and Smurfit (the Parties' main competitors) are all active in each of the beverages, dairy, food and wine segments in the EEA, the CMA notes that:
  - i. There appear to be material differences in individual suppliers' market shares across different segments (see Table 1 below); and
  - ii. Some of the Parties' internal documents analyse the different segments [X].

40. The CMA noted the lack of demand-side substitutability between different end use segments and the evidence of some differences in the conditions of competition between segments, but nevertheless considered it appropriate to define a single frame of reference for BiB packaging for edible products and take account of differences between segments in the competitive assessment below.<sup>11, 12</sup>

#### *Conclusion on product scope*

41. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frame of reference:

- The supply of BiB packaging for edible products.

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<sup>11</sup> In any event, the CMA considers that its views on the impact of the Merger (see competitive assessment below) would be the same whether or not the CMA assesses the Merger by reference to the supply of BiB packaging for edible products or alternatively, by reference to the supply of BiB packaging for individual end-use segments (ie beverages, dairy, food and wine).

<sup>12</sup> The Parties submitted that, should the relevant market for BiB solutions be segmented by end-use, the criteria for a de minimis exception to the CMA's duty to refer the Merger to Phase 2 applies. The CMA can apply the 'de minimis' exception where the market concerned is not, or the markets concerned are not, of sufficient importance to justify the making of a reference. Even if each segment were considered to be a distinct product frame of reference, the annual value in the UK, in aggregate, of each segment combined is more than £15 million and the CMA considers the BiB packaging market to be of sufficient importance to justify a reference to Phase 2 (see paragraph 8, [Mergers: Exceptions to the duty to refer](#)).

## **Geographic scope**

42. The Parties submitted that the relevant geographic market is not narrower than the EEA.<sup>13</sup>
43. In particular, the Parties told the CMA that:<sup>14</sup>
- a) There are significant trade flows of BiB packaging into the UK as only Liqui-Box and Scholle have a local manufacturing presence;
  - b) Transport costs are very low, estimated on average at [redacted]% of price for Liqui-Box and [redacted]% for the Target;<sup>15</sup>
  - c) Precedent from European Commission (**EC**) decisions ‘concludes’ the relevant geographic market is EEA-wide;
  - d) The Parties operate European business models<sup>16</sup> and do not view the geographic scope to be the UK only – for example, the Parties’ internal documents generally provide an assessment of competition at a European level without specifically considering the UK separately;
  - e) Some customers tender on a European wide basis, including [redacted],[redacted],[redacted] and [redacted]; and
  - f) Technologia and AZ-Pack entered the UK from Europe recently.
44. However, the CMA notes the following points from its investigation:
- a) Prices and other terms are determined by tendering or negotiation between customers and suppliers, rather than being determined by suppliers’ list prices.<sup>17</sup> Hence, prices and some other terms for UK customers may diverge from those for customers elsewhere in the EEA. Thus, it is not appropriate to base the geographic market purely on the location of suppliers.<sup>18</sup>

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<sup>13</sup> Paragraph 173 of the Merger Notice.

<sup>14</sup> Paragraphs 19-25 of the Parties’ response to the CMA’s issues letter.

<sup>15</sup> Liqui-Box further analysed the shipping costs for the greatest distance it ships from its [redacted] facility (to [redacted]). For this distance, the transport costs are estimated to be [redacted]%.

<sup>16</sup> The Parties added that neither of them tracks profitability at Member State level, as they sell to a number of countries from each of their factories. Moreover, the small size of the BiB industry lends itself to Europe-wide supply, and centralised sales and technical support teams.

<sup>17</sup> Nor are prices determined by trading on international markets, as occurs for commodity markets such as oil products.

<sup>18</sup> [Merger Assessment Guidelines](#), paragraph 5.2.22.

- b) The majority of customers purchase BiB on a UK rather than EEA-wide basis. Only two customers, [REDACTED] and [REDACTED] told the CMA that their BiB suppliers are determined at a European level, as opposed to a UK, level.<sup>19</sup> Firms selling to UK customers require a method of UK distribution, though this may be through a third-party distributor.
- c) While the Parties argued that the EC precedent decisions support an EEA-wide geographic market, the CMA considers that the most relevant EC precedent is *Jefferson Smurfit / Kappa* (2005), where the EC identified a product market for BiB packaging. In this case, the EC left the geographic market definition open as the merger did not raise competition concerns on any reasonable geographic market definition, and considered shares of supply at both an EEA-level and at a national level (in Sweden).<sup>20</sup>
45. Overall, the CMA noted that the Parties consider themselves to compete on a European basis, as shown also by the Parties' internal documents, for example [REDACTED].<sup>21</sup> The CMA recognised that some aspects of competition, such as innovation, would likely be determined on a frame that was wider than the UK. However, the CMA also recognised that other aspects of competition, including price and service standards, are determined at a customer level and UK levels may differ from those elsewhere in the EEA.
46. The CMA also considered supply-side factors. The CMA may aggregate several markets into a broader one where the same production assets are used, where the same firms compete to supply different geographies and where the conditions of competition are the same across different geographies.<sup>22</sup> However, the CMA found that the conditions of competition appear to be different in the UK compared to the EEA region taken as a whole:
- a) Only the Parties, Scholle, Smurfit and, to a lesser extent, Technologia have more than negligible sales in the UK, and there are fewer competitors active in the UK than in the EEA as a whole.
- b) The BiB market is also noticeably more concentrated by share of supply between these suppliers in the UK than in the EEA as a whole – for example, in 2018, on aggregate the Parties, Scholle and Smurfit had a share of supply in the UK of [95-100]% and a [60-70]% share in the EEA

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<sup>19</sup> Customers' responses to the CMA questionnaire.

<sup>20</sup> Case No COMP/M.3935 – *Jefferson Smurfit / Kappa* (2005), paragraphs 40-41.

<sup>21</sup> Annexes 9-6 and 9-7 of the Parties' response to RFI 3.

<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 5.2.17, which relates to the product market. The same approach is relevant to the geographic as to the product market.

(with Aran and Goglio accounting together for an additional [20-30]% share in the EEA).

47. Hence, the CMA has focused its assessment on competition in the UK and has taken into account the competitive constraint posed by suppliers active elsewhere in the EEA but not active in the UK in its assessment of entry and expansion.

