

Completed acquisition by Sonoco Products Company, Inc of Can Packaging SAS

Decision on relevant merger situation and substantial lessening of competition

ME/6902/20

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 21 December 2020. Full text of the decision published on 29 January 2021.

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

SUMMARY

1. On 31 July 2020, Sonoco Products Company, Inc (**Sonoco**) acquired the entire share capital of Can Packaging SAS (**Can Packaging**) (the **Merger**). Sonoco and Can Packaging are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Sonoco and Can Packaging is an enterprise; that these enterprises have ceased to be distinct as a result of the Merger; and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. The Parties overlap in the supply of composite cans for food use to customers in the United Kingdom (**UK**). Sonoco supplies traditional cylindrical composite cans that cannot be easily recycled. Can Packaging supplies recyclable all-paper cans in a range of shapes.
4. The CMA assessed the impact of the Merger in the supply of composite cans for food use, but took into account competitive constraints from alternative packaging formats in its competitive assessment.

5. The CMA found that the parameters of competition in the supply of composite cans may be flexed at different geographic levels. In relation to price, quality, range, and service for individual contracts, the CMA assessed the impact of the Merger on the supply of composite cans for food use into the UK (whether by suppliers based in the UK or via importers). In relation to innovation in composite cans for food use, the CMA assessed the impact of the Merger at a European level (including the UK).
6. Sonoco had a very strong pre-Merger position in the supply of composite cans for food use into the UK, with a pre-Merger share of [75-85]%.
7. The CMA found, however, that Can Packaging was a weak constraint on Sonoco pre-Merger and that its prospects for growth absent the Merger were limited. Pre-Merger, Can Packaging was a small supplier, despite having already been active for over 10 years with [X] UK customers and a market share of [0-5]%. Although Can Packaging has had some limited success over time in winning business from Sonoco, it has failed to win any new business in recent years. Many of Sonoco's UK customers do not consider Can Packaging to be a viable alternative to Sonoco, in particular because of its limited scale.
8. The CMA considered whether Can Packaging would have become a more significant competitor in the UK absent the Merger given increasing demand from customers for recyclable packaging. However, the CMA believes that there are a number of factors that restrict Can Packaging's ability to compete for UK customers, including its lack of UK presence, which it would have limited prospect of addressing in future. Can Packaging exports cans to the UK from its manufacturing plants in France, increasing transport costs and making it difficult to make 'just in time' deliveries and provide technical support for machinery installed at customers' premises. These issues may be exacerbated by the end of the transition period following the UK's withdrawal from the European Union (**EU**).
9. The CMA also believes that a number of competitors will remain (namely AR Packaging (**ARP**), CBT Packaging (**CBT**) and suppliers of tin packaging) that will each continue to exercise a degree of constraint on the Merged Entity that is likely to be greater than the constraint exerted by Can Packaging on Sonoco pre-Merger.
10. As a result, the CMA believes that there is no realistic prospect that the Merger would give rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of composite cans for food use into the UK.

11. The CMA also assessed the extent to which the elimination of Can Packaging as an independent competitor would impact Sonoco's innovation efforts to develop recyclable composite cans and, as a result, the quality of products available to customers in Europe (including the UK) both in the short and longer term.
12. The CMA found that, despite Can Packaging exerting some competitive constraint on Sonoco in Europe, Sonoco's R&D efforts to develop recyclable composite cans prior to the Merger were largely driven by pressure from one of Sonoco's largest customers in Europe, and the risk of that customer switching to an alternative packaging format, rather than by rivalry with Can Packaging (in particular because the customer was not aware of Can Packaging prior to the Merger and therefore had not considered it as a viable alternative supplier). As a result, the CMA believes that there is no realistic prospect that the Merger would reduce the Merged Entity's innovation efforts.
13. The CMA therefore does not believe that it is or may be the case that the Merger may be expected to give rise to a SLC as a result of horizontal unilateral effects.
14. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

15. Sonoco is a US corporation and manufacturer of industrial and consumer packaging products and provider of packaging services. Sonoco's UK subsidiary for consumer packaging, Sonoco Limited (**Sonoco UK**), operates manufacturing plants in Bedford and Chesterfield.¹ Sonoco supplies traditional cylindrical composite cans for food and non-food use in the UK. Sonoco's worldwide turnover in 2019 was approximately £4.2 billion, of which approximately £[REDACTED] was generated in the UK, including £[REDACTED] from the supply of composite cans for food use.²
16. Can Packaging designs and manufactures recyclable paper cans and related machinery and was, prior to the Merger, a privately-owned company. It operates manufacturing plants in Habsheim and Ancenis, France. Can

¹ More than 95% of the Sonoco group's composite can activities in the UK are carried out through Sonoco UK. Sonoco Holdings SAS and Sonoco Consumer Products Europe GmbH may also make occasional sales into the UK ('CMA Submission 5: Response 2 to Enquiry Letter' dated 18 September 2020 (**CMA Submission 5**), paragraph 5).

² Annexes 3 and 4 CMA Submission 5.

Packaging's worldwide turnover in 2019 was approximately £[REDACTED], of which approximately £[REDACTED] was generated in the UK, including approximately £[REDACTED] from the supply of composite cans for food use.³

Transaction

17. On 31 July 2020, Sonoco, through its subsidiaries Sonoco Holdings SAS and Sonoco Development, Inc, acquired 100% of the share capital of Can Packaging and the associated patents in the GreenCan technology for a total consideration of approximately £37.6 million.⁴

Rationale for the Merger

18. The Parties submitted that Can Packaging's management initiated discussions with Sonoco regarding a potential sale of Can Packaging in early 2018.⁵ Can Packaging submitted that the rationale for selling the business was to allow Can Packaging's Managing Director to 'concentrate on his passion on innovation rather than running plants which he sees as [Sonoco's] strengths' in light of the retirement of Can Packaging's founder and President.⁶
19. Sonoco submitted that the Merger will allow it to respond to the shift in Europe towards recyclable and sustainable mono material packaging by providing it with the technology to develop an "all-paper" can,⁷ which can be broadly defined as a composite can with an overall paper content of at least 95%.⁸
20. The CMA found that Sonoco's internal documents are broadly consistent with its stated rationale for the Merger.⁹

³ Annex Q.8 CMA Submission 5; 'CMA Submission 9: Response to S109 Notice of 24 September 2020 – Can Packaging'; dated 16 October 2020 (**CMA Submission 9**), question 13; 'CMA Submission 7, Response to S109 Notice of 24 September 2020 – Sonoco' dated 16 October 2020 (**CMA Submission 7**), question 13.

⁴ 'CMA Submission: Transaction Overview' dated 27 August 2020 (**Transaction Overview**), section II; CMA Submission 5, paragraph 4; Annex 3b Sonoco CMA Submission 4.

⁵ 'CMA Submission 6: Response to Request for Information 1 – Sonoco' dated 16 October 2020 (**CMA Submission 6**), question 1.

⁶ Annex 2s6, page 23; Note of the CMA's teach-in with the Parties on 21 October 2020 (**Note of the teach-in**).

⁷ Transaction Overview, section III; CMA Submission 5, paragraphs 9 and 10. See also Sonoco's press release 'Sonoco Acquires Sustainable Paper Can Solutions Producer', available at: <https://investor.sonoco.com/news-releases/news-release-details/sonoco-acquires-sustainable-paper-can-solutions-producer>.

⁸ The 95% threshold for an all-paper can is not a regulatory requirement. It is an industry standard, as well as Sonoco's internal objective for an all-paper can, which is informed by customer demand and recycling costs in certain countries. See paragraph 28.

⁹ Annex Q.20(b) CMA Submission 5; Annex Q.20(e) CMA Submission 5; Annex Q.20(c) CMA Submission 5; Annex Q.20(d) CMA Submission 5; Annex 2s6; Annex Q.20(a) CMA Submission 5, pages 5, 6, 9, 11-12, 17.

Procedure

21. The CMA's mergers intelligence function identified this transaction as warranting an investigation.¹⁰
22. The Merger was considered at a Case Review Meeting.¹¹

Background

Composite cans

23. Composite cans are rigid containers with closures on each end, in which the walls of the container are made up of layers of paper-based materials and other materials necessary to give the container the physical properties (such as rigidity and moisture barrier¹²) required for the product to be packaged. Being rigid, composite cans protect the product inside (helping to prevent breakages), can have an airtight seal (a 'membrane') to keep the product fresh until first opened, and are re-sealable with lids (which protect the contents and allow multiple use).¹³
24. There are broadly two different models for the supply of composite cans:
 - (a) Some suppliers (eg Sonoco and Can Packaging) assemble the can bodies (made of paperboard and an attached liner) and closing system (either top or bottom) and then palletise the cans in their own manufacturing plants for shipment. The pre-erected cans are later filled and sealed on the customer's packing line.¹⁴
 - (b) Other suppliers deliver the can components as flat material which are then converted (ie erected into a can) on the customer's packing line.¹⁵
25. Composite cans are most commonly used as packaging for food (eg gravy granules and crisps) and powdered beverages (eg coffee and tea). They are also used for non-food products (eg hand-rolled tobacco) and various other products (eg insect repellent and carpet cleaner). Composite cans are

¹⁰ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

¹¹ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

¹² Barrier protection refers primarily to the rate of oxygen (**OTR**) and moisture (**WVTR**) transmission, which in turn can affect shelf life.

¹³ See the CMA's [report on the completed acquisition by Sonoco Products Company of Weidenhammer Packaging Group GmbH](#) (July 2015) (the **Sonoco/Weidenhammer final report**), paragraphs 2.9-2.10.

¹⁴ 'CMA Submission 15: Response to Third S109 Notice – Can Packaging' dated 9 November 2020 (**CMA Submission 15**), question 10; 'CMA Submission 13: Response to Third S109 Notice – Sonoco' dated 9 November 2020 (**CMA Submission 13**), question 11; [Sonoco/Weidenhammer final report](#), paragraph 2.12.

¹⁵ Note of call with [X]; [Sonoco/Weidenhammer final report](#), paragraph 2.12.

typically made to a customer's specific requirements and can differ depending on the materials used and whether they are used for food or non-food packaging.¹⁶

26. In line with the *Sonoco/Weidenhammer* final report in 2015, the term 'composite cans for food use' refers to cans designed to contain products with the following properties:
- (a) Food (including powdered beverages) consumed by humans (as opposed to animal food);
 - (b) Edible products (as opposed to, for example, tobacco); and
 - (c) Food in direct contact with the composite can (as opposed to food in another container such as a plastic wrap, which is then placed inside a can).¹⁷
27. The Parties submitted that composite cans are in direct competition with alternative food packaging formats (including tin, flexible packaging, rigid plastics, etc) because of their interchangeability from a customer perspective.¹⁸ Alternative packaging formats are discussed further in the CMA's competitive assessment below.¹⁹

Sustainability and recyclability trends

28. The Parties submitted that there is an ongoing 'shift in European demand towards fully recyclable and sustainable mono material packaging' driven by regulation and customer demand:²⁰
- (a) *Regulation.* The Parties submitted that laws in some European countries increasingly disfavour composite materials.²¹ For example, German law imposes a recycling fee on composite packaging (defined as packaging with no single material type that exceeds 95% by mass) that is 400% higher than the fee for all-paper packaging.²² The Parties submitted that businesses active across Europe – including Sonoco, Can Packaging and their customers – are under pressure to meet the 95% threshold.²³

¹⁶ [Sonoco/Weidenhammer final report](#), paragraphs 2.15-2.16.

