

Anticipated acquisition by USCO SpA Group of Knockturn Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6845/19

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 6 December 2019.

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. USCO SpA Group (**USCO**) has agreed to acquire Knockturn Limited (**Knockturn**) (the **Merger**). USCO and Knockturn 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 USCO and Knockturn 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. In the UK, the Parties overlap in the supply of:
 - (a) undercarriages for crushers and screeners to original equipment manufacturers (**OEMs**); and
 - (b) spare parts for undercarriages produced by Strickland Tracks Limited (**STL**), a subsidiary of Knockturn, to OEMs and dealers.

4. The CMA has assessed the impact of the Merger in these two frames of reference on a cautious basis. However, the CMA did not need to conclude on the product or geographic frame of reference because it identified no concerns on any plausible basis.
5. The CMA found that the Parties' combined share of supply of undercarriages for crushers and screeners to OEMs in the UK is very high (approximately [80-90%]). However, the CMA believes that the Merger does not give rise to competition concerns in this frame of reference because the Parties are not close competitors. This lack of close competition is supported by the CMA's finding that USCO has very limited activities in the supply of undercarriages for crushers and screeners in the UK: the Merger will result in a very small increment of less than [0-5%]. A few third parties [X] did raise concerns but the CMA found that these were not supported by the evidence.
6. Further, the CMA received evidence that the Parties are not close competitors in the supply of spare parts for undercarriages produced by STL. The CMA also found that the Parties' products also compete with alternative products within this frame of reference. This analysis is supported by customer responses to the CMA's merger investigation. Although some third parties [X] raised concerns, the CMA found that these were either non-merger specific, or were not supported by the evidence.
7. The CMA also assessed if the Merger may result in any vertical effects. In particular, the CMA looked at concerns [X] as to whether the merged entity may be able to foreclose USCO's upstream rival suppliers of components for undercarriages or USCO's rivals in the supply of generic and branded spare parts. However, the CMA found that the Merger did not give rise to any vertical effects.
8. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of either horizontal unilateral or vertical effects.
9. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

10. USCO is the holding company for a trading and manufacturing group established and headquartered in Italy. It manufactures and supplies components for earth-moving machines to customers globally. USCO is active in a broad range of products and supplies customers in many different industries. Most of the group's revenue is generated from selling generic spare parts. The group also sells products to OEMs. USCO products include undercarriages (including both complete units and spare parts), repair parts, ground engaging tools, rubber tracks and tires. USCO manufactures undercarriages through its subsidiary Track One SRL (**Track One**).
11. Knockturn, the target, is a holding company established on the Isle of Man. The ultimate controlling party is the O'Neill family. Knockturn owns STL, a UK-based wholly-owned subsidiary. STL manufactures, designs and supplies complete undercarriage units globally. STL has a more limited product portfolio than USCO and focuses on manufacturing of complete undercarriages for OEMs, mainly for the material processing industry.
12. The Transaction also involves Knockturn (prior to its acquisition by USCO) acquiring the entire share capital of Wuxi Strickland Co. Ltd, a manufacturing company established in China, and Strickland Track Systems India Private Limited, a manufacturing company established in India (together, with Knockturn and STL, the **Target Group**), which, together with Knockturn, are under the common control of the O'Neill family.

Transaction

13. USCO, via its subsidiary ITR UK Holding Ltd, will acquire 75% of the share capital of Knockturn for £[~~3~~]. The remaining 25% of Knockturn's share capital will be retained by Sawel Holdings Limited (UK) (**Sawel**), a company controlled by the O'Neill family.
14. On 18 July 2019, the Parties entered into an SPA relating to the Transaction. The merger is anticipated and is conditional on CMA approval.

15. The turnover of the Target Group in the financial year ending 2018 was approximately EUR [⌘] worldwide and approximately EUR [⌘] in the UK.

Jurisdiction

16. As a result of the Merger, USCO and Knockturn will cease to be distinct.¹
17. The Parties overlap in the supply of undercarriages for crushers and screeners, with a combined share of supply (measured by sales) estimated to be approximately [80-90%] and an increment of [0-5%] (see Table 1, below). The CMA therefore believes that the share of supply test in section 23 of the Act is met.²
18. 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.
19. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 18 October 2019 and the statutory 40 working day deadline for a decision is therefore 13 December 2019.