#### *Conclusion on geographic scope*

48. For the reasons set out above, the CMA has considered the impact of the Merger in the UK.

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

49. For the reasons set out above, the CMA has considered the impact of the Merger in the following frame of reference:

- The supply of BiB packaging for edible products in the UK.

## **Competitive assessment**

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

50. 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>23</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
51. 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 frame of reference set out above. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects, the CMA considered evidence in relation to:
- a) Ease of switching;
  - b) The shares of supply of the Parties and their competitors;
  - c) Closeness of competition between the Parties including evidence from third parties; and

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<sup>23</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

- d) The competitive constraints posed by alternative suppliers currently active in the UK.

### *Ease of switching*

52. As part of its assessment, the CMA has also considered the ease with which customers of the Parties can switch supplier.
53. Customers had mixed views about the ease of switching BiB packaging supplier. However, a significant proportion considered that switching was difficult, for example because switching would often require undertaking trials and, in some cases, obtaining end-users' approval. Some customers considered that switching could be very challenging due to the customers currently using supplier-specific filling machines or fitments such as valves or connectors. Some customers said that switching can take up to six months, and cost thousands of Pounds per supplier. One customer ([REDACTED]) said that switching part of its supply took [REDACTED].
54. The Parties submitted that switching BiB packaging supplier was not difficult, stating that the process of switching generally took only a few weeks, and that switching rates were high. However, the CMA noted that the Parties' data show that [REDACTED]% of Liqui-Box's UK customer accounts and [REDACTED]% of the Target's UK customer accounts had not switched during a five-year period. The CMA considers that this data shows that switching BiB packaging supplier is not necessarily particularly common.
55. More generally, the CMA attributes weight to the view of a significant proportion of customers that switching is relatively difficult and believes this illustrates that BiB packaging should not be treated as a fully homogeneous product, but as one with elements of differentiation between suppliers, including the strength of their customer relationships.

### *Shares of supply*

56. Table 1 below reports the CMA's estimated market shares in the UK, based on the Parties' and competitors' data and estimates.
57. The CMA was able to verify the sales of all the main competitors of the Parties and also some other EEA suppliers.<sup>24</sup> The CMA therefore considers its estimates of shares of supply to be particularly reliable.

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<sup>24</sup> Where the CMA could not verify smaller suppliers' sales, it relied on the Parties' estimates.

**Table 1: Estimated shares of supply for BiB packaging for edible products (UK, 2018)**

	Beverages	Dairy	Food	Wine	Total edible products
Liqui-Box	[10-20%]	[20-30%]	[10-20%]	[10-20%]	[10-20%]
Target	[50-60%]	[10-20%]	[0-10%]	[0-10%]	[20-30%]
<b>Combined</b>	<b>[70-80%]</b>	<b>[40-50%]</b>	<b>[20-30%]</b>	<b>[20-30%]</b>	<b>[40-50%]</b>
Smurfit Kappa	[0-5%]	[0-5%]	[10-20%]	[70-80%]	[20-30%]
Scholle IPN	[20-30%]	[50-60%]	[50-60%]	[0-5%]	[20-30%]
Technologia	[0-5%]	[0-10%]	[0-5%]	[0-5%]	[0-10%]
Others	[0-5%]	[0-5%]	[0-10%]	[0-5%]	[0-10%]
Total	100%	100%	100%	100%	100%

Source: CMA analysis of the Parties' and competitors' data and estimates for 2018 sales value.<sup>i</sup>

58. These estimates show that the Merged Entity would have approximately a [40-50]% market share in the supply of BiB packaging for edible products in the UK overall.<sup>25</sup> The combined share of the Parties differs between segments and is highest in the beverages segment at over 70%.<sup>26</sup>

59. The estimates also show that the Merger would cause a reduction in the number of independent competitors with a material share of supply from four (the Parties, Scholle and Smurfit) to three (the Merged Entity, Scholle and Smurfit). However, the reduction would be from three to two when considering each of the beverages and wine segments separately. This is because Smurfit does not have a strong presence in beverages, while Scholle does not have a strong presence in wine. Smurfit also does not have a strong presence in the dairy segment, but this is compensated to a degree by the presence of Technologia albeit that Technologia's presence in this segment is small.

60. The Parties said that the CMA's estimates of the shares of supply should be interpreted with caution for a number of reasons, as set out below:<sup>27</sup>

- a) The Parties submitted that the CMA's estimates were based on sales, rather than capacity, so were not a true measure of suppliers' ability to compete. However, the CMA considers that sales are a better indication of the current market position of the Parties and of their competitors. The CMA does not believe that BiB packaging is a fully homogeneous product where competitive strength is determined only by production capacity, but that it is differentiated. Competitive strength in BiB packaging is affected also by other factors including product quality, distribution arrangements, standards of customer service and relationships with customers. The Parties

<sup>25</sup> The Parties' share in 2018 is estimated at [X]%, though this would reduce to [X]% if the [X] contract, which the Parties have lost, was excluded.

<sup>26</sup> The Parties' share in 2018 is estimated at [X]%, though this would reduce to [X]% if the [X] contract, which the Parties have lost, was excluded. For completeness, the CMA notes also that [X] accounts for around [X]% of the UK beverages segment.

<sup>27</sup> Paragraph 33 of the Parties' response to the CMA's Issues Letter.

submitted, however, that, the products were largely homogeneous (which they considered was supported by low margins, aggressive tendering and the success of low cost importers such as Technologia). Hence, in the Parties' view, the effects of the Merger did not depend so much on the number of post-Merger competitors but on the excess capacity of rivals which they considered was significant. The CMA has taken into account the potential excess capacity of the Parties' competitors in paragraphs 110 to 114 below.

