

Anticipated acquisition by Graphic Packaging Holding Company of AR Packaging Group AB

Decision on relevant merger situation and substantial lessening of competition

ME/6945/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 6 October 2021. Full text of the decision published on 27 October 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. Graphic Packaging International Europe Holdings B.V., a wholly-owned subsidiary of Graphic Packaging Holding Company (together with all subsidiaries **GPK**) has agreed to acquire AR Packaging Group AB (**ARP**) (the **Merger**). GPK and ARP are together referred to as the **Parties**, and, for statements referring to the future, the **Merged Entity**.
2. The Parties overlap in the supply of folding cartonboard packaging for the food segment in the UK. The Competition and Markets Authority (**CMA**) considered whether, as a result of horizontal unilateral effects, the Merger may give rise to a substantial lessening of competition (**SLC**).
3. In assessing the competitive effects of the Merger, the CMA considered a range of evidence, including shares of supply, bidding data, the Parties' internal documents, as well as third-party evidence. The CMA found that although GPK is the largest supplier of folding cartonboard packaging for the food segment in the UK, ARP only has a small share of supply. The available evidence also shows that the Parties do not compete particularly closely, and that the Merged Entity will be constrained by a large number of other competitors post-Merger.

4. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of folding cartonboard packaging products for the food segment in the UK.
5. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties and transaction

6. GPK is a global manufacturer and supplier of paperboard and sustainable paper-based packaging solutions for a wide variety of customers in the food, beverage, foodservice, household, personal care, pet care and other segments.¹ GPK is headquartered in the US and listed on the New York Stock Exchange. In the UK, GPK is active in converting cartonboard to produce and supply cartonboard packaging to customers primarily in the food and consumer goods sectors. It also supplies packaging machinery.² GPK's UK turnover in the financial year ending 2020 was approximately £[~~3~~] million.³
7. ARP is a Swedish-headquartered global provider of sustainable fibre-based packaging for the food, beauty, confectionary, food service, tobacco, pharmaceutical and medical industries.⁴ ARP is currently owned by CVC Capital Partners Fund VI (which is managed by CVC Capital Partners - a private equity and investment advisory firm). In the UK, ARP has three production facilities, one of which produces folding cartonboard packaging.⁵ In the financial year ending 2020, ARP's UK turnover was approximately £[~~3~~] million.⁶
8. On 12 May 2021, GPK agreed to acquire ARP from CVC Capital Partners Fund VI, pursuant to a share purchase agreement between GPK, Sarcina Holdings S.à r.l. and the other shareholders of ARP.⁷

Jurisdiction

9. Each of GPK and ARP is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

¹ Final merger notice submitted by the Parties on 9 June 2021 (**FMN**), paragraphs 15, 37 and 39.

² FMN, paragraph 40.

³ GPK's email to the CMA dated 22 September 2021.

⁴ FMN, paragraph 41.

⁵ FMN, paragraph 43. The other two facilities produce paper based tubs, containers and lids, and flexible packaging respectively.

⁶ FMN, paragraphs 43, 71 and Annex 8.1.

⁷ FMN, paragraph 17, and Annex 2.1.

10. The Parties overlap in the supply of folding cartonboard packaging for the food segment in the UK, with a combined share of supply (by value of sales) in 2020 of [30-40]%, with an increment of [0-5]% brought about by the Merger (see Table 1, below).⁸ The CMA therefore believes the share of supply test in section 23 of the Act is met.
11. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
12. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 18 August 2021 and the statutory 40 working day deadline for a decision is therefore 13 October 2021.

Counterfactual

13. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.⁹ In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹⁰
14. The Parties submitted that the CMA should assess the effects of the Merger against the prevailing competitive situation.¹¹ The Parties submitted that the Merger was agreed following a competitive auction process involving a number of bidders.¹² [X] submitted that [X].¹³ A number of these bidders are not active in the same areas as ARP.
15. The CMA therefore considers that the appropriate counterfactual is one where ARP would have continued to operate as an independent competitor either under current ownership or under new ownership. Given that a number of bidders for ARP have no overlapping activities with ARP, the CMA considers that in either scenario the counterfactual would not lead to weaker or stronger competition between the Parties than under the prevailing conditions of

⁸ FMN, paragraph 69 and Annex 14.1.1 Prism share of supply data (see Table 1 below).

⁹ Merger Assessment Guidelines, paragraph 3.2.