¹⁷ [Sonoco/Weidenhammer final report](#), paragraph 2.19.

¹⁸ CMA Submission 5, paragraphs 18, 21-25.

¹⁹ See paragraphs 163 to 166.

²⁰ CMA Submission 5, paragraphs 9-10; CMA Submission 6, question 13.

²¹ CMA Submission 5, paragraph 10; Annex 2 CMA Submission 5, page 2; Annex S7Q7c, page 32; Annex S7Q7f, page 10.

²² Annex 2 CMA Submission 5, page 2.

²³ CMA Submission 6, question 13.

Evidence from Sonoco's internal documents suggests that the 95% threshold acts as a benchmark in terms of optimum paper content.²⁴

(b) *Customer demand.* The Parties submitted that recyclability of food packaging is now a key area of focus for retailers in the UK, and at least three of Sonoco's top five customers have indicated their intention to address environmental concerns relating to the composite cans that they source from Sonoco. The Parties submitted that, for example, Kellogg's, Nestlé and Mondelez have all signed the MacArthur 'New Plastics Economy Global Commitment' (the **Global Commitment**) which sets a goal of 100 percent reusable, recyclable, or compostable packaging by the end of 2025. The Global Commitment provides that 'a package can be considered recyclable if its main packaging components, together representing >95% of the entire packaging weight, are recyclable [...] and if the remaining minor components are compatible with the recycling process and do not hinder the recyclability of the main components'.²⁵ The Parties submitted that this reflects pressure from retailers like Tesco (also a signatory to the Global Commitment) to remove hard-to-recycle materials such as plastics from the products it sells.²⁶

29. Third-party responses to the CMA's merger investigation consistently recognised the demand for sustainable packaging. Most of the Parties' top customers said that there is a drive towards sustainable packaging and that they already use recyclable all-paper cans or have plans to improve the recyclability of the cans they use.²⁷ One competitor described meeting standards for sustainability and recyclability as its main driver to innovate.²⁸ Moreover, large UK retailers confirmed to the CMA that they are working towards some form of recyclability and/or sustainability targets relating to packaging.²⁹ In this regard, one third party noted that 'mono materials are a vital contribution to achieving these targets'.³⁰

30. While third party feedback confirmed the shift towards recyclable packaging, the Parties' top customers said that this shift is still at an early stage. Some customers are currently engaging in discussions with suppliers and

²⁴ Annex S7Q9f, page 6; Annex 5s6, page 9; Annex S13Q13fo pages 6 and 7; Annex S13Q14d; Annex S13Q13p; Annex S13Q13m.

²⁵ See the Global Commitment, available at: https://www.ellenmacarthurfoundation.org/assets/downloads/Global-Commitment_Definitions_2020-1.pdf.

²⁶ CMA Submission 6, question 13; Annex S7Q9r, page 4; Annex 15s6, page 2; Annex 2 CMA Submission 5, pages 2-5; Annex Q.19 CMA Submission 5, page 3; Annex 15s6, page 14. See also Tesco's website, available at: <https://www.tescopl.com/media/755543/packaging-preferred-materials-formats-guidelines-2020-2320.pdf>.

²⁷ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

²⁸ Note of call with [REDACTED] dated 30 October 2020.

²⁹ [REDACTED], [REDACTED], [REDACTED] responses to CMA retailer questionnaire.

³⁰ [REDACTED] response to CMA retailer questionnaire.

investigating the available options for more recyclable packaging, while others are carrying out shelf trials for recyclable packaging.³¹

31. The CMA found that Sonoco's internal documents are consistent with the Parties' submissions on the trend towards recyclability. Sonoco's internal documents describe, in particular, the recyclability trend as '[redacted]' and note that '[redacted]'.³²
32. Based on this evidence, the CMA believes that the trend towards recyclability is at an early stage of development, and that demand for more recyclable packaging, particularly mono-material packaging, is likely to grow.

Parties' relevant activities and innovation efforts

Can Packaging

33. Can Packaging has worked on developing recyclable packaging since its foundation in 1989.³³ Specifically, Can Packaging supplies composite cans for food use with a cardboard and paper content varying between 92% and 98%.³⁴ It also has a research and development centre where it builds patented packaging machines (which create the composite cans) and sealing equipment (which close the cans once filled (**CMAF**)).³⁵
34. Can Packaging's flagship product, the patented GreenCan, is a rigid composite can with a paper content that can exceed 95% of the can weight (ie an all-paper can) and, as such, qualifies for the lowest fees under Germany's recycling system.³⁶ GreenCan uses a PET (plastic) based membrane and the hinged lid is reclosable and lined with thin barrier film and paper.³⁷ The GreenCan lid is integrated into the can body and this feature differentiates GreenCan from other products in the market, including Sonoco's composite cans.³⁸

³¹ [redacted], [redacted], [redacted], [redacted], [redacted] responses to CMA customer questionnaire.

³² Annex Q.20(c) CMA Submission 5, page 4; Annex S7Q9p, page 3; Annex Q.20(a) CMA Submission 5, page 7; Annex 2s6, page 11; Annex S7Q6j, page 8.

³³ See Can Packaging's website, available at: <https://en.canpackaging.com/about-us/>.

³⁴ See Can Packaging's website, available at: <https://en.canpackaging.com/greencan-technology/>.

³⁵ Annex 2s6. Can Packaging controls the entire manufacturing process of its cans. It uses its own machines to manufacture pre-erected cans, and it also installs machines at customers' sites to seal the paper bottom of each can after it is filled. See Can Packaging's website, available at: <https://en.canpackaging.com/about-us/innovations/>.

³⁶ CMA Submission 5, paragraph 6.

³⁷ See Can Packaging's website, available at: <https://en.canpackaging.com/greencan-technology/>; 'CMA Submission 8: Response to Request for Information – Can Packaging' dated 16 October 2020 (**CMA Submission 8**), question 14.

³⁸ CMA Submission 6, question 2; Annex S10Q2u, page 42.

35. Can Packaging's largest customer is [REDACTED], a private label snack producer based in mainland Europe that is a subcontractor for supermarket brands in France and several other European countries.³⁹ [REDACTED].⁴⁰ [REDACTED].⁴¹ [REDACTED].⁴²
36. In 2018, Can Packaging started supplying composite cans [REDACTED].⁴³ All cans supplied to [REDACTED] are imported from Can Packaging's production sites in France.⁴⁴
37. [REDACTED]. [REDACTED].⁴⁵ [REDACTED].⁴⁶
38. [REDACTED]:
- (a) [REDACTED]; and
- (b) [REDACTED].⁴⁷

Sonoco

39. Sonoco is a global provider of a variety of consumer packaging, industrial products, protective packaging, and displays and packaging supply chain services, with operations in 36 countries. Through Sonoco UK, Sonoco is the leading supplier of composite cans for food use in the UK.⁴⁸
40. The CMA understands that Sonoco historically focused on manufacturing traditional cylindrical composite cans with a plastic top and a metal bottom. These cans offer high barrier protection (up to 18 months shelf life) and high speed/high volume production.⁴⁹ However, Sonoco's traditional composite cans have a paper content of less than 70%, by comparison to the 98% achievable by Can Packaging.⁵⁰

³⁹ 'CMA Submission 2: Response to Questions' dated 2 September 2020 (**CMA Submission 2**), question 8; CMA Submission 5, paragraphs; Annex S7Q6n, page 19.

⁴⁰ Note of call with [REDACTED] dated 7 October 2020.

⁴¹ Note of call with [REDACTED] dated 7 October 2020; CMA Submission 2, question 8; Annex S15Q5.

⁴² CMA Submission 2, question 8; 'CMA Submission 16: Parties' Response to CMA Issues Letter' dated 2 December 2020 (**CMA Submission 16**), page 3.

⁴³ CMA Submission 8, question 3; Transaction Overview, section V; Annex S7Q6n, page 19.

⁴⁴ CMA Submission 2, question 2; Annex S7Q6n, page 19.

⁴⁵ CMA Submission 9, question 8; CMA Submission 15, question 2.

⁴⁶ CMA Submission 16, page 3.

⁴⁷ CMA Submission 15, question 2.

⁴⁸ CMA Submission 7, question 4.

⁴⁹ CMA Submission 5, paragraph 5; Annex Q.20(a) CMA Submission 5.

⁵⁰ CMA Submission 2, question 7; Annex Q.20(a) CMA Submission 5, page 6.

41. Evidence from internal documents and the Parties' submissions show that, in the last two years, Sonoco has been focusing its R&D efforts on improving the recyclability of its composite cans, primarily to '[redacted]'.⁵¹ [redacted].⁵² [redacted].⁵³
42. The available evidence showed that sustainability is a key issue for [redacted]. [redacted].⁵⁴ [redacted].⁵⁵
43. As detailed below and in the assessment of the counterfactual, in response to the trend described at paragraph 28 above and pressure from customers, Sonoco has been actively working on a range of R&D projects to develop recyclable composite cans [redacted]. This includes separate R&D projects to develop [redacted]. Specifically:
 - (a) [redacted]. [redacted]. [redacted]. [redacted]. [redacted];⁵⁶
 - (b) [redacted]. [redacted]. [redacted]. [redacted]. [redacted].⁵⁷ [redacted]. [redacted]. [redacted]⁵⁸ [redacted]. [redacted].⁵⁹
 - (c) [redacted].
 - (i) [redacted]. [redacted]. [redacted]. [redacted]. [redacted]. [redacted]. [redacted]. [redacted].⁶⁰ [redacted]. [redacted].⁶¹
 - (ii) [redacted]. [redacted]. [redacted]. [redacted]. [redacted].⁶²
 - (d) [redacted]. [redacted]. [redacted].⁶³ [redacted].⁶⁴

Jurisdiction

44. Each of the Parties is an enterprise. As a result of the Merger, Sonoco and Can Packaging have ceased to be distinct.
45. The Parties overlap in the supply of composite cans for food use in the UK, where they have a combined share of supply of [75-85]%, with an increment

⁵¹ CMA Submission 5, paragraph 11; Annex Q.20(b) CMA Submission 5; Annex S7Q9a; Annex S10Q2h; Annex S13Q13CW.

⁵² CMA Submission 5, paragraph 19.

⁵³ CMA Submission 6, question 2.

⁵⁴ Annex 4s6, pages 9-10.

⁵⁵ Annex 4s6, page 10.

⁵⁶ CMA Submission 13, question 12; Annex S7Q9f; Annex S7Q9a; Annex 8s6 CMA Submission 5.

⁵⁷ Annex S7Q9aa.