- b) The Parties submitted that the CMA's estimates reflect historical positions, and these positions are being eroded. However, the CMA found that the market shares have been broadly stable and consistent in the last three years (2016 to 2018), and moreover that the Parties' market shares have increased over this period, rather than decreased, with only one recent entrant, Technologia, winning non-negligible business from the Parties, Scholle and Smurfit. As shown in Table 1, Technologia's UK share remains small.
- c) The Parties submitted that the CMA's estimates do not take into account that any attempt by the current set of suppliers in the UK to increase prices by a small amount would be defeated by customers switching to other importers, whether new suppliers not currently active in the UK or via suppliers already active in the UK. However, the CMA recognises that shares of supply only provide an indication of the current market position of the different suppliers active in the UK. The CMA has assessed the competitive constraint from suppliers currently active in the UK and the likelihood of entry from new suppliers not currently active in the UK below.
- d) The Parties submitted that the CMA's estimates are subject to potential large variations given that a small number of customers account for a large share of business, and the loss of a single customer can have a large impact on a supplier's sales share. While the CMA recognises that there are a small number of large customers, and that, if these customers change their supplier, it could impact on the shares of the suppliers concerned, it also found that suppliers' shares have in practice tended to be broadly stable over the period 2016 to 2018. There was also an increase in the overall share of supply over this same period by the Merging Parties. Moreover, any switching by large suppliers to date has largely been only between the four main competitors (ie the Parties, Scholle and Smurfit Kappa).

### *Closeness of competition between the Parties*

61. The CMA has examined the closeness of competition between the Parties and has considered within its assessment:
- a) Evidence from internal documents;
  - b) Evidence from the Parties' data on won and lost opportunities; and
  - c) Evidence from third parties.
62. The Parties submitted that competition in the market for BiB packaging is intense because there is no significant product differentiation, all suppliers have excess capacity, customers can easily switch supplier and, as a result, industry margins are low.<sup>28</sup>
63. The Parties argued that there are many BiB packaging suppliers active in the UK, including key suppliers Scholle, Smurfit, Aran, Technologia and Goglio. Liqui-Box does not consider the Target to be a closer or more distant competitor than any of these suppliers. On the basis of its lost accounts in the last five years, Liqui-Box believes that [X] is its closest competitor in the UK, followed by [X] and [X].<sup>29</sup>
64. Notwithstanding the Parties' submissions, the evidence that the CMA received indicates that the Merging Parties compete closely with each other in the UK, as well as with Scholle and Smurfit, but that other suppliers are more distant competitors. This evidence is detailed in the sub-sections that follow.

### *The Parties' internal documents*

65. The Parties submitted more than 200 internal documents, including reports, meeting notes and presentations, email exchanges, evidence of negotiations with customers, and regular internal newsletters.
66. The CMA analysed such documents, finding evidence that, at a global and European level,<sup>30</sup> each Party frequently references [X], [X] and [X]. For example:

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<sup>28</sup> Paragraph 213 of the Merger Notice.

<sup>29</sup> Paragraphs 214-215 of the Merger Notice.

<sup>30</sup> The documents provide an illustration of competition [X].



- a) Liqui-Box's [REDACTED] indicates that, for all product segments, Liqui-Box considers [REDACTED], [REDACTED], the Target, [REDACTED] and [REDACTED] (and, for food only, [REDACTED]) to be its main competitors;<sup>31</sup>
  - b) The Target's monthly updates on relevant news in Europe [REDACTED] regularly mention [REDACTED], Liqui-Box and [REDACTED], showing that the Target constantly monitors news on these three competitors;<sup>32</sup> and
  - c) Liqui-Box's [REDACTED] show that Liqui-Box regularly competes for customers in Europe with the Target, [REDACTED] and [REDACTED].<sup>33</sup>
67. Some internal documents also mention other competitors, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], etc. However, these appear in [REDACTED] when compared with Liqui-Box, the Target, [REDACTED] and [REDACTED].
68. The Parties submitted that their internal documents were not pertinent for assessing closeness of competition, as they did not show that some suppliers are closer competitors of the Parties than others.<sup>34</sup> The Parties also submitted that the documents are static and only reference certain competitors at any given time.<sup>35</sup>
69. The Parties further submitted that the most relevant documents of the Parties show that a wide range of competing suppliers exist in Europe. Such documents include the following:<sup>36</sup>
- a) For Liqui-Box, its EMEA Commercial Team Meeting presentation (February 2018);<sup>37</sup>
  - b) For the Target:
    - i. The 'pan-European appointment and action checklists' for [REDACTED] (2018);<sup>38</sup>
    - ii. The 'Flexibles Narrative – Europe (July 2018)';<sup>39</sup> and
    - iii. The 'Flexibles Europe – Quarterly Review (May 2018)'.<sup>40</sup>

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<sup>31</sup> Annex 9-4H of the Parties' response to RFI 3.

<sup>32</sup> Annexes 7-1A-7-1R of the Parties' response to RFI 3.

<sup>33</sup> Annexes 9-6 and 9-7 of the Parties' response to RFI 3.

<sup>34</sup> Information provided by the Parties verbally at the Issues Meeting.

<sup>35</sup> Paragraph 35 of the Parties' response to the CMA's Issues Letter.

<sup>36</sup> Paragraphs 36-37 of the Parties' response to the CMA's Issues Letter.

<sup>37</sup> Annex 8-1 of the Parties' response to RFI 3.

<sup>38</sup> Annexes 9-3B to 3F of the Parties' response to RFI 3.

<sup>39</sup> Annex 9-3T of the Parties' response to RFI 3.

<sup>40</sup> Annex 9-3L of the Parties' response to RFI 3.

70. In relation to a Liqui-Box EMEA Commercial Team Meeting presentation, the CMA notes that although it is clear that a number of European competitors are mentioned, the document focuses significantly only on [REDACTED], [REDACTED], the Target and [REDACTED] (for each of whom Liqui-Box dedicates a single page of the document), and focuses markedly less on other competitors (who are collectively listed on a single page, the last page of the document).
71. Overall, the CMA considers that the internal documents provided by the Parties show that, at a European level, the main competitors are the Parties, Scholle and Smurfit Kappa. Although other competitors are mentioned as well in the Parties' internal documents, the importance attached to these other competitors and the number of times they are mentioned is markedly lower.

*Won and lost opportunities*

72. The Parties submitted their records of the BiB packaging commercial opportunities won and lost in the UK since 2016.<sup>41</sup> The data included details of the customers and the competitors who these customers were won from or lost to.
73. The CMA considers that the data showing the loss of customers from one Party to the other Party provides an indication on closeness of competition between the Parties.
74. Table 2 below shows the results of the CMA's analysis of the Target's data. The CMA believes that the Target's data is more reliable than Liqui-Box's data for two main reasons. First, Liqui-Box was only able to guess the suppliers who might have won its lost customers in most of the cases. Secondly, the Parties explained that while the Target's data were created [REDACTED], Liqui-Box's records were created [REDACTED]. Accordingly, the CMA has given less weight to Liqui-Box's won and lost data.