Counterfactual

20. 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.³

¹ The CMA notes that Sawel will retain a 25% interest in Knockturn, which may enable it to exercise material influence. However, the CMA has not considered this further as neither Sawel nor the O'Neill family (ie the shareholders of Sawel) have any other activities in the relevant frames of reference discussed in this decision.

² The Parties submitted that their combined market share in the UK may be less than 25% on the basis of a relevant frame of reference for 'the manufacture of completed undercarriage units to UK manufacturers of material processing plant and equipment'. However, the Parties acknowledged that the relevant frame of reference may be narrower.

³ *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).

21. In this case, the CMA has not seen any evidence supporting a different counterfactual, and neither the Parties nor third parties have put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Background

22. USCO offers a broad range of products and supplies customers in many different industries. Most of the group's revenue in the UK comes from selling generic spare parts which are cross-compatible with other manufacturers' undercarriages. USCO also supplies undercarriages, spare parts and ground engaging tools in the UK and worldwide.
23. USCO's activities in the UK represent a small percentage [0-5%] of its total global revenues (EUR [X]). In particular, its sales of undercarriages in the UK are very small (less than EUR [X] in 2018).
24. STL has a more limited product portfolio and focuses on manufacturing completed undercarriages, which it supplies to OEMs. STL also supplies branded spare parts for its own undercarriages to OEMs and independent dealers but does not sell any generic spare parts.
25. Undercarriages are a part of an automotive vehicle. They are situated beneath the main body of the vehicle. The Parties assemble undercarriages from the supply of different parts and then supply the undercarriage to OEMs, who use the undercarriages to produce machines that are used for various off-highway applications (see Footnote 6 below).
26. All of USCO's supply of completed undercarriages is undertaken by Track One, which accounts for a very limited share [5-10%] of USCO's total revenues. Less than [0-5%] of these sales are in the UK.
27. In the UK, the Parties overlap in the supply of undercarriages for crushers and screeners to OEMs.⁴
28. The Parties also overlap in the supply of spare parts for undercarriages to customers that own an STL undercarriage. STL supplies branded spare parts to OEMs and independent dealers that in turn sell these parts to end customers with an STL undercarriage. USCO supplies

⁴ The Parties also overlap in the supply of mini and compact rubber carriages. However, the CMA has not assessed this overlap as USCO does not generate any revenues in relation to this product in the UK. In 2018, USCO's global revenues from mini and compact rubber undercarriages were £[X] and STL's were £[X]

generic spare parts that are cross-compatible with a range of undercarriages, including STL undercarriages.

Frame of reference

29. 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.⁵

Product scope

30. The Parties overlap in the supply of:
- (a) completed undercarriages for crushers and screeners; and
 - (b) spare parts for STL undercarriages.

Completed undercarriages for crushers and screeners

31. The Parties submitted that their undercarriages are differentiated. Track One supplies more complex and low-volume products for machines requiring bespoke solutions. STL supplies more standardised undercarriages.
32. On the demand side, undercarriages can be used for different types of vehicles with different applications. Different applications may have different technical requirements. The Parties provided a non-exhaustive list of 26 applications for different types of undercarriages.⁶ On the basis of segmentation by application, the Parties only overlap in the UK in the supply of undercarriages for crushers and screeners.
33. The Parties submitted that some applications could be grouped together because customers for these applications use undercarriages for similar purposes and have similar technical requirements. The Parties submitted that this is the case for crushers and screeners.

⁵ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁶ These applications comprise the following categories: crusher, mining drilling rig, drilling, milling, recycling, pipeline, forestry, aerial platform, conveyor, compact track loader, screeners, marble quarry, piling, excavator, harvester, railway, plough, mining underground, concrete, lifting crane, trencher, chicken harvester, amphibious, dozer, paving and agricultural.

