

Anticipated acquisition by Carpenter Co. of the engineered foams business of Recticel NV/SA

Decision on relevant merger situation and substantial lessening of competition

ME/6986/22

SUMMARY

1. On 6 December 2021, Carpenter Co. (**Carpenter**) agreed to acquire the engineered foams business (**REF**) of Recticel NV/SA (**Recticel**) (the **Merger**). Carpenter and REF are together referred to as the **Parties**, and for statements relating to the future, the **Merged Entity**.
2. The Parties overlap in the manufacture and supply (**supply**) of various types of flexible polyurethane (**PU**) foam (**flexible PU foam**) in the UK, namely:
 - (a) unconverted polyether comfort foam (**comfort foam**), which is used mainly for applications such as upholstered furniture and mattresses;
 - (b) unconverted technical foam (**technical foam**) which is used for a wide range of applications, including cleaning sponges (**technical sponge foam**, the primary segment in which the Parties overlap); and
 - (c) **converted comfort foam**, which is comfort foam that has been processed (or converted) into components by eg cutting, gluing, or laminating, for use in comfort applications. Such applications can range from 'simple' products (such as mattresses) to products requiring more complex conversion (such as furniture).
3. The Competition and Markets Authority (**CMA**) found that comfort foam, technical foam and converted comfort foam are not substitutable with each other as they are intended for different applications. The CMA has therefore

assessed the impact of the Merger in the supply of each of comfort foam, technical foam and converted comfort foam without further segmentation. The CMA has taken account of differences between types of technical foam in its competitive assessment. The CMA found that the geographic frame of reference is UK-wide for each of these three categories of foam and that it would not be appropriate to widen to include the EEA and Switzerland (or beyond), given the importance to UK customers of low transport costs (necessitating suppliers to have a UK-based plant), and the comparatively limited role of imports in the UK. The CMA has therefore assessed the impact of the Merger in the supply of each of comfort foam, technical foam and converted comfort foam in the UK, and taken account of the constraint posed by non-UK based suppliers in the competitive assessment.

4. The CMA has found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in:

- (a) **The supply of comfort foam in the UK (Theory of Harm 1):** the supply of comfort foam in the UK is highly concentrated, with three main suppliers: the Parties and Vita. These three main suppliers are the only suppliers that have plants producing comfort foam in the UK. The Parties' combined shares of supply are high and have been stable over time. The Parties' internal documents and evidence from other market participants show that the Parties compete closely, posing an important competitive constraint on one another. The majority of comfort foam customers and suppliers that responded to the CMA's Merger investigation expressed concerns about the impact of the Merger on competition in the supply of comfort foam in the UK. The CMA found that, other than Vita, which poses a strong constraint on the Parties, other suppliers (including non-UK based suppliers) do not pose a material competitive constraint on the Parties.
- (b) **The supply of technical foam in the UK (Theory of Harm 2):** the Parties are two of just three sizeable suppliers of technical foam in the UK. Technical foam is a differentiated product market: different types of technical foam may be required for different applications and different production methods may be used to produce different types of foam. While REF sells a broader range of technical foam than Carpenter, the Parties overlap and are close competitors in the supply of conventional polyether-based technical foam, in particular technical sponge foam. The Parties face limited constraints in the supply of technical sponge foam: there is mixed evidence with respect to the constraint from Vita (the only other sizeable supplier of technical foam in the UK), and imports from suppliers outside the UK exert a limited constraint in the supply of technical foam to sponge manufacturers in the UK.

(c) **The supply of converted comfort foam in the UK (Theory of Harm 3):** the Parties are the two largest suppliers of converted comfort foam in the UK, and are substantially larger than the next largest supplier (Vita) with the remainder of the market being highly fragmented. In addition, the Parties and Vita are the only vertically integrated suppliers with UK plants. The evidence gathered by the CMA indicates that vertical integration provides a particular advantage in the supply of simple converted products that are typically supplied at higher volumes. The evidence indicates that there is a material degree of competitive interaction between the Parties in the supply of converted comfort foam in the UK and the majority of customers that responded to the CMA in the course of its investigation raised concerns about the effect of the Merger on competition.

5. The CMA has not seen evidence of entry and/or expansion in response to the Merger that would be timely, likely and sufficient in any of these markets to prevent a realistic prospect of a substantial lessening of competition (**SLC**) as a result of the Merger.
6. The CMA therefore believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the (i) supply of comfort foam in the UK, (ii) supply of technical foam in the UK, and (iii) supply of converted comfort foam in the UK.
7. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (the **Act**). The Parties have until 11 July 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.