**Table 2: Target's won and lost opportunities data**

Target's won opportunities data (UK, 2016-2018)				
	All won opportunities	Opportunities won from Liqui-Box	Opportunities won from Scholle	Opportunities won from Smurfit
Number	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Value	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Share (number)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Share (value)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Target's lost opportunities data (UK, 2016-2019)				

<sup>41</sup> Annexes 9-6 and 9-7 of the Parties' response to RFI 3.

	All lost opportunities	Opportunities lost to Liqui-Box	Opportunities lost to Scholle	Opportunities lost to Smurfit
Number	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Value	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Share (number)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Share (value)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA analysis of the Parties' data.

75. The Target's won and lost data suggests that its closest competitors in the UK are Liqui-Box, [REDACTED] and [REDACTED]. No other competitor appears in the Target's won and lost records.<sup>42</sup>
76. The Parties submitted that the won opportunities data is not informative, in isolation, of the competitive constraints between the Parties.<sup>43</sup> The Parties further submitted that the Parties' records show that Liqui-Box lost only [REDACTED] opportunities to the Target, and that the Target lost only [REDACTED] opportunities to Liqui-Box (although as shown above these opportunities account for [50-60]% of the lost opportunities value, due to the large value of the [REDACTED] business lost to Liqui-Box by [REDACTED]).<sup>44</sup>
77. The CMA recognises that the Parties did not lose opportunities to each other in a large number of cases in this data. However, the sample-size is small and the number and value of such lost opportunities is not immaterial.
78. Overall, the CMA considers that this data indicates that the main and closest BiB competitors in the UK are the Parties, Scholle and Smurfit.<sup>45</sup>

### *Evidence from third parties*

#### *Closeness of competition*

79. In its customer questionnaire, the CMA asked customers to rank suppliers according to how closely the suppliers could meet their needs.<sup>46</sup>

<sup>42</sup> For completeness, Liqui-Box's data, to which the CMA has given less weight, suggest that Liqui-Box's closest UK competitors are [REDACTED], the Target and [REDACTED]. Aran and Technologia were also included in Liqui-Box's data. However, the CMA found that Aran [REDACTED] and that Technologia has only a minor presence in the UK.

<sup>43</sup> Paragraph 39 of the Parties' response to the CMA's Issues Letter.

<sup>44</sup> Paragraphs 41-42 of the Parties' response to the CMA's Issues Letter.

<sup>45</sup> The Parties also submitted an analysis of the overlaps in their customer lists. This, combined with further analysis by the CMA, showed that about [REDACTED] of the Parties' customers, accounting for about [REDACTED]% of their sales, purchased from both Parties.

<sup>46</sup> The customers targeted were all customers served by one or both the Parties either now or in the past.

80. The responses (30 in total) indicated that customers consider the Parties, Scholle and Smurfit as the main suppliers that can meet their needs. In particular:
- a) The responses from beverage customers (10) suggest the strongest competitors are the Parties, followed by Scholle and Smurfit;
  - b) The responses from dairy customers (9) suggest the strongest competitors are the Parties, followed by Scholle and Smurfit;
  - c) The responses from food customers (3) suggest the strongest competitor is Scholle, followed by Liqui-Box and the Target; and
  - d) The responses from wine customers (7) suggest the strongest competitor is Smurfit, followed by the Parties and Scholle.
81. Importantly, a large proportion of each Party's customers that responded to the CMA's questionnaire considered the other Party to be a suitable alternative supplier:
- a) Two thirds of Liqui-Box's customers considered the Target a supplier that can meet their needs. One third of Liqui-Box's customers considered that Scholle can meet their needs and one quarter that Smurfit can meet their needs.
  - b) Around a third of the Target's customers considered that Liqui-Box, Scholle and Smurfit can meet their needs.
82. Five companies other than the Parties, Scholle and Smurfit Kappa were mentioned by one or more customers as suppliers that could meet their needs, but in each case the number of customers mentioning them was low:
- a) Technologia was listed by three customers [redacted], [redacted] and [redacted];
  - b) Aran was listed by one beverages customer ([redacted]); and
  - c) Three UK distributors, England Worthside, Jigsaw and Bag in Box and TPS Rental Systems, were each listed by (only) one customer.
83. The Parties submitted that the evidence from customers on closeness of competition:<sup>47</sup>

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<sup>47</sup> Slide 23 of the Parties' Issues Meeting Presentation.

- a) confirms that the four main suppliers currently are the Parties, Scholle and Smurfit;
- b) is backwards looking on dairy where Liqui-Box has now [X];
- c) only includes feedback from three customers on food;
- d) wrongly suggests the Target is strong in the wine segment – although the CMA’s market share data (see Table 1 above) shows that the Target is the third largest supplier to wine customers, despite its low market share in this segment;
- e) shows that many customers did not consider the Parties as competitors – at least as many of each Party’s customers named the other Party as a supplier that could meet their needs as named Scholle and Smurfit Kappa (see paragraph 81 above); and
- f) provides evidence that Technologia and Aran are (or have been) present in the UK – the CMA considers the competitive constraint from these suppliers further below.

*Evidence from third parties on the effects of the Merger*

- 84. The CMA also sought views from the Parties’ customers on the effects of the Merger. A number of the Parties’ customers and former customers of either or both of the Parties expressed concerns about the effect of the Merger on competition. Concerns included that the Merger could lead to higher prices, a lower quality of service and of product (in relation to the Target especially), difficulties in switching suppliers, a reduction in the supply of products, and a reduction of their options of available suppliers from four to three, three to two, or in some segments, down to only one supplier, depending on the segment.
- 85. A number of customers did not comment on the impact of the Merger, or said that, either because they were too small or did not know of the potential impact, they did not know whether the Merger would impact them or their business. Some customers said that they were neutral as to the Merger.
- 86. However, 10 customers<sup>48</sup> (of the 30 who responded to the CMA’s questionnaire) reported concerns, including larger customers<sup>49</sup>. Most of these

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<sup>48</sup> 4 of 10 beverages customers, 4 of 10 dairy customers, 1 of 7 wine customers, and 1 of 3 food customers.