However, for other applications, the Parties submitted that undercarriages are not substitutable. For example, undercarriages for drilling and excavators have different characteristics and technical requirements from undercarriages for crushers and screeners. Crushers and screeners are generally fixed whereas excavators and drillers need to be more mobile. The undercarriages are therefore adapted to suit these different requirements.

34. Third parties who responded to the CMA's investigation provided views which were consistent with the Parties' submissions in this regard. Some customers [X] said that they required bespoke undercarriages for crushers and screeners. Other customers [X] indicated that whilst undercarriage structures might be similar, technical specifications are customised for a customer's specific use. Competitors of the Parties [X] also confirmed that crushing and screening machines do not use the same type of undercarriage as excavators.
35. As regards supply-side substitution, the Parties submitted that suppliers of undercarriages for certain applications could also supply undercarriages for different applications. For example, STL submitted that it could start supplying undercarriages for excavators within a very short timeframe because it would be able to source components from its current suppliers.
36. The views of [X] third party respondents differed from the Parties' submissions on this point. They indicated that switching to supplying undercarriages for crushers and screeners would be time-consuming due to the complexities of the assembly process and the time needed to test each part (which can take several years). Likewise, they submitted that supply chain lead times can be substantial and switching would also require a large investment in stock, enlargement of manufacturing facilities and an increase in workforce sizes.
37. Based on this evidence and on a cautious basis, the CMA has considered the impact of the Merger on the supply of undercarriages for crushers and screeners. However, the CMA did not need to conclude on the product frame of reference because it identified no concerns on any plausible basis.

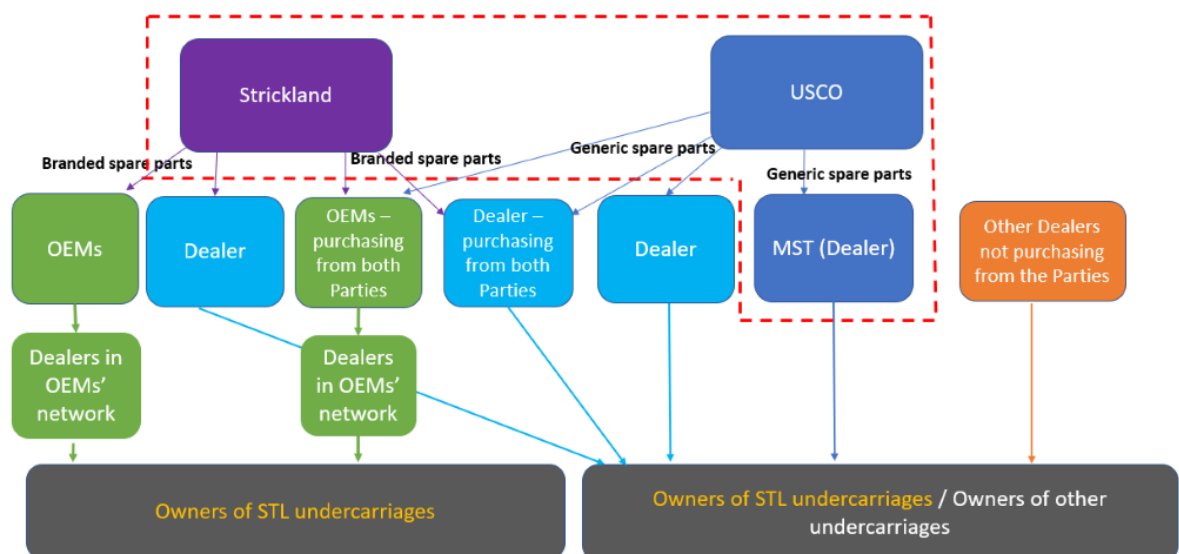
Spare parts for undercarriages

38. Both Parties sell spare parts to dealers and OEMs. These dealers and OEMs then either distribute the spare parts to end users or sell the products on to other dealers. The Parties explained that STL only sells

branded spare parts for use in an STL undercarriage whilst USCO sells generic spare parts which are cross-compatible with undercarriages for different applications, including STL's undercarriages.

