

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

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 4 July 2022. Full text of the decision published on 5 August 2022.

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 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**),¹ which is used mainly for applications such as upholstered furniture and mattresses;
 - (b) unconverted technical foam (**technical foam**)² which is used for a wide range of applications, including cleaning sponges (**technical sponge foam**, the primary segment in which the Parties overlap); and

¹ Supplied both as block comfort foam and semi-converted (sheets/slabs/rolls) comfort foam.

² Supplied as both block and semi-converted technical foam.

- (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.

ASSESSMENT

PARTIES

8. Carpenter is a USA-headquartered manufacturer of a range of flexible PU foam and foam-related products.³ In the UK, Carpenter supplies comfort foam, technical foam and converted comfort for a range of applications.⁴ Carpenter has three manufacturing plants in the UK: (i) a flexible PU foam plant in Glossop (Derbyshire); (ii) a converted comfort foam plant in Somercotes (Derbyshire); and (iii) a converted comfort foam plant in Penallta (South Wales).⁵ Carpenter group's worldwide turnover in the financial year ending 31 December 2021 was £[<], £[<] of which was generated in the UK.⁶
9. Recticel is a Belgium-headquartered manufacturer of flexible PU foam (through REF), bedding and insulation products.⁷ In the UK, REF supplies and converts both comfort foam and technical foam.⁸ REF has three plants in the UK: (i) a flexible PU foam plant in Alfreton (Derbyshire); (ii) a converted comfort foam plant also in Alfreton (Derbyshire); and (iii) a technical foam converting plant in Corby (Northamptonshire).⁹ REF's worldwide turnover in the financial year ending 31 December 2021 was £509.1 million, £[<] of which was generated in the UK.¹⁰

TRANSACTION AND RATIONALE

10. On 6 December 2021, pursuant to a share purchase agreement, Carpenter agreed to acquire 100% of the shares in the relevant Recticel companies that currently own all assets and liabilities of and operate REF, for €656 million (approximately £559 million).¹¹
11. Carpenter submitted that its rationale for the Merger was to benefit from REF's complementary product focus (as REF's core expertise is in higher value technical foam, while in the UK and EEA, Carpenter's core expertise is in comfort foam).¹²

³ Final Merger Notice submitted to the CMA by the Parties on 4 April 2022 (**FMN**), paragraph 3.19. References to Annexes in this Decision refer to Annexes to the FMN.

⁴ FMN, paragraphs 3.20-3.21.

⁵ FMN, paragraph 3.22.

⁶ FMN, paragraph 6.

⁷ FMN, paragraph 3.1.

⁸ FMN, paragraph 3.7.

⁹ FMN, paragraph 3.9.

¹⁰ FMN, paragraph 6.

¹¹ FMN, paragraphs 2.2, 2.11, 2.12 and 2.22; Bank of England exchange rate against Euro on 6 December 2021.

¹² FMN, paragraph 2.24.

Carpenter further submitted that the acquisition of REF will improve Carpenter's position in technical foam in North America and Europe and establish a presence in Asia Pacific.¹³

12. The CMA found that Carpenter's internal documents were consistent with some aspects of its stated rationale.¹⁴ However, several of the Parties' internal documents also reference the scope for the Merger to enhance the size and power of the Parties to create a leading vertically integrated global supplier in the form of the Merged Entity.¹⁵
13. The Parties informed the CMA that the Merger was also reviewed by competition authorities in Germany, Poland and Turkey.¹⁶

PROCEDURE

14. The CMA's mergers intelligence function identified this transaction as warranting an investigation.¹⁷
15. The Merger was considered at a Case Review Meeting.¹⁸

JURISDICTION

16. Each of Carpenter and REF is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
17. The Parties submitted that the CMA does not have jurisdiction over the Merger on the basis that neither the turnover nor share of supply tests set out in section 23 of the Act are met.¹⁹ The Parties however then further noted that if looked at 'narrowly'

¹³ FMN, paragraph 2.24.

¹⁴ For example: Carpenter: Annex 004 and Annex 005, Annex 067, Annex 026 (slide 2); Recticel: Annex 194 (slides 7, 13), Annex 197, Annex 198. Carpenter's internal documents indicate that it was keen to expand its presence in technical foam in Europe, which is considered to be Carpenter's area of weakness (see Carpenter: Annex 120, Annex 121 (slides 2,4,5, and 9), Annex 172 (slides 19, 20-23, and 27) and that it was keen on improving its position in North America and Asia Pacific (for example, Carpenter Annex 121, Annex 052).

¹⁵ For example, in Carpenter's Annex 162, slide 6, Carpenter states that the '[Merger] makes Carpenter dominant flexible foamer in Europe'. Another Carpenter document (Annex 121) states that '[Carpenter] will be roughly [3x] and becoming an even larger global player'. A Recticel document (Annex 317) states that '[Combining] Carpenter and Recticel Engineered Foams creates [3x] vertically integrated PU foam producers, with strong presence in most segments'.

¹⁶ The Parties received unconditional clearances from competition authorities in Poland (25 January 2022), Germany (26 January 2022), and Turkey (3 February 2022). FMN, paragraph 2.26.

¹⁷ See [Mergers: Guidance on the CMA's jurisdiction and procedure \(CMA2revised\)](#), December 2020 ([CMA2](#)), paragraphs 6.4-6.6.

¹⁸ See [CMA2](#), December 2020, from page 46.

¹⁹ FMN, paragraphs 5.3-5.4.