<sup>49</sup> Of the 20 customers who did not raise concerns, only seven of these customers told the CMA that other suppliers other than the Parties, Scholle and/or Smurfit could meet their needs.

said that only limited number of suppliers could meet their needs, and these were mainly the Merging Parties.

- a) Customers' concerns were mainly regarding the reduction in the number of available suppliers brought about by the Merger.
  - b) Some customers said that the Merger could cause an increase in the level of prices or a reduction in quality; in particular, one customer commented that "the acquisition of one by the other would totally remove the ability of the post mix industry to negotiate competitive pricing".
  - c) Some customers said that it would be difficult for them to switch suppliers due to bespoke bags, fitments or machines.
  - d) A number of customers said that, in their view, the UK market for BiB packaging for edible products was already concentrated, and that the Merger would result in a further reduction in competition:
    - i. Some customers commented that there were only three suppliers in the wine segment, including one of the two Merging Parties, and that there were only two to four suppliers in the beverages segment, which included the two Merging Parties;
    - ii. One customer commented that "the supplier market is already heavily consolidated, and this could expose the situation further";
    - iii. Several customers commented that supply would be reduced from three to two, or from four to three, in certain segments, and that they could only use one or two of those suppliers.
  - e) Some customers said that the UK market for BiB packaging for edible products was not dynamic, that it was difficult for any new entrants to come into the market, and that the Merger would make new entry harder.
  - f) Several customers said that the Merger may result in the movement of supply to a manufacturing facility outside the UK which may result in difficulty or reduction in supply service and quality.
  - g) One customer was concerned about losing the option of dual-supply and that this could lead to quality control and supply risks.
87. With respect to the Parties' competitors, six competitors told the CMA that they were concerned about the effect of the Merger on competition. These included concerns regarding the impact of the Merger given the Parties' high market shares and their established name/reputation in the UK, difficulty in competing on price, and a reduction in the supply of BiB products or bag-making

machines. In particular, one competitor which was concerned about the impact of the Merger on competition in the post-mix and dairy segments, noted that the market share of the Merged Entity would 'exceed 75%' and the Merger would allow it to consolidate competition even further in the UK.

88. One competitor said it was not concerned about the Merger.
89. The CMA considers that these third-party views are consistent with a theory of harm that the Merger will lessen the competitive constraint on the Merged Entity, allowing it to increase prices and/or reduce the reliability and/or quality of supply (albeit the CMA acknowledges that not all customers expressed concerns and that relatively fewer concerns were expressed in the food and the wine segments).

#### *Conclusion on closeness of competition between the Parties*

90. Overall, the CMA considers that the evidence considered above indicates that the main competitors in the UK are the Parties, Scholle and Smurfit. The CMA believes that Liqui-Box and the Target compete closely with each other, as well as with Scholle and Smurfit, in the supply of BiB packaging for edible products in the UK, which suggests that the Merger will remove an important competitive constraint, on the basis of:
  - a) The Parties' internal documents, which show that the main four BiB suppliers in Europe are the Parties, Scholle and Smurfit – although a number of other European competitors are also referenced in the documents, these have, both individually and collectively, at most a minor presence in the UK;
  - b) The Parties' won and lost opportunities data, which provides evidence that the Parties win and lose business competing with each other, as well as with Scholle and Smurfit in the UK;
  - c) Evidence from customers, which confirmed that the main BiB suppliers in the UK are the Parties, Scholle, and Smurfit; and
  - d) A number of customers and competitors told the CMA in particular that they considered the Parties to be very similar and close competitors. A large proportion of each Party's customers consider the other Party as a suitable provider.

#### *Competitive constraints posed by alternative suppliers currently active in the UK*

91. The CMA has found (see Table 1 above) that, other than the Parties, the only BiB suppliers currently active in the UK with any material shares of supply are:

- a) Scholle;
- b) Smurfit; and (to a much lesser extent)
- c) Technologia (albeit its UK sales in 2018 were below £[~~£~~], that is [0-10%] of the total UK market).<sup>50</sup>

92. In this sub-section, the CMA considers:

- a) The extent of the competitive constraint provided by each of Scholle, Smurfit, Technologia, and other BiB suppliers currently active in the UK; and
- b) Excess capacity.

### *Scholle*

- 93. The Parties submitted that Scholle is a key competitor to the Parties in the supply of BiB packaging for edible products in the UK (and has local manufacturing facilities).<sup>51</sup>
- 94. As the shares of supply estimates illustrate (see Table 1 above), Scholle is currently one of the four largest BiB suppliers in the UK. It is particularly strong in the food and dairy segments, where the CMA has estimated that it has shares of [50-60%] and [50-60]% respectively. Scholle also has a sizeable share in the beverages segment, [20-30%]. It is, however, a weaker competitor in the wine segment in the UK with a share of [0-5%].
- 95. The won and lost opportunities data suggests that Scholle is one of the closest competitors of the Parties in the UK (see paragraphs 72-78 above).
- 96. The customer responses to the CMA's questionnaire indicated that around one third of each of Liqui-Box and the Target's customers consider Scholle as a supplier that could meet their needs (see paragraph 81 above).
- 97. The internal documents of the Parties confirm that Scholle is one of the closest competitors of the Parties in Europe (see paragraphs 65-71 above).
- 98. Overall, the CMA considers that both Parties compete closely with Scholle in the BiB packaging segments for beverages, dairy and food. The CMA currently

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<sup>50</sup> The potential constraint from other suppliers with currently no or very low shares of supply in the UK is considered further below in paragraph 109.

<sup>51</sup> Table 9 of the Merger Notice.



considers Scholle to pose a weaker constraint in the wine segment, where the analysis shows Scholle does not currently have a strong presence in the UK.