39. A potential overlap between the Parties arises because STL's customers can choose between purchasing STL's branded spare parts and purchasing generic spare parts (from USCO or from other suppliers).
40. There is also a vertical link between the Parties' activities. USCO operates a spare parts dealership through its subsidiary Midland Steel Traders (**MST**) (see Figure 1 below). MST was acquired by USCO in February 2019. Previously, MST was USCO's main customer for generic spare parts for undercarriages. MST competes with other dealers and OEMs for the sale of spare parts to all types of end customer, including those requiring spare parts for an STL undercarriage.
41. Below is an illustration of the supply chain for spare parts for undercarriages:

Figure 1: Supply chain for spare parts for undercarriages



Source: CMA analysis of evidence submitted by the Parties and third parties.

42. STL only sells branded spare parts for STL undercarriages for crushers and screeners in the UK. The CMA has therefore considered whether the narrowest frame of reference should be limited to (i) branded spare parts; or (ii) spare parts used in crushers and screeners.

43. In relation to the substitutability of branded and generic spare parts, from a demand-side perspective, most of STL's customers who responded to the CMA's merger investigation [X] indicated that they are able to purchase either STL-branded spare parts (manufactured by STL) or generic spare parts from alternative suppliers. Although the Parties submitted that customers with an STL undercarriage would mainly purchase STL-branded spare parts, they also explained that USCO's generic spare parts would be compatible with STL's undercarriages. The Parties explained that USCO is not able to identify the end customers for its spare parts as it does not have direct relationships with end customers. Thus, USCO's generic spare parts for any undercarriage could potentially be used for STL undercarriages.
44. In relation to the substitutability between spare parts used in crushers and screeners and those used in other applications, the Parties explained that USCO is not able to identify the end application for its spare parts as it does not have direct relationships with end customers. The Parties noted that most of USCO's generic spare parts for undercarriages are interchangeable as between different applications. Thus, the majority of USCO's generic spare parts for any undercarriage could potentially be used for undercarriages for crushers and screeners.
45. Based on this evidence, the CMA has considered the impact of the Merger on the supply of spare parts (both branded and generic) that are compatible with STL undercarriages. However, the CMA did not need to conclude on the product frame of reference because it identified no concerns on any plausible basis.

Conclusion on product scope

46. For the reasons set out above, the CMA has considered the impact of the Merger on:
 - The supply of undercarriages for crushers and screeners; and
 - The supply of spare parts (both branded and generic) that are compatible with STL undercarriages.
47. However, it was not necessary for the CMA to reach a conclusion on the product frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Geographic scope

Completed undercarriages

48. The Parties proposed that the geographic scope of the market for the supply of undercarriages is the UK.
49. From a demand-side perspective, all customers [X] who responded to the CMA's merger investigation indicated that they purchase their undercarriages in the UK and the Parties submitted that most customer demand for STL products (and [50-60%] of STL's revenue) comes from the UK, which is where most crusher and screener manufacturing takes place. However, some customers [X] did make some purchases from outside the UK and the majority of respondents to the CMA's merger investigation [X] informed the CMA that they would consider alternative suppliers from outside the UK, suggesting that the relevant geographic frame of reference may be wider than national.
50. From a supply-side perspective, STL submitted that the main restriction on expanding into other countries is logistics costs. USCO submitted that it would have the ability to expand the same product base in other countries and globally due to its distribution network.⁷ However, due to demand for a more standardised undercarriage in the UK, which USCO does not produce, USCO submitted it would not have the incentive to expand its UK operations.
51. On a cautious basis, the CMA has considered the impact of the Merger on the supply of undercarriages for crushers and screeners in the UK. However, the CMA did not need to conclude on the geographic frame of reference because it identified no concerns on any plausible basis.

Spare parts for undercarriages

52. The Parties submitted that spare parts for undercarriages can be sourced from the UK, Europe and Asia. The Parties also submitted that the components included in STL undercarriages are generic industry parts which can be manufactured by suppliers in the UK and globally. In particular, STL noted that a number of Europe-based companies and suppliers in Asia can and do supply independent dealers with spare parts compatible with an STL undercarriage.