⁵⁸ [redacted] (CMA Submission 5, paragraph 11; CMA Submission 6, question 15).

⁵⁹ CMA Submission 13, question 12; Annex S7Q9v; Annex S7Q9aa; Annex S10Q2k.

⁶⁰ [redacted]. [redacted]. [redacted] (CMA Submission 13, question 12; Annex S10Q2h).

⁶¹ CMA Submission 13, question 12.

⁶² CMA Submission 13, question 12.

⁶³ Annex S10Q2h.

⁶⁴ Annex 9s6, pages 1-2; Annex S13Q13fb.

of [0-5]% brought about by the Merger.⁶⁵ The CMA therefore believes that the share of supply test in section 23 of the Act is met.

46. Although the Merger completed on 31 July 2020,⁶⁶ material facts about the Merger were only made public on 3 August 2020.^{67,68} The four-month deadline for a decision under section 24 of the Act is therefore 22 December 2020, following an extension under section 25(2) of the Act.
47. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
48. The CMA opened an investigation into the Merger by sending an enquiry letter to Sonoco on 4 September 2020.⁶⁹ The initial period for consideration of the Merger as defined in section 34ZA(3) of the Act started on 27 October and the statutory 40 working day deadline for a decision is therefore 21 December 2020.

Counterfactual

49. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual. However, the CMA will assess a 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.⁷⁰

Parties' submissions

50. The Parties submitted that the appropriate counterfactual against which to assess the Merger is one in which Can Packaging would have remained

⁶⁵ See Table 1 below.

⁶⁶ Annex 3b Sonoco CMA Submission 4.

⁶⁷ When Sonoco issued a press release regarding the Merger. See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 4.42-4.44.

⁶⁸ See Sonoco's press release 'Sonoco Acquires Sustainable Paper Can Solutions Producer', available at: <https://investor.sonoco.com/news-releases/news-release-details/sonoco-acquires-sustainable-paper-can-solutions-producer>.

⁶⁹ See *Mergers: Guidance on the CMA's jurisdiction and procedure* (CMA2), January 2014, paragraphs 6.9–6.19 and 6.59–60.

⁷⁰ *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).

independent and there would have been no material change to its competitive position in the short-term.⁷¹

51. In particular, the Parties submitted that, absent the Merger, Can Packaging would have:

(a) [REDACTED];

(b) [REDACTED]; and

(c) [REDACTED].⁷²

52. Sonoco submitted that, [REDACTED].⁷³

CMA's assessment

53. As noted at paragraph 32 above, the available evidence indicated that the industry is in the early stages of a move towards sustainable and more recyclable packaging, with suppliers of composite cans working to address this shift in customer demand.

54. Against this background, the CMA assessed the Parties' respective strategies absent the Merger.

Sonoco

55. The CMA considered what steps, if any, Sonoco would have taken to improve the recyclability of its composite cans in the counterfactual. In particular, the CMA considered:

(a) Sonoco's incentive to develop recyclable composite cans in response to the trend identified above absent the Merger; and

(b) Sonoco's ability to develop recyclable composite cans absent the Merger.

Sonoco's incentive to develop recyclable composite cans

56. Sonoco's internal documents show that it recognises the trend towards sustainability. It also recognises the risks to its business of not innovating sufficiently quickly.^{74,75} As set out in detail in paragraphs 28 to 32 above, the

⁷¹ CMA Submission 5, question 17; CMA Submission 8, question 3; CMA Submission 16, page 13.

⁷² CMA Submission 16, page 13.

⁷³ CMA Submission 5, paragraph 2.

⁷⁴ Annex Q.20(c) CMA Submission 5, page 4; Annex S10Q2i, page 11; Annex Q.20(d) CMA Submission 5, page 7.

⁷⁵ By Sonoco's own admission, [REDACTED] (Note of the teach-in).

CMA's merger investigation showed that there is significant pressure on Sonoco from its customers to improve the recyclability of its composite cans, including its largest customer [REDACTED].

57. In addition, internal documents show that, since early 2019, Sonoco has been actively working on a range of R&D projects to develop recyclable composite cans, as detailed in the background section above.⁷⁶ Sonoco submitted that these R&D efforts are driven by the demands of its customers – and are independent of the Merger – and will continue with or without Can Packaging.⁷⁷
58. Based on the available evidence, the CMA therefore believes that Sonoco would have had a very strong incentive, absent the Merger, to continue to invest in innovation to develop recyclable composite cans to protect its market-leading position in Europe.

Sonoco's ability to develop recyclable composite cans

59. Sonoco's internal documents show that it has made considerable investments in developing recyclable composite cans independently of the Merger.
60. Sonoco has been cooperating closely over the past two years with some of its largest customers, particularly [REDACTED], to develop recyclable composite cans. For example, internal documents show that:

(a) [REDACTED];⁷⁸

(b) [REDACTED].⁷⁹

61. While the CMA has not received evidence quantifying the total investments made to date by Sonoco in developing recyclable composite cans, Sonoco confirmed that [REDACTED].⁸⁰
62. Throughout the merger inquiry, Sonoco submitted that [REDACTED].⁸¹ Sonoco's internal documents show that it has [REDACTED]. They also show that Sonoco is [REDACTED]. This is partly because, [REDACTED].⁸²

⁷⁶ For example, Annex S7Q7c; Annex S7Q9a; Annex S7Q9v; Annex 4s6.

⁷⁷ CMA Submission 16, page 13.

⁷⁸ Annex 4s6, pages 3-4.

⁷⁹ Annex S7Q9v, pages 10-11.

⁸⁰ Note of the teach-in.

⁸¹ CMA Submission 2, question 2; CMA Submission 5, paragraphs 2 and 11.

⁸² Annex S10Q2u, page 42. Also, CMA Submission 5, paragraphs 2, 11 and 54; Note of the teach-in; Annex S10Q2u; page 42; Annex S7Q9a, page 4; Annex S7Q9f, pages 3-4.

63. Sonoco's internal documents show, however, that it has made significant progress towards achieving recyclable composite cans, and that it is confident of achieving further improvements absent the Merger. For example:
- (a) [REDACTED]. [REDACTED];⁸³ and
 - (b) [REDACTED],⁸⁴[REDACTED].⁸⁵
64. The Parties cautioned the CMA against relying on Sonoco's internal documents relating to its R&D efforts, noting that [REDACTED].⁸⁶ [REDACTED].
65. The CMA believes that it is appropriate to place material weight on Sonoco's commitments to its most important customers and to treat them as a reliable indicator of Sonoco's prospects of success. Moreover, these customer-facing documents are broadly corroborated by Sonoco's internal documents reporting on the progress of its R&D projects, which show that Sonoco has a similar level of confidence internally.⁸⁷ For example, [REDACTED].⁸⁸
66. Based on the available evidence, the CMA believes that there is a realistic prospect that Sonoco would have developed recyclable composite cans absent the Merger.

Can Packaging

Acquisition by an alternative purchaser

67. In its submissions, Can Packaging indicated that Sonoco was chosen over other potential acquirers because [REDACTED].⁸⁹
68. The CMA considered whether, absent the Merger, Can Packaging would have been sold to an alternative purchaser. [REDACTED].⁹⁰ [REDACTED].⁹¹ [REDACTED].⁹²

⁸³ Annex S13Q13cw and Annex 9s6. Also, [REDACTED]. (Annex S13Q13by, page 1).

⁸⁴ CMA Submission 6, question 2; Annex 3s6.

⁸⁵ Annex 8s6, page 3.

⁸⁶ CMA Submission 16, page 12.

⁸⁷ For example, [REDACTED] (Annex S13Q13fb, page 21).

⁸⁸ Annex S13Q13fi, page 4; Annex S13Q13ci; Annex S13Q13fk; page 3.

⁸⁹ CMA Submission 8, question 3; Note of the teach-in.

⁹⁰ CMA Submission 8, question 3; Note of the teach-in; Parties' legal advisers' e-mail to the CMA on 5 November 2020 11:44.

⁹¹ Note of the call with [REDACTED].

⁹² Parties' legal advisers' e-mail to the CMA on 10 November 2020 09:22.

69. Based on the available evidence, the CMA does not believe that there is a realistic prospect that Can Packaging would have been acquired by an alternative purchaser in the foreseeable future absent the Merger.

Can Packaging's growth trajectory in the UK

70. The CMA also considered whether Can Packaging would have become a more significant competitor in the UK absent the Merger.
71. In 2019 (its first full year of sales in the UK), Can Packaging sold over 6 million cans, generating revenues of £[REDACTED].⁹³ This volume is projected to increase moderately over the next few years, primarily as a result of an expected increase in sales of [REDACTED] by Can Packaging's existing customer [REDACTED].⁹⁴
72. The CMA considered whether the trend towards recyclable packaging would have made Can Packaging a stronger competitor in the counterfactual given that it is the only supplier that currently offers an all-paper can. The CMA ultimately concluded that, although Can Packaging's GreenCan may have become more attractive as a result of this trend, Can Packaging's growth in the UK absent the Merger would have been hindered by a number of factors.
73. First, the CMA found that Can Packaging's growth in the UK absent the Merger would have been limited by its lack of UK presence. Without an office or manufacturing plant in the UK, it would be difficult for Can Packaging to support its UK customers. Specifically, and as further discussed in the competitive assessment from paragraph 122 below:
- (a) The CMA believes that Can Packaging would have faced challenges serving its UK customers from France, [REDACTED]⁹⁵ [REDACTED]. These challenges may be exacerbated by the end of the transition period following the UK's withdrawal from the EU; and
- (b) In addition, the CMA notes that Can Packaging has shown limited commercial appetite to compete aggressively and expand in the UK. [REDACTED].⁹⁶ The evidence available to the CMA is broadly consistent with these submissions. [REDACTED]. [REDACTED].⁹⁷ In light of this, the CMA believes that there is no

⁹³ Annex S7Q6n, page 18; Annexes 3 and 4 CMA Submission 1.

⁹⁴ [REDACTED] (Annex S7Q6n, page 15). [REDACTED] (CMA Submission 9, question 8). [REDACTED] (CMA Submission 16, page 11).

⁹⁵ [REDACTED] (CMA Submission 16, page 10).

⁹⁶ CMA Submission 5, paragraph 6; CMA Submission 8, question 10; CMA Submission 16, page 11; Note of the teach-in; Annex S7Q6n, page 14; Annex 2s6.

⁹⁷ CMA Submission 16, page 11.

realistic prospect of Can Packaging setting up a manufacturing plant or office in the UK in the foreseeable future absent the Merger.

74. Second, as further discussed in the competitive assessment, the CMA found that Can Packaging's ability to win customers (in particular certain large customers) in the counterfactual would have been hindered by a number of factors:
- (a) Can Packaging's GreenCan technology has certain limitations, for example, in relation to high barrier applications;⁹⁸ and
 - (b) Can Packaging lacks scale and capacity.⁹⁹
75. Finally, the CMA observed that other suppliers of composite cans, including Sonoco, are in the process of developing recyclable composite cans.¹⁰⁰ This means that any competitive advantage as a result of the recyclability of Can Packaging's cans may have become less significant overtime in the counterfactual.
76. Based on this evidence, the CMA does not believe that there is a realistic prospect of a more competitive counterfactual absent the Merger. However, the CMA found that Can Packaging would have continued to exert a competitive constraint on Sonoco in the counterfactual.