¹⁰ Merger Assessment Guidelines, paragraph 3.9.

¹¹ FMN, paragraph 104.

¹² Parties response to CMA's request for information 1 (RFI 1 response) dated 24 June 2021, paragraph 1.

¹³ [X].

competition.¹⁴ The CMA therefore assessed the Merger against the prevailing conditions of competition.

Background

16. Both Parties supply folding cartonboard packaging mainly for the food segment in the UK.¹⁵ This activity, also known as converting, consists of converting pre-ordered sheets of paperboard by printing, folding, gluing and cutting it into packaging shaped to the customer's specifications.¹⁶ The final product consists of customised flat sheets of cartonboard which are typically delivered to the customers and then assembled at their manufacturing facilities as part of their packaging process.

Competitive assessment

Frame of reference

17. The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.¹⁷
18. Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms.¹⁸ In some cases, market definition can be an important part of the overall merger assessment process. In other cases, the evidence gathered as part of the competitive assessment, which will assess the potentially significant constraints on the merger firms' behaviour, will capture the competitive dynamics more fully than formal market definition.¹⁹ Hence, there may be no need for the CMA's assessment of competitive effects to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant markets and bright-line determinations of whether

¹⁴ Merger Assessment Guidelines, paragraph 3.12.

¹⁵ FMN, paragraphs 46 to 54. The Parties also overlap to a limited extent in (i) folding cartonboard packaging for beverages, (ii) packaging machinery, (iii) folding cartonboard packaging for non-food segments; and (iv) paper-based cups, tubes and round containers. The CMA found that the Parties (i) have negligible overlap in folding cartonboard for beverages as ARP had sales of less than £[REDACTED] to a [REDACTED] UK customer in 2020; (ii) are active in different product areas for packaging machinery (GPK focussing on multi-packs for beverages and ARP focusing on composite cans for dry food); and (iii) the Parties' combined shares of supply are less than [0-5]% in other segments. For paper-based cups, tubes and round containers, the CMA found that the Parties supply products with different end uses for example GPK [REDACTED] produces commoditised products like cups and containers for fast foods whereas ARP [REDACTED] on higher value added products such as ice-cream cups. Production of these types of packaging requires different machinery. These overlaps are therefore not discussed further in this decision.

¹⁶ FMN, paragraph 79. GPK is vertically integrated and produces and supplies paperboard from its ten mills located in the USA. The Parties submitted that the Merger does not give rise to any material vertical relationship affecting the UK as GPK does not sell its paperboard to any third parties on the open market in the UK (or the EEA). FMN, paragraph 392. This vertical relationship is therefore not considered further in this decision.

¹⁷ [Merger Assessment Guidelines](#), paragraph 9.1.

¹⁸ [Merger Assessment Guidelines](#), paragraph 9.2.

¹⁹ [Merger Assessment Guidelines](#), paragraph 9.2.

particular products or services fall within it).²⁰ The approach taken by the CMA will reflect the circumstances of the case.

Product scope

19. The Parties submitted that the appropriate frame of reference is no wider than the supply of folding cartonboard packaging for the food segment, the only segment where there is a material overlap between the Parties.²¹ The Parties also submitted that any further sub-segmentation by type of food would be artificial and not capture that the range of available suppliers will depend on the relevant customer's particular requirements rather than the particular type of food concerned.²²
20. In *Graphic Packaging/Benson Box*, the CMA assessed the impact of the merger in the supply of all folding cartonboard packaging for the food sector.²³ This is because (i) a customer submitted that it would not purchase food packaging from suppliers not already active in producing food packaging, and (ii) converters may require certain accreditations to supply packaging to the food sector. In that case, the CMA also considered whether the product frame of reference should be further segmented by type of food. However, the CMA found that on the demand side, customers had bespoke packaging requirements, meaning that one packaging product would not necessarily be a substitute for another, even if both packaging products could be used for the same food.²⁴ The CMA found that on the supply side, the number of suppliers available to a customer depended on the customer's specific requirements rather than the type of food.²⁵
21. In this case, the CMA's investigation found that:
 - (a) The Parties' internal documents generally monitor performance and discuss strategy separately for the food sector.²⁶
 - (b) All of the customers that responded to the CMA's Merger investigation submitted that they only used suppliers that are active in the food segment for their supply of folding cartonboard packaging for food in 2019 and 2020. Two of these customers submitted that they did not consider suppliers not active in the supply of food packaging to be able to meet their needs because suppliers of food packaging need to meet food safety

²⁰ [Merger Assessment Guidelines](#), paragraph 9.5.