⁷ USCO submitted that it has already started its expansion in the USA and South Korea, but that it does not currently have any expansion plans in the UK other than through the Merger.

53. Third party responses were consistent with the Parties' submissions. Most OEMs and independent dealers who responded to the CMA's merger investigation [X] stated that they currently purchase, or would consider purchasing, from suppliers outside the UK (including from Europe and Asia).
54. Based on this evidence, the CMA has considered the impact of the Merger on the supply of spare parts for STL undercarriages globally. However, the CMA did not need to conclude on the geographic frame of reference because it identified no v concerns on any plausible basis.

Conclusion on geographic scope

55. For the reasons set out above, the CMA has considered the impact of the Merger on:
- The supply of undercarriages for screeners and crushers in the UK.
 - The supply of spare parts for STL undercarriages globally.
56. When conducting its competitive analysis in relation to the supply of undercarriages for screeners and crushers in the UK, the CMA also considered the competitive constraint exerted by non-UK suppliers.
57. However, it was not necessary for the CMA to reach a conclusion on the geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

58. For the reasons set out above, the CMA has considered the impact of the Merger on:
- The supply of undercarriages for screeners and crushers in the UK.
 - The supply of spare parts for STL undercarriages globally.

Competitive assessment

Horizontal unilateral effects

59. 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.⁸ Horizontal unilateral effects are more likely when the merging parties are close competitors. 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: (i) the supply of undercarriages for crushers and screeners; and (ii) the supply of spare parts for STL undercarriages.

Supply of undercarriages for crushers and screeners

Shares of supply

60. The estimated shares of supply for undercarriages for crushers and screeners are set out in Table 1 below:

Table 1. Shares of supply in undercarriages for crushers and screeners in the UK

Firm	Total sales (units)	Total sales (€ thousands)	Share by value (%)
Knockturn (STL)	[REDACTED]	[REDACTED]	[80-90%]
USCO	[REDACTED]	[REDACTED]	[0-5%]
<i>Parties combined</i>	[REDACTED]	[REDACTED]	<i>[80-90%]</i>
Trackline	[REDACTED]	[REDACTED]	[5-10%]
Portafill	[REDACTED]	[REDACTED]	[5-10%]
ATG	[REDACTED]	[REDACTED]	[0-5%]
<i>Total</i>	<i>1 [REDACTED]</i>	[REDACTED]	<i>100.00%</i>

Source: CMA's calculation based the Parties' and third party submissions.⁹

61. While STL has a very large share, the increment arising from the Merger is small [REDACTED] due to USCO's very small share of supply in the UK.

⁸ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

⁹ This calculation is based on the Parties' and third parties' submissions of their UK revenues in 2018. The calculation also excludes in-house manufacturers.

Closeness of competition

62. The Parties submitted that their undercarriages do not compete closely because their main customers are located in different countries and demand for undercarriage types varies by country.
63. The Parties submitted that the UK is characterised by demand for standardised undercarriages for crushing and screening, for which STL's products are suitable, whereas USCO supplies more complex undercarriages for which there is little demand in the UK.
64. Knockturn stated that it would take STL a significant amount of investment and time to start supplying the more complex undercarriages in those segments where USCO is mostly active. Whilst USCO would find it easier to start supplying standardised and less complex undercarriages, USCO confirmed that it does not have any plans to expand in the supply of undercarriages for crushers and screeners in the UK.
65. The majority of customer responses to the CMA's merger investigation [redacted] indicate that the Parties are not close competitors in the UK.
66. STL's UK-based customers [redacted] who responded to the CMA's investigation do not consider that USCO is a relevant alternative supplier of undercarriages for crushers and screeners. Likewise, responses from customers who purchase from both Parties [redacted] also suggest that they do not consider the Parties to be close substitutes. For instance, the Parties' main UK customer indicated that it uses STL's undercarriages in the vast majority [redacted] of its machines and only purchases from USCO for specific undercarriages used in heavier applications. Another customer confirmed that it purchases different types of undercarriages from each of the Parties.
67. On the basis of this evidence, the CMA considers that USCO has limited business in the UK and the Parties' products are differentiated and not close substitutes. The CMA therefore considers that the Parties are not close competitors in the supply of undercarriages for crushers and screeners in the UK.