Conclusion

77. Based on the available evidence, the CMA assessed the Merger against the pre-Merger conditions of competition but carefully considered the Parties' respective commercial strategies absent the Merger within its competitive assessment. The CMA believes that Sonoco would have continued to innovate to meet customer demand for more recyclable packaging, and that Can Packaging would have remained a competitive constraint on Sonoco in the UK.

Frame of reference

78. 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

⁹⁸ See paragraph 112.

⁹⁹ See paragraph 120(d).

¹⁰⁰ See paragraphs 43 and 131.

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.¹⁰¹

79. As set out in paragraphs 33 to 40 above, the Parties overlap in the supply of composite cans for food use. Sonoco currently supplies traditional cylindrical composite cans used for packaging food and Can Packaging supplies composite cans with a paper content ranging from 92% to 98% which are also used for packaging food.

Product scope

Parties' submissions

80. The Parties submitted that:
- (a) The supply of composite cans for food use into the UK is [REDACTED];
 - (b) Since the *Sonoco/Weidenhammer* merger inquiry in 2015, [REDACTED]; and
 - (c) Because the CMA implicitly found in the *Sonoco/Weidenhammer* final report that competition between composite cans and alternative packaging formats provided sufficient constraints to prevent the merger from giving rise to an SLC, the relevant market is a highly differentiated one encompassing multiple forms of consumer packaging for food use.¹⁰²

CMA's assessment

81. Consistent with its established practice, the CMA considered the overlapping products of the Parties to form the starting point for the product frame of reference.¹⁰³ The Parties overlap in the supply of composite cans for food use, as described in detail at paragraphs 33 to 40 above.
82. In the *Sonoco/Weidenhammer* final report, the CMA identified a relevant market for the supply of composite cans for food use in the UK.¹⁰⁴ In the assessment of that merger, the CMA considered alternative packaging formats in its competitive assessment as they did not impose a sufficient

¹⁰¹ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹⁰² CMA Submission 5, paragraphs 21-26; CMA Submission 16, pages 4-8.

¹⁰³ When selecting a candidate market in horizontal mergers the Authorities will include at least the substitute products (narrowly defined) of the merger firms ([Merger Assessment Guidelines](#), paragraph 5.2.11).

¹⁰⁴ [Sonoco/Weidenhammer final report](#), paragraphs 2.15 and 2.19.

constraint to form part of the same product market.¹⁰⁵ This included flexible packaging, plastic containers, metal packaging (tin) and glass packaging.¹⁰⁶

83. The CMA believes that the available evidence does not support a wider product frame of reference that includes alternative packaging formats. Specifically:

(a) [REDACTED];¹⁰⁷

(b) The large majority of the Parties' customers who responded to the CMA's merger investigation said that they would be unlikely to switch to alternative packaging formats in response to a small hypothetical price increase;¹⁰⁸ and

(c) The growing demand for recyclable packaging (see paragraph 28(b) above) means that some packaging materials, such as plastic, are likely to be less desirable alternatives to paper than they might have been in the past. [REDACTED].¹⁰⁹

84. However, the CMA found some evidence, albeit limited, of customers switching from composite cans to tin. [REDACTED] (see further paragraph 163 below).¹¹⁰

85. In light of this limited evidence on switching, the CMA has concluded that alternative packaging formats should not be included in the product frame of reference, but should be considered instead, where appropriate, in the competitive assessment.

Conclusion on product scope

86. For the reasons set out above, the CMA considered the impact of the Merger in the supply of composite cans for food use. Competitive constraints from alternative packaging formats were taken into account in the competitive assessment, where appropriate.

¹⁰⁵ [Sonoco/Weidenhammer final report](#), paragraphs 6.5-6.9 and 6.19-6.20.

¹⁰⁶ [Sonoco/Weidenhammer final report](#), paragraph 2.3.

¹⁰⁷ For example, Annex S7Q6k, page 3; Annex S10Q2j, page 5; Annex 2s6, page 3. See also paragraph 165.

¹⁰⁸ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

¹⁰⁹ For example, Annex Q.20(e) CMA Submission 5, page 4; Annex S7Q6j; Annex S10Q2n, page 8. One internal document suggests [REDACTED] (Annex S7Q9ae, page 13). [REDACTED] (Annex S10Q2i, page 17). Annex 2s6 (page 15) further states: '[REDACTED]'. Another document indicates [REDACTED].

¹¹⁰ The CMA notes that [REDACTED].

Geographic scope

Parties' submissions

87. The Parties submitted that, consistent with the CMA's finding in *Sonoco/Weidenhammer*, the market for the supply of composite cans for food use is UK-wide. Specifically:
- (a) Composite cans can be competitive when they are shipped within a [X] of the facility where they are produced;
 - (b) Less than [X] of supply from Sonoco's UK manufacturing plants (as of 2019) is to customers located outside of the UK and Ireland;
 - (c) Customers prefer to buy composite cans from a nearby source because they may need technical support for equipment that handles or fills the cans;
 - (d) Customers have delivery requirements that are difficult to satisfy from abroad (eg some customers may only confirm delivery requirements by midday on the day before the delivery); and
 - (e) The uncertainty associated with Brexit is driving UK manufacturers to source composite cans from as close to home as possible.¹¹¹

CMA's assessment

88. The available evidence indicates that parameters of competition for the supply of composite cans for food use may be flexed at different geographic levels. The CMA therefore considered the geographic frame of reference for different parameters of competition separately below.

Price, quality, range and service (PQRS) for individual contracts and/or customers

89. In the *Sonoco/Weidenhammer* final report, the CMA defined the market for the supply of composite cans as UK-wide but took account of imports and the likelihood of entry by overseas suppliers in the assessment of the competitive effects of the Merger, where appropriate.¹¹²

¹¹¹ CMA Submission 5, paragraphs 27 to 33; 'Analysis of Sonoco UK's customers' locations' dated 20 October 2020.

¹¹² [Sonoco/Weidenhammer final report](#), paragraph 6.18.

90. Since the *Sonoco/Weidenhammer* final report (published in 2015), the market has continued to develop. At that time, imports of composite cans into the UK did not occur in practice and were considered as a theoretical possibility. However, there is now a supplier (Can Packaging) based in France that supplies UK customers, albeit with relatively small volumes.
91. The results of the CMA's merger investigation indicated that customers have mixed views on imports. Some customers told the CMA that location was one of the three most important criteria when selecting a supplier of composite cans for food use in the UK.¹¹³ Most customers, however, thought that other criteria, such as price and quality, were more important.¹¹⁴ In particular, some customers that value product quality (especially the recyclability of the packaging) may be willing to source products from further afield despite the potentially higher transport costs involved.¹¹⁵
92. As further explained in paragraphs 167 and 168 below, the available evidence suggests that, in the UK, the Parties do not face a material competitive constraint from European composite can suppliers that are not currently active in the UK. The CMA also found that none of these suppliers have any plans to start supplying composite cans into the UK in the foreseeable future.
93. Based on this evidence, the CMA believes that it is appropriate to define the relevant geographic frame of reference as the supply of composite cans for food use into the UK (whether through suppliers based in the UK or via importers).^{116,117}
94. The CMA took into account suppliers of composite cans for food use based outside the UK that do not currently supply UK customers in the competitive assessment, where appropriate.

Innovation

95. In addition to competing for specific customer contracts, composite can suppliers compete more generally by offering innovative products, such as products that meet recyclability requirements (as explained in paragraph 28

¹¹³ [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

¹¹⁴ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

¹¹⁵ CMA Submission 5, paragraph 48.

¹¹⁶ Defining customer-based rather than supplier-based markets is consistent with CMA's past practice. See for example the CMA's decision in *Taboola/Outbrain* (2020), *Aragorn/Overdrive* (2020), *Pepsico/Pioneer* (2020), *Send For Help/SoloProtect* (2019) and *Senior Link/Aid Call* (2009).

¹¹⁷ In response to the Issues Letter sent by the CMA to the Parties on 25 November 2020, the Parties agreed with CMA's view on the 'basic elements of the frame of reference' noting that 'European manufacturers of composite cans do not constrain UK can sales in a significant way' (CMA Submission 16, page 14).

above). The available evidence shows that product innovation occurs on a wider than national basis. Specifically:

- (a) Sonoco's internal documents show that its recyclability initiatives are targeted at customers across Europe (rather than UK customers only), and that Sonoco looks at competition at a European-wide level when considering product innovation.¹¹⁸ For example, one Sonoco internal document states that '[REDACTED]';¹¹⁹
- (b) Most of the Parties' top customers in Europe are planning to switch from non-recyclable composite cans to recyclable all-paper cans (or other mono-material cans);^{120,121} and
- (c) A competitor submitted that investments in innovation are determined by competition at EEA-wide level.¹²²

96. Based on this evidence, the CMA believes that innovation takes place at least at the European level, and that the appropriate geographic frame of reference for its assessment of the impact of the Merger in relation to innovation in composite cans for food use is Europe (including the UK).¹²³

Conclusion on geographic scope

97. For the reasons set out above, the CMA considered the impact of the Merger in the following geographic frames of reference:

- (a) the UK in relation to PQRS for individual contracts and/or customers (whether through suppliers based in the UK or via importers); and
- (b) Europe-wide (including the UK) in relation to innovation.¹²⁴

¹¹⁸ For example, Annex S10Q2a, pages 9 to 10; Annex S7Q9f, page 4; Annex S13Q14d [REDACTED]. [REDACTED] (Annex S7Q3d, page 43). [REDACTED]. [REDACTED]. [REDACTED] (Annex Q.20(c) CMA Submission 5). [REDACTED] (Annex Q.20(a) CMA Submission 5; Annex S10Q2n).

¹¹⁹ Annex 2s6, page 15.

¹²⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

¹²¹ As set out in further detail at paragraph 28, the trend towards recyclability is one that spreads across Europe.

¹²² Note of call with [REDACTED] dated 30 October; [REDACTED] response to CMA competitor questionnaire.

¹²³ The Parties agreed that 'it is plausible that innovation in composite cans could effectively come from companies based across the EEA' (CMA Submission 16, page 14).

¹²⁴ The CMA notes that defining different geographic markets for different competitive parameters is consistent with CMA's past practice. For example, in *Sainsbury's/Asda*, the CMA performed both a local and national assessment in relation to its assessment of competition between supermarkets. The national assessment focused on nationally-set parameters of competition, such as price levels and the quality of own-brand products which do not differ by store, whereas the local assessments focused on locally-set parameters such as the range of products on offer and customer service levels which can differ between individual stores. See the CMA's final report on the [Anticipated merger between J Sainsbury PLC and Asda Group Ltd](#) (April 2019), paragraph 26.