²¹ FMN, paragraph 178.

²² FMN, paragraph 178.

²³ [Graphic Packaging International/Benson Box Holdings](#), paragraph 36.

²⁴ [Graphic Packaging International/Benson Box Holdings](#), paragraphs 23 and 29.

²⁵ [Graphic Packaging International/Benson Box Holdings](#), paragraph 35.

²⁶ See for example, FMN, Annex 9.5, slide 8, and Annex 9.3, slide 6.

and hygiene standards and hold specific regulatory accreditations. This was also confirmed by two competitors.

(c) Two competitors that responded to the CMA's Merger investigation also submitted that suppliers of folding cartonboard packaging for food are typically able to produce packaging for all types of food (including packaging involving direct food contact).

22. On the basis of the above evidence, the CMA considers that the appropriate frame of reference to assess the effects of the Merger is the supply of folding cartonboard packaging for the food segment. However, given that no competition concerns arise on any plausible basis, the CMA has not had to conclude on any widening or further segmentation of the product frame of reference.

Geographic scope

23. The Parties submitted that they face real competitive constraints from actual and potential competition from producers outside the UK importing (or capable of importing) into the UK such that the frame of reference may be wider than national.²⁷

24. ARP's customer data showed that, prior to its acquisition of UK-based folding cartonboard packaging company Firstan Limited in January 2021, ARP served customers in the UK from plants located in Sweden, Germany, Poland and Estonia, but that these sales were [redacted].²⁸

25. The CMA found that GPK's internal documents generally discuss marketing strategies and conditions of competition for each European country separately including the UK (albeit the UK and Ireland are looked at mostly together).²⁹ However, ARP's internal documents discuss its strategy and the conditions of competition on a European-wide or global basis, including the UK, and only one internal document focuses specifically on the UK (discussing ARP's acquisition of Firstan Limited).³⁰

26. While most customers that responded to the CMA's Merger investigation submitted that purchasing cartonboard packaging from outside of the UK is possible (with two customers buying limited volumes from Europe-based suppliers), they also expressed a preference for folding cartonboard packaging suppliers with a manufacturing plant in the UK. They submitted that this was due to (i) the additional logistics and transport costs when using a

²⁷ FMN, paragraph 186.

²⁸ FMN, Annex 15.2 and ARP's response to CMA's follow-up questions dated 2 September 2021.

²⁹ See for example, FMN, Annexes 10.4, 10.7 and 10.8.

³⁰ See for example, FMN, Annexes 10.13 and 13.3.

non-UK based supplier; and (ii) the security of supply benefits of using a UK-based supplier, particularly when packaging is required at short notice.

27. The majority of competitors that responded to the CMA's Merger investigation submitted that they have at least one UK manufacturing plant from which they largely serve their UK customers in the food segment.
28. On the basis of the above evidence, on a cautious basis the CMA has assessed the effects of the Merger on a national basis.

Horizontal unilateral effects

29. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.³¹ Horizontal unilateral effects are more likely when the merging parties are close competitors.³²
30. In its assessment of the effects of the Merger, the CMA considered: (i) shares of supply, (ii) the Parties' bidding data, (iii) the Parties' data on customer purchases, and (iv) third-party evidence on closeness of competition between the Parties and the strength of alternatives.

Shares of supply

31. The Parties submitted shares of supply estimates, by value of sales, for the supply of folding cartonboard packaging in the UK for the food sector, based on two different estimates of the total size of the UK market from two industry reports (PRISM and PIRA) (see Table 1).³³ The Parties estimated shares of supply for their competitors based on their knowledge of the market. These are presented below in Table 1.

³¹ [Merger Assessment Guidelines](#), paragraph 4.1.

³² [Merger Assessment Guidelines](#), paragraph 4.8.

³³ The main difference between the two sets of share of supply estimates provided concerns whether imports and exports into and out of the UK are taken into account to estimate the size of the UK market. The PRISM Report provides market size estimates on the basis of the location of the production facilities (therefore disregarding imports and exports of folding cartonboard into and out of the UK) whereas PIRA provides an estimate of the size of the UK market on the basis of total folding cartonboard consumption which includes imports and exports of folding cartonboard.