Competitive constraints

68. The Parties submitted that there are a number of existing competitors in the supply of undercarriages for crushers and screeners in the UK. This is supported by the data in Table 1, which shows three other competitors larger than USCO with shares of supply between [redacted].

69. Third parties [X] confirmed that there are alternative suppliers of completed undercarriages, both from the UK and abroad (albeit with differences in terms of pricing, quality and capacity). Moreover, some of these alternative suppliers [X] considered that they were competitive with STL.
70. The Parties submitted that there is potential for existing competitors to expand. This view was supported by [X] that indicated that it had plans to expand in the supply of completed undercarriages in the UK. In addition, the Parties noted that some customers also exert an effective competitive constraint as they are able to self-supply undercarriages in-house.¹⁰ This was confirmed by [X] that indicated that in-house supply would be a viable alternative to purchasing from the Parties.

Conclusion on horizontal unilateral effects

71. For the reasons set out above, the CMA believes that USCO provides a very limited constraint on STL in the supply of undercarriages for crushers and screeners in the UK. The Merger would result in only a small increment to their shares of supply and the Parties are not close competitors. The Parties will also continue to face competition from alternative suppliers both within and outside the UK as well as from in-house manufacturing. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to supply of undercarriages for crushers and screeners.

Supply of spare parts for STL undercarriages

Shares of supply

72. Neither the Parties nor any third party respondents were able to provide any pre-existing data on shares of supply in spare parts, either generally or specifically to customers owning an STL undercarriage.¹¹ The Parties were also not able to estimate the market size (ie total revenues from end customers purchasing spare parts for use in STL undercarriages, either branded or generic). However, the Parties'

¹⁰ The Parties provided the following examples of occasions where their customers have manufactured undercarriages in-house. Terex for instance has started to self-supply approximately [10-20]% of its total UK undercarriage spend through a plant in India. Likewise, Kee-track (Czech Republic) previously purchased undercarriages from STL but now manufactures these in-house.

¹¹ USCO explained that it sells generic spare parts to dealers who then on-sell the products to end customers. Thus, USCO is not able to identify the share of spare parts sold to end customers using STL undercarriages.

revenue figures indicate that STL's turnover from branded spare parts is about one third of USCO's sales of generic spare parts globally.

73. The Parties submitted that USCO's spare parts are not specific to crusher and screener undercarriages: they are cross-compatible with other types of application. USCO estimated that only [X] of the spare parts sold by MST in 2018 would be compatible with an STL undercarriage. Therefore, although USCO does not have visibility over the end use for its generic spare parts, the proportion of USCO's spare parts actually used on STL undercarriages is likely to be small.

Closeness of competition

74. None of the [X] customers who responded to the CMA's merger investigation mentioned USCO as an alternative to STL in the supply of spare parts compatible with STL undercarriages. One customer who currently purchases other generic spare parts from USCO told the CMA that it would not source STL compatible parts from USCO. Other customers who said that they do purchase, or would consider purchasing, generic spare parts for use with STL undercarriages mentioned at least one alternative supplier but not USCO.
75. In addition, [X] did not consider STL to be an alternative supplier to USCO and indicated that other suppliers of generic spare parts are more viable alternatives to STL.
76. On the basis of the above evidence, the CMA believes that USCO and STL are not close competitors in the supply of spare parts for STL undercarriages.

Competitive constraints

77. The Parties submitted that USCO faces competitive constraints from other suppliers of generic spare parts. Responses from customers supported this view. STL is the only supplier of STL-branded spare parts; generic spare parts therefore constitute the only alternative for customers of spare parts for STL undercarriages. Customers who said that they would consider purchasing generic spare parts for STL undercarriages listed several alternative suppliers, including Trackline, ATG, ITS Track, Steve Woods, Digbits and other non-UK suppliers.

Conclusion on horizontal unilateral effects

78. For the reasons set out above, the CMA believes that the Parties do not compete closely in the supply of spare parts for STL

undercarriages and that, in any case, the Parties face competition from alternative suppliers both within and outside the UK. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of spare parts for STL undercarriages.