Conclusion on frame of reference

98. For the reasons set out above, the CMA considered the impact of the Merger in the following frames of reference:
- Supply of composite cans for food use into the UK;
 - Innovation in composite cans for food use in Europe (including the UK).

Competitive assessment

99. As set out in the following sections, the CMA assessed the following theories of harm:
- (a) Horizontal unilateral effects arising from the loss of competition in the supply of composite cans for food use into the UK; and
 - (b) Horizontal unilateral effects arising from the loss of competition in innovation in composite cans for food use in Europe (including the UK).
100. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to increase prices, degrade quality, reduce the range of products it offers and/or reduce innovation without needing to coordinate with its rivals. As a result of the merger, it may be less costly for the merged firm to raise prices (or lower quality, range or innovation) as it will recoup the profit on recaptured sales from those customers who would have switched to the products of the other merger firm absent the merger.¹²⁵
101. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the frames of reference set out above, as a result of the loss of competition between Sonoco and Can Packaging.

Horizontal unilateral effects in the supply of composite cans for food use into the UK

102. In order to assess whether there is a realistic prospect of the Merger resulting in horizontal unilateral effects in the supply of composite cans for food use into the UK, the CMA considered:
- (a) The market structure, including shares of supply;

¹²⁵ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

- (b) The closeness of competition between the Parties;
- (c) The competitive constraints from other suppliers of composite cans into the UK; and
- (d) Other competitive constraints.

Market structure

Shares of supply

103. The Parties estimated that their combined share of supply of composite cans for food use into the UK is [70-80]% by volume and [70-80]% by value, with an increment of [0-5]% by volume and [0-5]% by value brought about by the Merger.
104. The CMA produced its own adjusted estimates based on the Parties' estimates and data submitted by their competitors. The CMA's estimates of shares of supply of composite cans for food use into the UK in 2019 are set out below in Table 1.¹²⁶

Table 1: Shares of supply of composite cans for food use into the UK in 2019; CMA's estimates

Company	Share of Supply	
	Volume (%)	Value (%)
Sonoco	[75-85]%	[75-85]%
Can Packaging	[0-5]%	[0-5]%
Combined	[75-85]%	[75-85]%
ARP	[5-10]%	[10-20]%
CBT	[5-10]%	[5-10]%
Smurfit Kappa	[0-5]%	[0-5]%

Source: CMA's analysis of CMA Submission 5, table above paragraph 68 and [redacted] response to CMA competitor questionnaire

105. As shown in Table 1 above, the CMA's estimates indicate that Sonoco is by far the largest supplier of composite cans for food use into the UK. All the other suppliers are significantly smaller. ARP is the next largest supplier,

¹²⁶ The CMA used the Parties' estimates as a starting point. The CMA received evidence that IPS and Visican are not active in the supply of composite cans for food use into the UK (see further paragraphs 149 to 157), so it removed them from the share of supply figures. The CMA also requested data on revenues and volumes from third party suppliers to verify the Parties' share of supply estimates, but it did not receive sufficient data to produce independent estimates for each supplier. Where available, the CMA replaced the Parties' estimates of third-party sales with the actual data received from those third parties.

followed by CBT. Can Packaging and Smurfit Kappa are smaller still, with shares of supply of less than 5%.

106. The CMA's estimates are broadly in line with the Parties' estimates and consistent with other evidence gathered during the CMA's merger investigation. The CMA therefore believes that these estimates provide a reliable indication of the current market position of the different suppliers of composite cans for food use into the UK.

Other evidence on market structure

107. Sonoco's leading market position and the limited number of alternative suppliers is corroborated by Sonoco's internal documents and third party responses to the CMA's merger investigation.¹²⁷ For instance:
- (a) [REDACTED];¹²⁸
 - (b) [REDACTED]. [REDACTED];¹²⁹ and
 - (c) More than half of Sonoco's UK customers who responded to the CMA's merger investigation said they would likely stay with Sonoco following a hypothetical price increase of 5-10%.¹³⁰ One customer stated that, even if it wanted to switch away to another supplier, it would be a challenge to identify one.¹³¹
108. The CMA believes that Sonoco already held a very strong position in the supply of composite cans for food use into the UK pre-Merger. The CMA therefore focused its assessment on the loss of Can Packaging as a competitive constraint.

Closeness of competition

109. The CMA assessed the closeness of competition between the Parties and considered within its assessment:
- (a) The Parties' respective product and service propositions; and
 - (b) Can Packaging's market position in the UK.

¹²⁷ As discussed further in paragraph 179, Sonoco has a similar market position in Europe.

¹²⁸ Annex S7Q6k, page 6.

¹²⁹ Annex S10Q2], pages 5-6.

¹³⁰ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

¹³¹ [REDACTED] response to CMA customer questionnaire.

Parties' respective product and service propositions

- *Parties' submissions*

110. Sonoco submitted that the Parties' offerings are strongly differentiated:

- (a) Sonoco produces a traditional cylindrical composite can with a plastic cap and non-paper barrier membrane, whilst Can Packaging produces fully recyclable, all-paper, cans in a range of shapes;¹³² and
- (b) Can Packaging's all-paper cans provide lower barrier protection than Sonoco's composite cans, [REDACTED].¹³³

- *CMA's assessment*

111. The CMA believes that there is a degree of product differentiation between the Parties' products given that only Can Packaging's cans are currently fully recyclable. However, the CMA considers that this fact alone does not prevent the Parties from being close competitors. In circumstances where the Parties' customers are moving towards more sustainable and recyclable packaging,¹³⁴ demand for Can Packaging's recyclable GreenCan might have increased and Can Packaging may have become a stronger competitive constraint on Sonoco absent the Merger than it is currently. Moreover, Sonoco is responding to customer demand for recyclable packaging by developing its own recyclable composite cans.¹³⁵

112. Can Packaging's GreenCan technology, however, has certain [REDACTED]. For example:

- (a) One of Sonoco's largest customers explained that one of its requirements for composite cans is that they provide a shelf life of over a year (as explained above, [REDACTED]);¹³⁶
- (b) Another customer that had considered using Can Packaging said that it was not confident about the tightness of the fit of GreenCan's lid;¹³⁷ and

¹³² CMA Submission 5, paragraph 2.

¹³³ [REDACTED]; [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

¹³⁴ See paragraphs 28 to 32.

¹³⁵ See paragraphs 41 to 43.

¹³⁶ Note of call with [REDACTED] dated 16 October 2020.

¹³⁷ Note of call with [REDACTED] dated 14 October 2020.

- (c) A competitor submitted that it is generally not complex to develop an all-paper can. The challenge is producing an all-paper can for high-barrier applications such as crisps including because of their fat content.¹³⁸

Can Packaging's competitive strength

- *Parties' submissions*

113. The Parties submitted that Can Packaging's sales into the UK are achieved [REDACTED]¹³⁹ [REDACTED].¹⁴⁰ [REDACTED].¹⁴¹

114. Further, the Parties submitted that '[REDACTED]'.¹⁴² [REDACTED].¹⁴³

115. The Parties submitted that there was [REDACTED].¹⁴⁴

116. Finally, the Parties submitted that suppliers based outside the UK, including Can Packaging, [REDACTED]:¹⁴⁵

(a) Transport costs increase over longer distances, particularly when products must be imported into the UK;¹⁴⁶

(b) [REDACTED];¹⁴⁷

(c) [REDACTED];¹⁴⁸ and

(d) The UK's withdrawal from the EU has created uncertainty and may add potential costs for companies based in mainland Europe sending products into the UK.¹⁴⁹

- *CMA's assessment*

117. The CMA considered a range of evidence, including sustainability trends in the industry, recent competitive interactions between Sonoco and Can

¹³⁸ Note of call with [REDACTED] dated 30 October 2020.

¹³⁹ CMA Submission 5, paragraph 33.

¹⁴⁰ CMA Submission 16, page 3.

¹⁴¹ CMA Submission 2, question 8.

¹⁴² CMA Submission 5, paragraph 62.

¹⁴³ CMA Submission 5, paragraph 40.

¹⁴⁴ CMA Submission 16, pages 11-12.

¹⁴⁵ CMA Submission 16, page 8.

¹⁴⁶ CMA Submission 16, page 9.

¹⁴⁷ [REDACTED]. [REDACTED]. [REDACTED] (CMA Submission 16, page 10).

¹⁴⁸ CMA Submission 5, paragraph 30.

¹⁴⁹ CMA Submission 16, pages 8-10.

Packaging, internal documents and third party views, to assess Can Packaging's current and future competitive constraint on Sonoco.

118. Can Packaging is currently a small supplier that serves UK customers by exporting cans from its manufacturing plants in France.
119. Since entering the UK market in 2018, Can Packaging has had some, albeit limited, success in competing against Sonoco. Specifically:
- (a) [REDACTED]. [REDACTED].¹⁵⁰ [REDACTED];¹⁵¹
 - (b) [REDACTED]. [REDACTED]. [REDACTED].¹⁵²
120. Ultimately, however, Can Packaging launched its GreenCan almost 10 years ago, and has failed to become a significant player in the UK market:
- (a) Can Packaging has [REDACTED] in the UK and accounts for a very small share of supply ([0-5]% by volume and [0-5]% by value);
 - (b) Can Packaging's sales volumes into the UK are expected to grow only moderately, [REDACTED];¹⁵³
 - (c) [REDACTED];
 - (d) Several of Sonoco's UK customers had not even heard of Can Packaging before the Merger;¹⁵⁴
 - (e) Many large customers do not consider Can Packaging to be a viable alternative to Sonoco, in particular because of its scale of production. [REDACTED].¹⁵⁵ One large Sonoco customer rejected Can Packaging because of its inability to meet the customer's standards [REDACTED].¹⁵⁶ Another large customer said that small suppliers such as Can Packaging are not a viable alternative for [REDACTED] owing to a lack of sufficient financial resources to allow these companies to scale to the level required.¹⁵⁷ Two other Sonoco customers referred to volume constraints as a reason for rejecting Can Packaging.¹⁵⁸ This evidence suggests that Can Packaging would

¹⁵⁰ [REDACTED] response to CMA customer questionnaire; Note of call with [REDACTED] dated 7 October 2020.

¹⁵¹ CMA Submission 16, table on page 6.

¹⁵² CMA Submission 5, paragraph 54; Note of call with [REDACTED] dated 19 October 2020.

¹⁵³ See paragraph 71.

¹⁵⁴ [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

¹⁵⁵ CMA Submission 9, question 17.

¹⁵⁶ Note of call with [REDACTED] dated 15 October 2020.

¹⁵⁷ Note of call with [REDACTED] dated 16 October 2020.

¹⁵⁸ [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

have been limited in its ability to grow and compete with Sonoco (especially for large customers) in the future; and

- (f) None of Sonoco's customers that responded to the CMA's merger investigation said that they would be likely to switch to Can Packaging in response to a 5-10% price increase by Sonoco.