Table 1: Shares of supply for folding cartonboard packaging for the food segment by value of sales in the UK in 2020

Supplier	PRISM	PIRA
GPK	[20-30]%	[20-30]%
ARP	[0-5]%	[0-5]%
Combined	[30-40]%	[20-30]%
Coveris	[5-10]%	n.a.
Huhtamaki	[5-10]%	n.a.
WestRock	[5-10]%	n.a.
SEDA	[5-10]%	n.a.
Ken Wilkins	[0-5]%	n.a.
RAP	[0-5]%	n.a.
MMP	[0-5]%	n.a.
Harrisons	[0-5]%	n.a.
Alexir	[0-5]%	n.a.
Others	[20-30]%	n.a.

Source: Parties' submissions.

32. The figures in Table 1 show that depending on the source used, the Parties' combined share of supply of folding cartonboard packaging for the food segment in the UK is either [20-30]% or [30-40]%, with an increment of less than [0-5]%.
33. The figures also show that the UK market is highly fragmented and that there are a large number of suppliers that have a comparable or larger share of supply to ARP. These competitors include suppliers that are active globally (such as MMP, Huhtamaki and WestRock) or regionally (such as Coveris and SEDA) and suppliers that are only active in the UK (such as Ken Wilkins, Harrisons and Alexir). Revenue data supplied by competitors show that the shares of supply estimated by the Parties are broadly accurate.

Closeness of competition

34. The Parties submitted that they are not close competitors and focus on different customer groups and locations.³⁴
35. To assess closeness of competition between the Parties in the supply of folding cartonboard packaging in the UK for the food segment, the CMA has considered: (i) the Parties' bidding data; (ii) the Parties' customer data; (iii) evidence from internal documents; and (iv) third-party evidence.

Parties' bidding data

36. The Parties provided an analysis of their tender data for UK contracts for cartonboard packaging for the food segment for the period 2016-2020. This analysis suggests that the Parties are not particularly close competitors

³⁴ FMN, paragraph 248.1.

(although consistent with its much larger share of supply, GPK appears to exert a greater constraint on ARP than *vice versa*). In particular:³⁵

- (a) ARP was only listed as a competitor in [X] tenders out of [X] food cartonboard packaging tenders that GPK bid for;
- (b) GPK was listed as a competitor in around half ([X] out of [X]) of the food cartonboard packaging tenders that ARP bid for; and
- (c) A large number of other suppliers (eg MMP, WestRock, Ken Wilkins, Coveris, Simply Cartons, VGP, Alexir and Qualvis) regularly participate in and win tenders against the Parties in the UK.

37. Nonetheless, the CMA notes that the Parties' bidding data has certain limitations, which could mean that the Parties might be closer competitors than suggested by the analysis. In particular, GPK and ARP were not always able to identify all competitors participating a tender, meaning that their analysis might omit tenders in which they both participated without their knowledge.

38. The CMA therefore undertook some further checks to validate the results of the Parties' tender analysis. In particular:

- (a) The CMA used data on tender characteristics to identify the tenders in which both Parties participated (including those where they were not aware of each other's participation). This did not materially change the results of the Parties' analysis; and
- (b) The CMA gathered tender data from customers. The data received was limited, but it showed that, although GPK and ARP both bid for some tenders, there were many other suppliers (including both multinational suppliers and national UK suppliers) that compete for these opportunities, and are able to win business from UK customers. These suppliers include Westrock, MMP, VGP, Alexir, Ken Wilkins and Seda. Further, several customers submitted that they invited either GPK or ARP (but not both) to participate in their tenders, along with other suppliers.

Parties' customer data

39. The Parties also provided sales data for their top 50 customers in the UK.³⁶ This data showed that the Parties focus largely on different customer groups with different volume requirements.

³⁵ FMN, Annex 16.3.

³⁶ The Parties' response to CMA's follow-up questions to RFI 1 dated 7 July 2021, Annex 15.1 and Annex 15.2.

40. In particular, while the Parties have some overlapping customers, including a few multinational companies, data on the Parties' top 50 UK customers suggests that GPK tends to serve large customers and deal with large volume orders (including for multinational customers such as [X]), compared with ARP which mainly serves small and mid-sized customers. The data also shows that GPK's top 20 customers spend between £[X] million and £[X] million per year on folding cartonboard from GPK (with an average customer spend of over £[X] million a year). By contrast none of ARP's folding cartonboard customers spent more than £[X] million per year with ARP (with ARP's top 20 customers spending less than £[X] million a year on average).