### *Smurfit*

99. The Parties submitted that Smurfit is a key competitor to the Parties in the supply of BiB packaging for edible products in the UK.<sup>52</sup>
100. As the shares of supply estimates illustrate (see Table 1 above), Smurfit is currently one of the four largest BiB suppliers in the UK. It is particularly strong in the wine segment, where the CMA estimated that it has a share of [70-80%]. It has also a moderate share in the food segment [10-20%]. It is, however, a weaker competitor in the beverages and dairy segments in the UK with a share of [0-5%] in these segments.
101. The won and lost opportunities data suggests that Smurfit is one of the closest competitors of the Parties in the UK (see paragraphs 72-78 above).
102. The customer responses to the CMA's questionnaire indicated that around one quarter of Liqui-Box's customers and one third of the Target's customers consider Smurfit as a supplier that could meet their needs (see paragraph 81 above).
103. The internal documents of the Parties confirm that Smurfit is one of the closest competitors of the Parties in Europe (see paragraphs 65-71 above).
104. Overall, the CMA considers that both Parties compete closely with Smurfit Kappa in the BiB packaging segments for wine and food. The CMA currently considers Smurfit to pose a weaker constraint in the beverages and dairy segments, where the analysis shows that Smurfit does not currently have a strong presence in the UK.

### *Technologia*

105. Technologia entered the UK market recently ([X]), making less than £[X] sales in 2018, equivalent to a [0-10%] share in the total UK market (see Table 1 above). Its share is slightly larger in the dairy segment, [0-10%] ([X]).
106. Based in Ukraine, Technologia [X]. [X] [X].
107. Technologia was listed as a potential supplier by three customers (two dairy and one beverages and wine).

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<sup>52</sup> Paragraph 215 of the Merger Notice.

108. Based on this evidence, the CMA considers that currently Technologia is still a minor competitor in the UK, with a slightly larger presence in the dairy segment. The CMA has considered the potential for Technologia to expand in the UK in paragraphs 132 to 136 below.

#### *Other BiB suppliers*

109. The CMA has found that a number of smaller suppliers together account for only 2% share of supply in total (see Table 1 above) suggesting that individually and collectively these other suppliers exert a very limited competitive constraint pre-Merger. The CMA has considered the potential for other suppliers to expand in the UK in paragraphs 145 to 147 below.

#### *Excess capacity*

110. The Parties submitted that the BiB industry is characterised by the existence of current extra capacity. Moreover, further capacity has been added by competitors in the market in recent years. As a result, the Parties submit that competitors compete aggressively for additional volumes.<sup>53</sup>

111. The Parties also explained that Liqui-Box's UK and Spanish production facilities are utilised at [redacted]% and [redacted]% respectively, while the Target's Bulgarian and German facilities have capacity utilisation of [redacted] and [redacted]% respectively.<sup>54</sup>

112. As explained above (see paragraph 60.a), the CMA does not consider that BiB packaging is a fully homogeneous product where competitive strength is determined only by production capacity.

113. Notwithstanding this, as part of its merger investigation, the CMA asked the Parties' key competitors for information on their spare capacity. Scholle told the CMA that, as a share of its 2018 EEA sales, it [redacted]. Smurfit told the CMA that, as a share of its 2018 EEA sales, it has around [redacted] spare capacity.

114. On the basis of this evidence, the CMA does not consider that [redacted] excess capacity. The CMA has considered the capacity of other suppliers available for expansion in paragraphs 132 to 144 below.

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<sup>53</sup> Paragraph 65 of the Parties' response to the CMA's Issues Letter.

<sup>54</sup> Paragraph 294 of the Merger Notice.

*Conclusion on competitive constraints posed by alternative suppliers currently active in the UK*

115. Overall, the CMA believes that Scholle and Smurfit currently exert a strong competitive constraint on the Parties in the market for BiB packaging for edible products in the UK. However, Scholle is weaker in the wine segment, while Smurfit is weaker in the beverages and dairy segments. Technologia poses a minor competitive constraint (mainly in dairy). Other BiB suppliers exert only a very limited competitive constraint.

*Conclusion on horizontal unilateral effects*

116. For the reasons set out above, the CMA believes that the Merger will cause a reduction in the number of main competitors active in the UK from four to three. The CMA believes that the Parties currently compete closely with each other. In addition, only two other suppliers, ie Scholle and Smurfit, represent competitive constraints in the UK, with one further much smaller supplier, Technologia. The loss of the Target from the UK market may lead to higher prices, poorer quality, and/or lower service levels in the supply of BiB packaging for edible products in the UK. This conclusion is supported by the evidence analysed by the CMA, including shares of supply, internal documents, Parties' data and evidence from third parties.

117. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to BiB packaging for edible products in the UK.

118. The CMA considers entry and expansion and buyer power in paragraphs 127 to 148 below.

***Vertical effects***

119. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers.

120. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such

foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>55</sup>

121. In the present case, the CMA has considered whether the Merger could give rise to vertical effects in relation to the supply by the Parties of two inputs into the supply of BiB packaging for edible products:
- a) Bag-making machines, which are supplied by Liqui-Box (through Maverick, which is based in South Africa); and/or
  - b) Dispensing solutions, ie BiB taps, fitments and connectors which are supplied by the Target (through Worldwide Dispensers, which manufactures in Slovakia, New Zealand and the USA).

#### *Bag-making machines*

122. In relation to Liqui-Box's supply of bag-making machines, the CMA has considered whether after the Merger the Merged Entity could have the ability and incentive<sup>56</sup> to:
- a) Engage in input foreclosure through foreclosing its rivals in the supply of BiB packaging for edible products, for example by refusing to supply bag-making machines; and/or
  - b) Engage in customer foreclosure through foreclosing its rivals in the supply of bag-making machines, for example by purchasing bag-making machines only from Maverick and not from other competitors.
123. The CMA considers that the Merger does not give rise to a realistic prospect of an SLC in relation to these theories of harm:
- a) In relation to input foreclosure; Liqui-Box does not have the ability to foreclose competitors since there are a number of global competitors in the supply of bag-making machines, including Tecnocanto (Portugal), GN Packaging (Canada), PPM Packaging (South Africa) and Zhou Tai (China).<sup>57</sup>
  - b) In relation to customer foreclosure; the CMA notes that even if the Target restricted its purchases of machines to Maverick only, other suppliers of

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<sup>55</sup> In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

<sup>56</sup> The CMA noted that Liqui-Box is already integrated as between bag-making machines and BiB packaging while the Target is already integrated as between taps, fitments and connectors and BiB packaging. Hence, the Merger only increases the sales of BiB packaging that are relevant for assessing the effects of vertical integration that already exists pre-Merger.