121. The CMA also considered whether Sonoco identifies Can Packaging as a credible competitor in its internal documents. The CMA found that some of Sonoco's internal documents identify Can Packaging as a particularly innovative competitor in composite cans in Europe.¹⁵⁹ The CMA notes, however, that these internal documents were prepared for Sonoco's senior management in anticipation of the Merger, and that their context may have been to promote Can Packaging as a valuable target for Sonoco, rather than to assess its competitive threat. The CMA found that, consistent with the Parties' submissions (and its market position),¹⁶⁰ Sonoco does not appear to monitor competitors actively, and few of its internal documents refer to any composite can competitors (including to Can Packaging).

122. Finally, as explained in paragraph 73 above, notwithstanding increasing demand from customers for more recyclable packaging, the CMA believes that Can Packaging's growth in the UK absent the Merger would have been restricted by its lack of UK presence. In particular:

- (a) Higher transport costs weaken Can Packaging's ability to compete for UK customers. [REDACTED]. [REDACTED]. [REDACTED].¹⁶¹ As discussed in paragraph 167 below, the Parties' customers who responded to the CMA's merger investigation confirmed that composite can suppliers located outside the UK are 'uncompetitive' when considering transport and storage costs;

- (b) [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED];¹⁶²

- (c) [REDACTED]. [REDACTED]. [REDACTED];¹⁶³ and

- (d) [REDACTED]. [REDACTED].¹⁶⁴

123. The challenges of winning customers solely through exports is broadly reflected in the CMA's merger investigation which found that, for at least a

¹⁵⁹ For example, Annex 2s6, pages 3 and 17; Annex Q.20(c) CMA Submission 5, page 10; Annex S7Q6k, page 3.

¹⁶⁰ CMA Submission 6, questions 5 and 17.

¹⁶¹ CMA Submission 16, pages 8-10.

¹⁶² CMA Submission 16, page 10.

¹⁶³ CMA Submission 5, paragraphs 30 and 55.

¹⁶⁴ See paragraph 73(b).

proportion of customers, location is one of the three most important criteria when selecting a supplier of composite cans for food use in the UK.¹⁶⁵

Consistent with this position, the Parties submitted data showing that most of their volumes are sold to customers located within approximately [REDACTED] of their manufacturing plants.¹⁶⁶

Conclusion on closeness of competition

124. Can Packaging is active in the UK market by supplying all-paper cans to [REDACTED]. [REDACTED]. [REDACTED]. Many of Sonoco's customers do not regard it as a viable option, primarily due to issues relating to product performance, financial resources, and scale of production. Its lack of presence in the UK also weakens it as a competitive constraint on Sonoco. The CMA therefore believes that, prior to the Merger, Can Packaging was a weak competitive constraint on Sonoco in the supply of composite cans for food use into the UK and was not likely to become a greater constraint in the foreseeable future.

Competitive constraints from other composite can suppliers

125. Unilateral effects are more likely where customers have limited choice of alternative suppliers. The CMA considered the strength of alternative suppliers that would provide a competitive constraint on the Merged Entity.
126. The CMA assessed the constraint from these alternatives by taking into account the Parties' submissions, shares of supply, product and service proposition, evidence from internal documents, third party views, and information on Sonoco's price renegotiations with existing customers.
127. Sonoco submitted data on individual opportunities ('new opportunities data') not related to an existing contract for the last three years.¹⁶⁷ The CMA considered that there were significant gaps in the data which made it difficult to identify the full range of suppliers that competed for each of these opportunities, as well as the winner of each opportunity (and the type of packaging they offered).¹⁶⁸ The CMA therefore put limited weight on this data.

¹⁶⁵ See paragraph 91.

¹⁶⁶ Over 80% of customers supplied from Sonoco's UK plants are located within [REDACTED] of those plants (see 'Analysis of Sonoco UK's customers' locations' dated 20 October 2020). [REDACTED] (CMA Submission 9, question 22). [REDACTED]. [REDACTED].

¹⁶⁷ Annex S7Q17 ('win loss' sheet); CMA Submission 7, question 17.

¹⁶⁸ The CMA also had concerns about the robustness of the data. In particular, a large number of opportunities appear to be unrelated to food usage (eg e-cigarettes, wine tube); the reasons provided on why a customer was won or lost are often unclear and unreliable and the context and the status of the opportunity is often unclear (eg whether it is for a new product launch or for an existing product, or whether an opportunity is still outstanding).

Nevertheless, the CMA took this data into account in assessing any relevant competitive interaction between Sonoco and third party suppliers.

ARP

128. ARP is a global supplier of a wide range of packaging solutions, including composite cans, for food and consumer goods, beauty and cosmetics, confectionery, food service, tobacco, the pharmaceutical and medical industries.¹⁶⁹ ARP is a global supplier, with around 25 manufacturing plants in Europe and worldwide.¹⁷⁰ In 2019, it generated global net sales of approximately £850 million.¹⁷¹
129. ARP is the second largest supplier of composite cans for food use into the UK with an approximate share of [5-10]% by volume and [10-20]% by value.¹⁷² In 2019, its sales in the UK were several times those of Can Packaging, and ARP confirmed that its whole business has been growing significantly over the past years.¹⁷³ ARP is currently in discussions with four food manufacturers based in the UK about potential supply.¹⁷⁴
130. ARP delivers flat-packed cans, which are transformed into erected cans using ARP's machines installed at customer sites, while the Parties deliver pre-erected cans which are then filled and sealed in customers' production lines.¹⁷⁵ The CMA understands that this business model allows ARP to produce and transport high volumes more efficiently than Can Packaging. The requirement for the customer to invest in ARP's machinery, however, means that ARP is only suitable for customers that manufacture sufficient volumes to recoup that investment (estimated to be around 10 million cans minimum).¹⁷⁶
131. The CMA understands that ARP is focused on developing recyclable composite cans. ARP's Boardio composite can has a high fibre content of up to 90% and work is ongoing to increase the recyclable content to 95%.¹⁷⁷ ARP's cans can also be tailored to offer low or high barrier protection (unlike Can Packaging's cans, [✂]).¹⁷⁸

¹⁶⁹ ARP's website, available at: <https://www.ar-packaging.com/en/our-business>.

¹⁷⁰ ARP's website, available at: <https://www.ar-packaging.com/en/career/plants>.

¹⁷¹ ARP's website, available at: <https://www.ar-packaging.com/en/our-business>.

¹⁷² See Table 1 above.

¹⁷³ Note of call with ARP dated 30 October 2020.

¹⁷⁴ ARP's response to CMA customer questionnaire.

¹⁷⁵ Note of call with ARP dated 30 October 2020.

¹⁷⁶ Note of call with ARP dated 30 October 2020.

¹⁷⁷ ARP's website, available at: <https://www.ar-packaging.com/en/news-and-cases/ar-packaging-introduces-small-size-high-fibre-content-composite-cans>.

¹⁷⁸ ARP's website, available at: <https://www.ar-packaging.com/en/solutions/systems>.

132. Further, the CMA notes that, although ARP exports raw materials (ie the flat-pack cans) and machinery from Sweden,¹⁷⁹ it is in a stronger position than Can Packaging to compete for customers in the UK:
- (a) Transport costs for flat-packed cans are lower than transport costs for pre-erected cans. ARP submitted that, for instance, 'to deliver 1 million composite cans' it would need three trucks, whilst composite can suppliers that deliver pre-erected composite cans would require 56 to 63 trucks;¹⁸⁰
 - (b) Although ARP does not appear to manufacture composite cans in the UK, ARP has two manufacturing plants in the UK.¹⁸¹ The CMA notes that having a presence in the UK adds to a supplier's strength in maintaining and winning new customers. ARP submitted that it 'supports [its] UK customers with [its] staff based in the UK. Having a UK presence gives us relations, long-term assurance for our customers of being present throughout our business relation'.¹⁸²
133. As explained above, Sonoco does not generally monitor competition in its internal documents. The CMA found almost no references to ARP in Sonoco's internal documents although [REDACTED].¹⁸³
134. A few of Sonoco's customers considered using ARP as an alternative to Sonoco:
- (a) A customer who responded to the CMA's merger investigation said that it had considered using ARP in the last three years.¹⁸⁴
 - (b) Another customer identified ARP as a potential alternative to Sonoco, following a hypothetical price increase of 5-10%. However, that customer submitted that they would be unlikely to switch, and would instead absorb the price increase.¹⁸⁵
135. Finally, Sonoco's data on renegotiations with its customers (which occur annually and/or at the end of the contract term) shows that [REDACTED].
136. Based on the available evidence, ARP has a UK presence, is a larger supplier than Can Packaging in the UK and is likely to be particularly well placed to compete for large customers. It may also become a closer competitor to

¹⁷⁹ Note of call with ARP dated 30 October 2020.

¹⁸⁰ Note of call with ARP dated 30 October 2020.

¹⁸¹ ARP's website, available at: <https://www.ar-packaging.com/en/our-business>.

¹⁸² [REDACTED] email to the CMA on 20 November 2020 08:49.

¹⁸³ Annex 2s6, page 16.

¹⁸⁴ Note of the call with [REDACTED] dated 9 October 2020.

¹⁸⁵ [REDACTED] response to CMA customer questionnaire.

Sonoco given its recyclability focus (similar to Can Packaging). However, ARP's competitive interactions with Sonoco were limited in the past. On balance, the CMA believes that ARP will be a moderate to weak competitor to the Merged Entity in the supply of composite cans for food use into the UK and that it will continue to exercise a degree of constraint on the Merged Entity that is likely to be greater than the constraint exerted by Can Packaging on Sonoco pre-Merger.

CBT

137. CBT is a UK-based supplier of packaging, including composite cans, for both food and non-food use.¹⁸⁶
138. CBT is the third largest supplier of composite cans for food use in the UK based on 2019 sales, after Sonoco and ARP. The CMA's estimates indicate that CBT has a share of supply of approximately [5-10]% by volume and by value, at least twice the size of Can Packaging.¹⁸⁷ Further, CBT has a similar business model to the Parties, delivering pre-erected cans to its customers which are then filled and sealed on customers' production lines.
139. CBT is a UK-based manufacturer. This means that it does not face the same hurdles as Can Packaging in serving its UK customers. In the same way the CMA believes that Can Packaging's lack of presence in the UK would hinder its ability to win opportunities in the future and means it represents a weak competitive constraint, the fact that CBT manufactures its products in the UK makes it a greater constraint on Sonoco than Can Packaging.
140. The available evidence shows some competitive interactions between Sonoco and CBT in recent years. [REDACTED].¹⁸⁸
141. As part of its merger investigation, the CMA received mixed third-party feedback on CBT:
 - (a) One of Sonoco's largest customers already sources some composite cans from CBT. A few other large UK customers said that they had considered using CBT as an alternative to Sonoco in the last three years. However, they ultimately rejected CBT for a number of reasons, including prices and can features (such as can size). One customer said that CBT

¹⁸⁶ CBT's website, available at: <http://www.cbtpackaging.co.uk/index>. See also the Summary of the CMA's hearing with CBT held on 25 March 2015 as part of the *Sonoco/Weidenhammer* merger inquiry, available at: https://assets.publishing.service.gov.uk/media/556d8739ed915d15bb000001/CBT_hearing_summary.pdf.