Vertical effects

79. 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.
80. 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.¹² In the present case, the CMA has considered whether (i) the merged entity would have the ability and incentive to pursue an input foreclosure strategy against OEMs and dealer customers of STL who may also compete with MST; and (ii) whether the merged entity would have the ability and incentive to pursue a foreclosure strategy against upstream suppliers of components for undercarriages.
81. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.¹³ This is discussed below.

Input foreclosure of MST's rivals for supply of generic and branded spare parts

82. STL is the only supplier of STL-branded spare parts to dealers and OEMs who distribute to end-customers with an STL undercarriage. USCO supplies generic spare parts through its vertically integrated dealer, MST, and to other dealers. STL is currently the only supplier of STL-branded spare parts and could control supply if it chose to do so.

¹² In relation to this theory of harm, 'foreclosure' means either foreclosure of a rival or substantially competitively weakening a rival.

¹³ [Merger Assessment Guidelines](#), paragraph 5.6.6.

USCO currently sells generic spare parts to MST's competitors and could limit supply if it chose to do so.

83. The CMA therefore considered whether post-Merger, the merged entity might pursue an input foreclosure strategy against its downstream customers (ie dealers) competing with MST.
84. As noted in paragraph 79 above, the CMA believes that the Parties are not close competitors in the supply of spare parts for undercarriages. The CMA therefore considers that the Merger would not materially increase the Parties' competitive position upstream and any putative vertical foreclosure strategy would not be merger-specific. As such, the Merger would not affect the Parties' ability to pursue a foreclosure strategy in relation to MST's rival dealers.
85. Additionally, the Parties have submitted that USCO is not able to identify dealers selling to end customers who own an STL undercarriage. The CMA therefore considers that any attempted foreclosure would have to target all of USCO's customers in compatible spare parts, including those that do not sell to end customers with an STL undercarriage. Consequently, any business lost by USCO (through MST) would not necessarily be recaptured as end customers could switch to other dealers. Therefore, even if the merged entity were able to foreclose other dealers, it would have no incentive to do so.
86. For the reasons set out above, the CMA believes that the merged entity would not have the ability or incentive to pursue an input foreclosure strategy and in any case such a strategy would not have an effect on end customers. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of potential input foreclosure of MST's rivals for the supply of generic and branded spare parts.

Customer foreclosure of USCO's upstream rival suppliers of components for undercarriages

87. The CMA also considered the potential foreclosure effects if the merged entity ceased purchasing components for undercarriages from its current suppliers and instead sourced them internally from USCO, which purchases components from its vertically integrated upstream supplier. One third party supplier of undercarriages expressed concern that if this did occur, one of STL's current suppliers would be left with insufficient volumes for it to be viable for it to continue supplying components for undercarriages to competitors of the Parties. The

Merger would therefore harm those competitors of STL who also purchase from that supplier and who do not have other alternatives.

88. However, the CMA received evidence that STL purchases represent only a limited share [X] of the total sales of undercarriage components for that particular supplier. The CMA therefore considers that that supplier would have sufficient volume to be able to continue trading and to supply other customers, including competitors of STL in the event that the merged entity ceased to purchase its products. The CMA also notes that it has received evidence that there are other alternative sources of supply for components for undercarriages.
89. For the reasons set out above, the CMA believes that the merged entity would not have the ability to pursue such a foreclosure strategy. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of potential foreclosure of USCO's upstream rival suppliers of components for undercarriages.

Barriers to entry and expansion

90. 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.¹⁴
91. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any plausible basis.

Third party views

92. The CMA contacted customers and competitors of the Parties. A small number of concerns were raised regarding the Merger which the CMA has considered in its analysis outlined above. No other third parties raised concerns about the Merger.
93. Third party comments have been taken into account where appropriate in the competitive assessment above.

¹⁴ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Decision

94. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the United Kingdom.
95. The Merger will therefore **not be referred** under section 33(1) of the Act.

Richard Romney
Director, Mergers
Competition and Markets Authority
6 December 2019