<sup>57</sup> Paragraph 261 of the Merger Notice.

machines could still sell to other BiB suppliers such as Smurfit, Scholle, Aran, etc. Further, the Target is unlikely to be an important customer of bag-making machines given that these machines have a long life (around 30 years) and as such it does not need a new machine often.

### *Dispensing solutions*

124. In relation to the Target's supply of dispensing solutions, ie BiB taps, fitments and connectors, the CMA has considered whether after the Merger the Merged Entity could have the ability and incentive to:

- a) Engage in input foreclosure through foreclosing its rivals in the supply of BiB packaging for edible products, for example by refusing to supply BiB taps, fitments and connectors; and/or
- b) Engage in customer foreclosure through foreclosing its rivals in the supply of BiB taps, fitments and connectors, for example by purchasing BiB taps fitments and connectors only from Worldwide Dispensers and not from other competitors.

125. The CMA considers that the Merger does not give rise to a realistic prospect of an SLC in relation to these theories of harm:

- a) In relation to input foreclosure:
  - i. The Target is unlikely to have the ability to foreclose since it has only a [20-30]% share in the EEA and an [0-10]% share in the UK in the merchant market for taps, fitments or connectors.<sup>58</sup> Competitors include Smurfit, Scholle, Aran, Meierhofer, Hoffer, Conro and iTap,<sup>59</sup> and
  - ii. The Target estimated that around 10%-20% of all its taps, fitments and connectors it sells worldwide contain patent protected technology. However, these patents do not prevent competitors from developing similar, substitutable products, and the Parties noted that all major competitors have produced versions of each other's taps, fitments and connectors.<sup>60</sup>
- b) In relation to customer foreclosure, Liqui-Box already meets internally [X]% of its EEA demand for taps, fitments and connectors.<sup>61</sup> Hence, if Liqui-Box restricted its purchase of these products to the Target only, the effect on

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<sup>58</sup> Based on the Parties' estimates (paragraph 245 of the Merger Notice).

<sup>59</sup> Paragraph 245 of the Merger Notice.

<sup>60</sup> Parties' response to RFI 6.

<sup>61</sup> Paragraph 243 of the Merger Notice.

other suppliers of taps, fitments and connectors would be small and they could still sell to Smurfit Kappa, Scholle, Aran, etc.

### *Conclusion on vertical effects*

126. For the reasons set out above, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to either Liqui-Box's supply of bag-making machines or the Target's supply of dispensing solutions. The CMA has found that neither Liqui-Box nor the Target has the ability to foreclose and we have therefore not needed to consider the incentive of the Parties to foreclose competition or any potential effect on competition of such a strategy.

### ***Entry and expansion***

127. Entry, or 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. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient. In terms of timeliness, the CMA's guidelines indicate that the CMA will typically look for entry to occur within two years although this will depend on depend on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants. depends on the specific capabilities of potential entrants.<sup>62</sup>

128. When considering the prospects for entry and expansion, and having regard to the realistic prospect threshold for reference, the CMA at Phase 1 requires compelling evidence if it is to conclude that the merger should not be referred for an in-depth Phase 2 investigation.<sup>63</sup>

129. The Parties said that suppliers based outside the UK had the ability and incentive to enter the UK market. The Parties mentioned Aran, Goglio, Tesseraux, Makplast and BiB Poland, as well as Technologia and AZ Pack which they said were already present in the UK. The Parties also mentioned Peak Packaging which supplied large BiB and, they said, could easily expand across BiB.

130. The Parties added that:

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<sup>62</sup> [Merger Assessment Guidelines](#), paragraph 5.8.11.

<sup>63</sup> [Merger Assessment Guidelines](#), paragraph 5.1.3.

- a) alternative suppliers, in particular Technologia and Aran, had a good reputation and were credible UK suppliers;
- b) while security of supply was important, a sufficient level of security could readily be provided by all the suppliers mentioned. BiB products can be easily stored and warehouse space was easy to find and could be rented with ease and at modest cost given that there were no special storage conditions; and
- c) BiB bags supplied from Eastern Europe were of the same quality as those produced elsewhere in Europe.

131. In the following sub-sections the CMA assesses the timeliness, likeliness and sufficiency of entry / expansion for:

- a) Technologia;
- b) Aran;
- c) Goglio;
- d) AZ-Pack; and
- e) Other European competitors.

### *Technologia*

132. Technologia, which is based in the Ukraine, entered the UK market recently ([REDACTED]). Its sales in 2018 were less than £[REDACTED], equivalent to a [0-10%] share of the total UK market (see Table 1 above). Its share is slightly larger in the dairy segment, [0-10%] ([REDACTED]). Its EEA sales were only £[REDACTED], equivalent to a very small [0-10%] share of the EEA total BiB-packaging market.

133. Three customers told the CMA that Technologia was a supplier that could meet their needs (see paragraph 82 above) and suggested that Technologia's current prices and quality were competitive.<sup>64</sup> Specifically:

- a) [REDACTED] commented: 'New to market. Very competitive and good quality';
- b) [REDACTED] commented: 'SHA in place and deliver as and when required'; and
- c) [REDACTED] commented: 'Very competitively priced but quality requires improvement.'

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<sup>64</sup> Although [REDACTED]

134. Technologia is a relatively new entrant to the UK market and is seeking to gain new customers. Technologia [redacted] ([redacted]). [redacted], [redacted]. [redacted] therefore it [redacted]. Hence the CMA believes Technologia's expansion may be timely and likely.
135. Technologia is a relatively small supplier both in the UK and the EEA as a whole. In regard to capacity, Technologia commented '[redacted]'. Given its small size (including its EEA operations) and [redacted], the CMA does not believe that Technologia's expansion would, by itself, be sufficient to offset the CMA's competition concerns in BiB packaging.
136. Based on this evidence, the CMA believes that Technologia's expansion may be timely and likely, but it would not by itself be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

#### *Aran*

137. Aran produces BiB packaging from facilities in Israel and Spain and is one of the six largest BiB suppliers in the EEA. Its EEA 2018 sales were £[redacted], equivalent to a [0-10%] share. Aran entered the UK market in 1997, but it [redacted] in the UK.
138. Aran was listed as a potential UK supplier only by [redacted] (see paragraph 82 above), which commented '[redacted]'.
139. The Parties submitted that Aran could supply into the UK easily and at short notice in the event of a post-Merger price increase. However, Aran told the CMA that [redacted].
140. Given that Aran has previously supplied into the UK, the CMA believes its entry could be timely. However, there is no evidence that Aran [redacted]. In regard to capacity, Aran [redacted]. Accordingly, the CMA believes that the Parties' argument is speculative and fails to meet the standard required at Phase 1 when considering the prospects for entry and expansion (see paragraph 128 above).
141. Based on this evidence, the CMA believes that Aran's entry into the UK is not likely.