¹⁸⁷ See Table 1 above.

¹⁸⁸ [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

could supply some of its demand but that no benchmarking had been undertaken due to its long-term contract with Sonoco and that the format of the can and required machinery would need to be considered.¹⁸⁹

(b) Two customers who responded to the CMA's merger investigation identified CBT as an alternative to Sonoco in the event of a hypothetical price increase of 5-10%. However, they submitted that they would be unlikely to switch and would instead absorb the price increase.¹⁹⁰

142. Based on the available evidence, the CMA therefore believes that CBT, albeit a much smaller supplier than Sonoco in a highly concentrated market, nevertheless will continue to exercise a degree of constraint on the Merged Entity that is likely to be greater than the constraint exerted by Can Packaging on Sonoco pre-Merger. On the whole, the CMA considers that CBT will exert a moderate competitive constraint on the Merged Entity in the supply of composite cans for food use into the UK.

Smurfit Kappa

143. The Parties submitted that Smurfit Kappa supplies non-food composite cans in the UK from its plants in Scotland (serving the whiskey/drinks industry) and Whitehaven. The Parties submitted that, more recently, it has supplied small volumes of composite cans for food use.¹⁹¹

144. The CMA's estimates illustrate, consistently with the Parties' estimates, that Smurfit Kappa has an approximate share of [0-5]% by volume and by value.¹⁹²

145. The Parties have not produced any internal documents which discuss Smurfit Kappa as a credible competitor in the supply of composite cans for food use into the UK.

146. Further, only one of the Parties' customers who responded to the CMA's merger investigation said that they had considered using Smurfit Kappa as an alternative to their current supplier of composite cans in the last three years, but rejected it owing to an increase in its pricing.¹⁹³

147. Finally, the available evidence shows no interaction between Sonoco and Smurfit Kappa in relation to [REDACTED].

¹⁸⁹ [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

¹⁹⁰ [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

¹⁹¹ CMA Submission 6, question 8.

¹⁹² See Table 1 above. The CMA was not able to verify this information with Smurfit Kappa.

¹⁹³ [REDACTED] response to CMA customer questionnaire.

148. Based on the available evidence, the CMA believes that Smurfit Kappa will exert a negligible competitive constraint on the Merged Entity in the supply of composite cans for food use into the UK.

Visican

149. Visican supplies cardboard tubes, cardboard containers with a fixed base and a removable lid, telescopic containers made from board, plastic containers, spiral-wound cores and composite mailing tubes, for retail, cosmetics, food, drink and industrial use. All its manufacturing takes place in Birmingham, UK.¹⁹⁴

150. Visican submitted that it does not see itself competing with the Parties as it focusses on a different type of packaging.¹⁹⁵ The CMA understands that, in relation to food use, Visican primarily produces packaging for pre-wrapped products, meaning that the food is not in direct contact with the can.¹⁹⁶

151. The Parties have not produced any internal documents which discuss Visican as a credible competitor in the supply of composite cans for food use into the UK.

152. None of the Parties' customers who responded to the CMA's merger investigation had considered using Visican as an alternative to their current supplier of composite cans in the last three years. One customer identified Visican as an alternative to Sonoco, following a hypothetical price increase of 5-10%. However, it submitted that it would be unlikely to switch to another UK composite can supplier in response to such a price increase.¹⁹⁷

153. While Sonoco's data shows that [REDACTED].

154. Based on the available evidence, the CMA believes that Visican will exert a negligible competitive constraint on the Merged Entity in the supply of composite cans for food use into the UK.

¹⁹⁴ See Visican's website, available at: <https://visican.com/about-us/>. See also, *Sonoco/Weidenhammer final report*, paragraph 2.48.

¹⁹⁵ Visican email to the CMA on 29 October 2020 13:09.

¹⁹⁶ Summary of hearing with Visican on 11 March 2015 as part of the *Sonoco/Weidenhammer* merger inquiry, available at:

https://assets.publishing.service.gov.uk/media/55926236e5274a155900000f/Visican_hearing_summary.pdf.

¹⁹⁷ [REDACTED] response to CMA customer questionnaire.

IPS

155. The Parties submitted that IPS entered the market after the *Sonoco/Weidenhammer* final report, and the Parties estimated its share of supply to be 6% by volume and 2% by value.¹⁹⁸
156. The CMA did not receive any evidence to verify IPS's shares of supply or to confirm that it is active at all in the supply of composite cans for food use. IPS was not mentioned as a competitor in Sonoco's internal documents and opportunities data, nor was it identified as an alternative to the Parties by any customers who responded to the CMA's merger investigation. IPS's website makes no mention of composite cans.
157. Based on the available evidence, the CMA believes that IPS is unlikely to exert a competitive constraint on the Parties in the supply of composite cans for food use into the UK.

Other suppliers

158. The Parties' customers who responded to the CMA's merger investigation also mentioned the following as suppliers they had either considered using or would consider using in the event of a hypothetical price increase: SEDA, SOTA (Zipform Packaging) and Graphic Packaging.¹⁹⁹
159. The CMA believes that these suppliers are unlikely to be a constraint on the Parties in the supply of composite cans into the UK. Specifically: (i) it is unclear to the CMA whether SEDA supplies composite cans, (ii) SOTA is active outside Europe and (iii) Graphic Packaging is not active in the supply of composite cans.

Conclusion on constraint from composite can suppliers active in the UK

160. In light of the evidence summarised above, the CMA believes that the Merged Entity is likely to face a moderate competitive constraint from CBT post-merger. The CMA believes that ARP will exert a moderate to weak competitive constraint, Smurfit Kappa and Visican will exert a negligible competitive constraint and IPS is unlikely to exert any competitive constraint on the Merged Entity.

¹⁹⁸ CMA Submission 6, question 8.

¹⁹⁹ Relevant webpages available at: <https://sedapackaging.com/>; <https://www.zipformpackaging.com.au/pages/sota-packaging-rebrand> and <https://www.graphicpkg.com/>.

Other competitive constraints

161. The CMA considered other competitive constraints on the Merged Entity outside the suppliers of composite cans into the UK discussed above, in particular those from:

- (a) Alternative packaging formats;
- (b) European composite can suppliers not active in the UK; and
- (c) In-house supply.

Constraint from alternative packaging formats

162. Sonoco submitted that the composite can market [REDACTED].²⁰⁰ [REDACTED].²⁰¹

163. The CMA found mixed evidence on constraints from alternative packaging formats. The evidence showed some competitive interaction between Sonoco and alternative packaging formats, mainly tin. In particular:

- (a) [REDACTED];²⁰²
- (b) [REDACTED]. [REDACTED];²⁰³ and
- (c) Half of the Parties' customers who responded to the CMA's merger investigation indicated that they had considered using other packaging formats as an alternative to their current supplier in the last three years.²⁰⁴ Of these customers, several had considered tin cans as an alternative, and one customer considered each of PET, plastic pots, and 'flex bags' respectively.²⁰⁵ One customer said that it intended to switch all its composite can volumes to tin in 2021.²⁰⁶

164. However, responses to the CMA's merger investigation also showed that alternative packaging formats are not always an alternative to composite cans. Specifically:

- (a) Customers associate a brand with its existing packaging, which makes changing the packaging a commercial risk. For example, one customer submitted that it did consider a tin can as an alternative but ultimately

²⁰⁰ CMA Submission 5, paragraphs 22-23; CMA Submission 16, page 4.

²⁰¹ CMA Submission 16, page 4.

²⁰² Annex S7Q17 ('Annual Price Changes' sheet).

²⁰³ CMA Submission 16, page 4.

²⁰⁴ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

²⁰⁵ [REDACTED], [REDACTED] and [REDACTED] response to CMA customer questionnaire.

²⁰⁶ [REDACTED] response to CMA customer questionnaire.

rejected it because its product cannot be packaged in an alternative packaging format;²⁰⁷

- (b) Own-label manufacturers have limited scope to change their packaging because it is often designed to match or resemble the branded product, both in appearance and format. One customer noted that the product's identity may prevent switching to another packaging format;²⁰⁸ and
- (c) Most of the Parties' customers who responded to the CMA's merger investigation indicated that, if the Parties were to increase prices by 5-10%, they would be unlikely to switch to an alternative packaging format.²⁰⁹

165. Sonoco's internal documents show that Sonoco views the threat from alternative packaging formats (and, in particular, plastic or PET) as [REDACTED]. [REDACTED].²¹⁰

166. Based on the evidence above, the CMA considers that there is some switching from composite cans to alternative forms of packaging, in particular tin. However, alternative packaging formats are not an alternative for some other customers of composite cans. On balance, the CMA considers that alternative packaging, in particular tin, exerts a moderate competitive constraint.²¹¹

Constraint from European composite can suppliers not active in the UK

167. The available evidence indicates that the Parties, in the UK, do not face a material competitive constraint from European composite can suppliers that are not currently actively supplying into the UK. In particular:

- (a) Most of the Parties' customers that responded to the CMA's merger investigation indicated that, in response to a hypothetical price increase by their current supplier, they would be unlikely to use another supplier of composite cans outside the UK;²¹² and

²⁰⁷ [REDACTED] response to CMA customer questionnaire.

²⁰⁸ Note of call with [REDACTED] dated 15 October 2020.

²⁰⁹ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

²¹⁰ Annex S7Q6k, page 6.

²¹¹ The CMA considered new product launches data which shows that Sonoco faces some competition from alternative packaging formats in the context of new products or where customers are already using alternative packaging formats. However, for the reasons set out in paragraph 127, the CMA put limited weight on Sonoco's new opportunities data.

²¹² [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

(b) One customer submitted that, although there are potential alternatives outside the UK (eg Pratopac in Austria and OPRA in the Czech Republic) that offer similar products to Sonoco, these are no longer competitive once transport and storage costs are taken into account.²¹³

168. Moreover, the evidence available to the CMA indicates that none of the European composite can suppliers identified as competitors by Sonoco have any plans to start supplying composite cans into the UK in the foreseeable future.²¹⁴

Constraint from self-supply

169. The Parties submitted that, in the UK and elsewhere, [REDACTED].²¹⁵

170. However, the CMA believes that the Parties do not face a material competitive constraint from self-supply. In particular, almost all of the Parties' customers who responded to the CMA's merger investigation said they would be unlikely to self-supply in response to a small hypothetical price increase by their current supplier. A number of these customers emphasised that self-supply would not be a viable option as packaging is not their core business and that significant capital investments would be required.²¹⁶

Conclusion on other competitive constraints

171. In light of the evidence above, the CMA believes that the Merged Entity will face a moderate competitive constraint from suppliers of tin packaging. Further, the CMA believes that, post-Merger, other alternative packaging formats, European competitors not actively supplying into the UK and self-supply will only exert a negligible competitive constraint, if at all, on the Merged Entity.

Conclusion on horizontal unilateral effects in the supply of composite cans for food use into the UK

172. For the reasons set out above, the CMA believes that, despite the Parties' high combined share in the supply of composite cans into the UK, the Merger ultimately brings about little change in market structure, with only a very small increment to Sonoco's existing position. Moreover, Can Packaging's growth in the UK absent the Merger would likely be limited, consistent with the modest

²¹³ [REDACTED] response to CMA customer questionnaire.