Internal documents

41. The CMA has reviewed documents produced by the Parties in the normal course of business which monitor the competitive landscape.
42. The CMA found that the Parties feature in each other's internal documents to a limited degree, and that they are always discussed alongside a number of other suppliers.³⁷

Third-party evidence

43. The CMA received mixed evidence on closeness of competition from third parties that responded to its Merger investigation, with some customers and competitors submitting that the Parties are close competitors in the UK. One multinational customer also submitted that the Parties are two suppliers among a small number of suppliers that have an established presence in several European countries in addition to the UK, and therefore well placed to serve multinational customers.
44. However, several third parties also submitted that the Parties do not compete closely. These third parties submitted that the Parties focus on different customer segments and use different machinery with different volume throughput capabilities. For example, one customer stated that GPK was able to meet large orders, which other suppliers, including ARP, could not. That same customer also submitted that ARP was smaller than GPK, with only one UK site that serves the food segment, and that in contrast to GPK, it focused on high-value products. Another multinational customer submitted that it did not consider GPK and ARP to be close competitors, as ARP supplied tailor-made and premium packaging products, while GPK supplied 'regular cartonboard'.

³⁷ For GPK, see for eg: FMN, Annex 10.8, slides 9-10. For ARP, see for eg: FMN, Annex 10.13, slides 105 and 107.

Constraints from alternative suppliers

45. The Parties submitted that there are many effective competitors active in the UK that will continue to exercise a competitive constraint on the Merged Entity.³⁸
46. In addition to the share of supply and bidding data, discussed above, the CMA has considered within its assessment: (i) evidence from internal documents; and (ii) third-party evidence.

Internal documents

47. The Parties' internal documents show that there are a large number of competitors that are active in the supply of folding cartonboard for the food segment. As noted above, while the Parties feature in each other's internal documents to a limited degree, they are always discussed alongside several other suppliers such as [REDACTED], etc.³⁹ In this context, one internal document from GPK describes the UK market for folding cartonboard as '[REDACTED]'.⁴⁰

Third-party evidence

48. While several customers and competitors that responded to the CMA's Merger investigation raised concerns about the Merger and noted that it would reduce the number of suppliers, the majority of customers identified several alternatives as strong suppliers of folding cartonboard packaging for food in the UK. The range of available alternatives identified by customers is wide and includes multinational companies with production facilities in the UK and elsewhere (eg MMP, WestRock, Coveris, Seda and Huhtamaki) as well as small to mid-sized UK-based suppliers (eg Ken Wilkins, Cartonage and Alexir).
49. As noted above, while one customer raised concerns about the Merger and submitted that it would reduce the number of suppliers with a European footprint from four to three, another multinational customer with a global footprint submitted that it did not consider the Parties to be close competitors and that its main suppliers of folding cartonboard packaging products in the UK are GPK, MMP, Offset and VGP.
50. The majority of competitors that replied to the CMA's Merger investigation identified a large number of alternatives in addition to the Parties active in the supply of folding cartonboard packaging for food in the UK. These suppliers

³⁸ FMN, paragraph 192.1.

³⁹ For GPK, see FMN, Annex 10.8, slide 9. For ARP, see FMN, Annex 9.3, slide 46.

⁴⁰ FMN, Annex 10.8, slide 9.

include Alexir, Harrisons, VGP, Seda and Huhtamaki. Furthermore, two competitors submitted that there are a large number of alternative suppliers ranging from small to large and stated that suppliers compete aggressively against each other, including with GPK and ARP, to win and retain business from UK customers. The CMA notes that this finding is consistent with the Parties' bidding data (paragraph 36(c)).

51. All competitors that replied to the CMA's Merger investigation submitted that they would be able to supply new folding cartonboard customers for food in the UK as they have spare capacity. Furthermore, the CMA notes that competitors continue to add capacity, with the majority of competitors submitting that they have plans to, or are already in the process of, expanding their production capacity in the UK.

Conclusion on horizontal unilateral effects

52. On the basis of the evidence above, the CMA considers that although GPK is the largest supplier of folding cartonboard packaging for the food segment in the UK, ARP only has a small share of supply. The available evidence also shows that the Parties do not compete particularly closely and that the Merged Entity will be constrained by a large number of other competitors post-Merger.

Decision

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

Naomi Burgoyne
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Competition and Markets Authority
6 October 2021