#### *Goglio*

142. Goglio, which is based in Italy, is one of the six largest BiB suppliers in the EEA, with £[redacted] sales and a [0-10%] share in 2018, mostly in the food segment. However, it had negligible sales in the UK and no customer listed it as a supplier that could meet its needs.



143. Goglio explained that it had no significant business in the UK. [REDACTED]. In regard to capacity, Goglio [REDACTED].
144. Based on this evidence, the CMA believes that some expansion by Goglio in the UK may be timely and likely. However, the scale and competitive significance of any such expansion would be small and [REDACTED] and as such would not, by itself, be sufficient to offset the CMA's competition concerns in BiB packaging.

#### *Other suppliers*

145. The Parties listed a number of other suppliers that could enter and/or expand in the UK:<sup>65</sup>
- a) AZ-Pack;
  - b) BiB Poland;
  - c) Makplast;
  - d) Peak Packaging; and
  - e) Tesseraux.
146. None of these companies have a significant share of BiB packaging in the EEA,<sup>66</sup> and the CMA found their sales in the UK were negligible. No customer listed them as a potential supplier.
147. The CMA has not received compelling evidence that entry or expansion by these currently small scale suppliers would be either timely or likely or of any competitive significance to the UK market.

#### *Conclusion on entry and expansion*

148. Technologia is already present on a small scale in the UK and the CMA believes that its expansion may be timely and likely, but would not by itself be sufficient to prevent a realistic prospect of an SLC as a result of the Merger. As regards the other companies, the CMA believes that their entry/expansion would in most cases not be timely and likely; but, where it may be timely and likely, would be of small competitive significance. Overall, taking into account both Technologia and the other companies, entry and expansion into BiB

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<sup>65</sup> Paragraph 51 of the Parties' response to the CMA's Issues Letter.

<sup>66</sup> Peak Packaging is a supplier of large BiB (which told the CMA [REDACTED]), and the other companies are small suppliers in the EEA.

packaging would not be sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

### ***Countervailing buyer power***

149. The Parties submitted that their customers have significant countervailing buyer power<sup>67</sup>, which the CMA has considered below.
150. The Parties submitted that the top five customers of Liqui-box and the Target accounted for [X]% and [X]% respectively of UK sales and that, given this level of customer concentration, these customers were able to exert a high degree of buyer power. The Parties also submitted that all customers are able to apply pressure on the Parties by using quotes from competitors in order to drive price reductions.
151. The CMA does not believe that customer size in itself means that customers can exert a high degree of negotiating power as it depends on the options available to customers.<sup>68</sup> Similarly, the ability of customers to use quotes from competitors to apply downward pressure on prices depends on the number of alternative options they have available. As a merger changes market structure and eliminates a competitor from the market, it reduces the options available to customers. Hence, it reduces the competitive constraints faced both by the Merging Parties and by their competitors. Indeed, competing suppliers may respond to a price rise by the merged firm by raising their own prices. As noted above, the CMA has found that the Merger will reduce the number of significant competitors currently active in the UK which will reduce the ability of customers to exert any buyer power post-Merger.
152. Furthermore, where individual negotiations are prevalent (as in the supply of BiB packaging for edible products), the buyer power possessed by any one customer will not typically protect other customers from any adverse effect that might arise from the merger<sup>69</sup>.
153. The Parties also submitted that the strength of customers for BiB packaging was also evidenced by their UK margins and prices decreasing in recent years. The Parties provided (at a late stage in the Phase 1 process) tables showing [X] in their gross margins and in the average prices per bag over the last three to five years.

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<sup>67</sup> Response to Issues Letter, paragraph 2 (bullet 5).

<sup>68</sup> [Merger Assessment Guidelines](#), paragraph 5.9.4.

<sup>69</sup> [Merger Assessment Guidelines](#), paragraph 5.9.6.

154. The CMA considers that, irrespective of whether this evidence does or does not provide an indication about the past and current intensity of competition (and customers' buyer power), it does not suggest that the conditions of competition would be unchanged post-Merger. In particular, the CMA notes that the Merger would reduce the number of main independent competitors in the UK from four to three. Hence, the competitive pressure on prices would be weaker for each Party and for their competitors after the Merger.

### Third party views

155. The CMA contacted current (and some former) customers as well as competitors of the Parties. Third party comments have been taken into account where appropriate in the competitive assessment above.

### Conclusion on substantial lessening of competition

156. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of BiB packaging for edible products in the UK.

### Decision

157. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.

158. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.<sup>70</sup> The Parties have until 26 July<sup>71</sup> to offer an undertaking to the CMA.<sup>72</sup> The CMA will refer the Merger for a phase 2 investigation<sup>73</sup> if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides<sup>74</sup> by **2 August** that there are no reasonable grounds for

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<sup>70</sup> Section 33(3)(b) of the Act.

<sup>71</sup> Section 73A(1) of the Act.

<sup>72</sup> Section 73(2) of the Act.

<sup>73</sup> Sections 33(1) and 34ZA(2) of the Act.

<sup>74</sup> Section 73A(2) of the Act.

believing that it might accept the undertaking offered by the Parties, or a modified version of it.

**Joel Bamford**  
**Senior Director of Mergers**  
**Competition and Markets Authority**  
**19 July 2**

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<sup>i</sup> Table 1 has been updated to reflect the inverted rows of figures between Scholle IPN and Smurfit Kappa at rows 4 & 5, to the correct position.