²¹⁴ [REDACTED] email to the CMA on 3 November 2020 15:58; [REDACTED] response to CMA customer questionnaire; Note of call with [REDACTED] dated 10 November 2020.

²¹⁵ CMA Submission 5, paragraph 22.

²¹⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

market position it has been able to achieve to date, despite being active in the industry for over 10 years. The CMA believes that the Parties do not compete more closely with each other than other third parties. The CMA also believes that other competitors will remain (namely ARP, CBT and suppliers of tin packaging) and that each of them will continue to exercise a degree of constraint on the Merged Entity that is likely to be greater than the constraint exerted by Can Packaging on Sonoco pre-Merger.

173. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of composite cans for food use into the UK.

Horizontal unilateral effects arising from the loss of competition in innovation in composite cans for food use in Europe (including the UK)

174. The CMA believes that, absent the Merger, Sonoco would have had the ability and a very strong incentive to continue innovating to develop recyclable composite cans.²¹⁷ The available evidence shows that these innovation efforts take place at a European level.²¹⁸
175. The CMA considered the extent to which the elimination of Can Packaging as an independent competitor would reduce Sonoco's incentive to innovate and, as a result, reduce the quality of products available to customers in Europe (including the UK) both in the short and longer term.
176. To assess the impact of the Merger on innovation in composite cans for food use at the European level, the CMA considered:
- (a) The competitive constraint exerted by Can Packaging on Sonoco in Europe;
 - (b) Whether competition with Can Packaging is a driver of Sonoco's innovation efforts; and
 - (c) On this basis, whether there is a realistic prospect that the Merger would reduce Sonoco's incentive to innovate.

²¹⁷ See paragraph 66.

²¹⁸ See paragraph 96.

Competitive constraint exerted by Can Packaging in Europe

Parties' submissions

177. The Parties submitted that Can Packaging is not a competitive constraint on Sonoco in Europe. They submitted that, in recent years, Sonoco's customers have switched to alternative packaging formats (such as tin) rather than to Can Packaging's all-paper can.²¹⁹

CMA's assessment

178. In order to assess the competitive constraint from Can Packaging on Sonoco in Europe, the CMA considered shares of supply, switching from Sonoco to Can Packaging and other suppliers, and third party views.
179. [REDACTED]. [REDACTED].²²⁰ [REDACTED].²²¹ [REDACTED].²²² [REDACTED].²²³ [REDACTED].
180. As discussed in paragraph 32 above, the CMA believes that the trend towards sustainability and recyclability is at an early stage of development, and that demand for more recyclable packaging, particularly mono-material packaging, is likely to grow. The Parties submitted evidence showing that, owing to this trend, (i) [REDACTED],²²⁴ and (ii) [REDACTED].²²⁵ The CMA notes that the evidence submitted by the Parties in this regard was not intended to represent the full spectrum of business or opportunities that Sonoco lost to competitors or alternative packaging formats in Europe.
181. The CMA's merger investigation provided a mixed picture as to the constraint Can Packaging exercised on Sonoco in Europe. Most of Sonoco's top European customers have plans to switch from non-recyclable composite cans to recyclable all-paper (or other mono-material) cans.²²⁶ While most of these customers have considered using Can Packaging,²²⁷ concerns relating to its scalability were raised by a number of customers that are active across Europe, and others ruled out Can Packaging as an option owing to its exclusivity agreement with [REDACTED].²²⁸ This suggests that most of Sonoco's

²¹⁹ CMA Submission 16, pages 4-7.

²²⁰ For example, Annex 2s6, page 3.

²²¹ CMA Submission 6, question 17.

²²² [REDACTED] (CMA Submission 6, question 17).

²²³ For example Annex 2s6 dated 28 July 2018 and Annex Q.20(c) CMA Submission 5 dated March 2020.

²²⁴ CMA Submission 16, page 6.

²²⁵ CMA Submission 6, question 16; Note of call with [REDACTED] dated 19 October 2020.

²²⁶ [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

²²⁷ [REDACTED], [REDACTED], [REDACTED] and [REDACTED] responses to CMA customer questionnaire.

²²⁸ Note of call with [REDACTED] dated 16 October 2020; [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] responses to CMA customer questionnaire.

European customers looking to switch to more recyclable cans do not see Can Packaging as a material alternative.

182. As Can Packaging's manufacturing plants are located in France, Can Packaging does not face the same transport costs and other hurdles serving customers in mainland Europe as it does in the UK where it lacks a physical presence.²²⁹ [REDACTED].²³⁰ [REDACTED]. [REDACTED].²³¹
183. Taking the available evidence in the round, the CMA considers that Can Packaging poses a moderate competitive constraint on Sonoco in Europe.

Driver for Sonoco's innovation efforts

184. The CMA considered whether competition with Can Packaging was a driver behind Sonoco's innovation efforts to develop recyclable composite cans. If this were the case, the Merger could impact Sonoco's innovation efforts in Europe to develop recyclable composite cans and, as a result, the quality of products available to customers in Europe (including the UK) both in the short and longer term.

Parties' submissions

185. Sonoco submitted that:
- (a) Its existing R&D efforts to develop sustainable all-paper cans are not driven by rivalry with Can Packaging;
 - (b) Its R&D efforts are largely driven by [REDACTED], not from Can Packaging, but from alternative packaging formats; and
 - (c) [REDACTED],²³² [REDACTED].²³³

CMA's assessment

186. In order to assess whether Can Packaging drove Sonoco's innovation efforts to develop recyclable composite cans, the CMA considered evidence from Sonoco's internal documents, as well as third party views.

²²⁹ See paragraph 73.

²³⁰ CMA Submission 9, question 22.

²³¹ See paragraph 73; CMA Submission 16, page 11.

²³² [REDACTED] (CMA Submission 13, question 14; Annex S13Q14a; Annex S10Q2q; Annex S13Q14d; Annex S10Q2h).

²³³ CMA Submission 16, pages 12-13.

187. Sonoco's internal documents show that, in line with Sonoco's submissions, innovation efforts to develop recyclable composite cans are predominantly driven by demands from [REDACTED]. [REDACTED].²³⁴
188. As described in paragraph 42 above, sustainability is a key issue for [REDACTED].²³⁵ [REDACTED].²³⁶
189. [REDACTED]. [REDACTED].²³⁷
190. Recent Sonoco internal documents in relation to its R&D projects refer primarily to [REDACTED].²³⁸ To a lesser extent, they also refer to [REDACTED].²³⁹ This evidence suggests that Sonoco's customers (and especially [REDACTED]) are putting considerable pressure on Sonoco to develop recyclable composite cans.
191. The CMA assessed the role of Can Packaging in developing product offerings that could help customers to achieve their sustainability objectives, thereby providing pressure on Sonoco to innovate. [REDACTED].²⁴⁰ Instead, [REDACTED] considered [REDACTED] as the only alternatives to working with Sonoco to develop a recyclable can.²⁴¹ This suggests that competition from alternative packaging materials, rather than competition from Can Packaging, is a more important driver of Sonoco's innovation efforts, given that these efforts are so heavily focused on [REDACTED].
192. [REDACTED]. [REDACTED].²⁴² [REDACTED] submitted that it worked with Can Packaging for about [REDACTED].²⁴³ This, again, supports the position that Can Packaging is not a material driver of Sonoco's innovation efforts to develop recyclable composite cans.
193. Some of Sonoco's internal documents indicate that Sonoco views Can Packaging as an important innovator with a number of internal documents singling out Can Packaging for its record on innovation.²⁴⁴ In assessing the weight of this evidence, the CMA notes that these documents were produced in contemplation of the Merger (rather than in the ordinary course of business) and, thus, their context may have been to promote Can Packaging as a

²³⁴ CMA Submission 6, question 2.

²³⁵ Annex 4s6, page 10.

²³⁶ Annex S10Q2h.

²³⁷ See paragraph 43.

²³⁸ For example, Annex S7Q9v (January 2020); Annex 9s6 (March 2020); Annex S10Q2h, Annex S7Q9a and Annex S7Q9f (September 2020).

²³⁹ For example, Annex S10Q2q; Annex S13Q14a; Annex 5s6.

²⁴⁰ Note of call with [REDACTED] dated 16 October 2020.

²⁴¹ Note of call with [REDACTED] dated 16 October 2020.

²⁴² CMA Submission 16, page 13. For example, Annex S15Q7i.

²⁴³ Note of call with [REDACTED] dated 15 October 2020.

²⁴⁴ Annex 2s6, pages 4 and 15; Annex Q.20(a) CMA Submission 5, pages 13 and 23; Annex S7Q6k, page 3; Annex Q.20(c) CMA Submission 5, page 17.

valuable target for Sonoco rather than to identify Can Packaging as a competitive threat driving Sonoco's innovation.

194. The evidence available to the CMA also suggests that Can Packaging's GreenCan [REDACTED]. [REDACTED].²⁴⁵ Sonoco's internal documents suggest that, regardless of the Merger, Sonoco intends to continue investing in R&D to develop a high-barrier all-paper can that meets its customers' requirements.²⁴⁶

Conclusion on horizontal unilateral effects arising from the loss of competition in innovation in composite cans for food use in Europe (including the UK)

195. For the reasons set out above, the CMA believes that despite Can Packaging posing a moderate competitive constraint on Sonoco in Europe, it does not seem to be a significant driver of Sonoco's innovation efforts. The evidence supports the position that Sonoco's incentive to innovate arises from pressure from [REDACTED] alternative packaging materials. The evidence also suggests that Sonoco will have to continue innovating after the Merger in order to meet its customers' requirements for recyclable composite cans. The CMA believes, therefore, that there is no realistic prospect of the Merger reducing the Merged Entity's innovation efforts.
196. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects arising from the loss of competition in innovation in composite cans for food use in Europe (including the UK).

Barriers to entry and expansion

197. 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. 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 basis.

²⁴⁵ The Parties submitted that: '[REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]' (CMA Submission 5, paragraph 46). Also, CMA Submission 5, paragraph 6; CMA Submission 16, page 13; Annex S7Q9af; Note of call with [REDACTED] dated 16 October 2020.

²⁴⁶ CMA Submission 13, question 12; CMA Submission 16, pages 12-13. Also, Annex S7Q9a; Annex S7Q9f; Annex S10Q2h; Annex S13Q13fi; Annex S13Q13ci; Annex S13Q13fk (internal documents all dated post completion of the Merger).

Third party views

198. The CMA contacted customers, retailers and competitors of the Parties. Some of the Parties' customers that responded to the CMA's merger investigation raised some concerns that the Merger could reduce competition and result in increased prices. But most third parties, including several of the largest customers in the market, were not concerned about the Merger.
199. Third party comments have been taken into account where appropriate in the competitive assessment above.

Decision

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

Colin Raftery
Senior Director, Mergers
Competition and Markets Authority
21 December 2020