(that is, to exclude foam included in imported finished products), the combined UK share of Carpenter and REF in the supply of comfort foam would be estimated as being greater than 25%.²⁰ In response to the CMA's issues letter, Carpenter further submitted that their combined UK share of supply is below 25%, when properly calculated, for each of the three frames of reference the CMA had identified.²¹

18. The CMA believes that the share of supply test is met on the basis that the Parties' combined share of supply in the UK in the supply of comfort foam (by volume and value) was [40-50]% in 2021 with an increment of [10-20]% arising from the Merger. The share of supply test would also be met on the basis of the Parties' combined share of supply of technical foam in the UK (by volume and value) which was [60-70]% in 2021 with an increment of [30-40]% by volume and [20-30]% by value arising from the Merger (see Table 1, Table 2, Table 3 and Table 4 below, and paragraphs 54 and 92 for an explanation of how these shares have been calculated).²² The CMA considers these to be reasonable descriptions of sets of goods for the purposes of determining the share of supply test.
19. 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. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 6 May 2022 and the statutory 40 working day deadline for a decision is therefore 4 July 2022.

COUNTERFACTUAL

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).²³ For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put

²⁰ FMN, paragraphs 5.3 and 5.4.

²¹ Carpenter's response to the CMA's Issues Letter dated 15 June 2022 (**Issues Letter Response**). The CMA's assessment of the Parties' share of supply estimates (and the basis for the CMA's own calculation of the Parties' shares of supply, which it has used to establish jurisdiction over the Merger) is set out in the competitive assessment. The CMA notes for completeness that in any event, as a general principle for the purposes of establishing jurisdiction, the group of goods or services to which the jurisdictional test is applied need not amount to a relevant economic market ([CMA2](#), paragraph 4.59(a)).

²² Section 23 of the Act.

²³ [Merger Assessment Guidelines](#), paragraph 3.1.

forward arguments in this respect.²⁴ Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

FRAME OF REFERENCE

21. 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.²⁵ Market definition involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.²⁶
22. The Parties overlap in the supply of: (i) comfort foam; (ii) technical foam; and (iii) converted comfort foam in the UK (and more broadly, worldwide).²⁷

Product scope

Parties' submissions

23. The Parties submitted that the product markets should be defined separately in terms of the (i) supply of comfort foam; (ii) supply of technical foam; and (iii) supply of converted comfort foam.²⁸ In particular, the Parties submitted that separate product frames of reference should be used to assess comfort and technical foam, as these foams are used for different applications by different sets of customers.²⁹
24. As regards any possible segmentation within each of comfort foam and technical foam, the Parties submitted that while there is some degree of differentiation within each of these foam types from a demand-side perspective, it is not sufficient to warrant further segmentation.³⁰ The Parties submitted that there is a high degree of supply-side substitutability within each of the foam types (ie in the supply of different

²⁴ FMN, paragraph 11.1. The Parties noted that Recticel had separately agreed to sell its Recticel Bedding division to Aquinos (a transaction which completed on 31 March 2022).

²⁵ [Merger Assessment Guidelines](#), paragraph 9.1.

²⁶ [Merger Assessment Guidelines](#), paragraph 9.2.

²⁷ The Parties also overlap in the supply of a number of other foam-related products such as polyester fibre products, mattresses and mattress toppers. The CMA has not found concerns related to these overlaps and they are therefore not covered further in this decision.

²⁸ FMN, paragraphs 13.4, 13.45 and 13.62; REF converts technical foam in the UK at its plant in Corby, while Carpenter does not convert technical foam in the UK, FMN, paragraph 3.9, 3.20 and footnote 12.

²⁹ FMN, paragraph 13.46.

³⁰ FMN, paragraphs 13.7 and 13.8, which refers to potential differentiation within comfort foam, with different grades having different densities and higher density grades being associated with higher prices; FMN, paragraph 13.49.

grades of foam (for comfort foam) and intended end-applications (for technical foam)).³¹

25. The Parties also submitted that comfort foam and converted comfort foam should be considered using separate frames of reference, with converted comfort foam being a downstream product in relation to the supply of comfort foam.³² The Parties further explained that different conversion techniques are used to create different converted foam products, but submitted that there should not be any segmentation of converted comfort foam on that basis.³³

CMA's assessment

- *Substitutability between comfort and technical foam*

26. The CMA believes that comfort foam and technical foam belong to separate product frames of reference, based on limited demand-side substitutability. The CMA has not seen any evidence from third parties indicating that customers are able to substitute between comfort and technical foam, or examples of customers purchasing both of these products. This evidence is also supported by the Parties' internal documents, which typically discuss comfort foam and technical foam separately.³⁴
27. As regards supply-side substitutability, all foam suppliers that responded to the CMA's Merger investigation indicated that they are unable to substitute between supplying comfort and technical foam. Whilst some suppliers (such as the Parties and Vita) supply both comfort and technical foam, some suppliers indicated that certain suppliers may choose to focus on supplying one type more than the other.³⁵
28. Finally, the vast majority of foam suppliers that responded to the CMA's Merger investigation generally recognised the distinction between 'comfort foam' and 'technical foam'.

- *Segmentation within comfort foam*

29. The CMA believes that it is not appropriate to adopt separate frames of reference within the category of comfort foam. A few third parties indicated that there exist

³¹ FMN, paragraphs 13.6; FMN, paragraph 13.49.

³² FMN, paragraph 13.62.

³³ FMN, paragraphs 13.63 and 13.64.

³⁴ For example: REF Annex 195, Annex 413, Annex 490 (slides 25 and 26); Carpenter Annex 172.

³⁵ An internal document submitted by REF similarly indicates that certain suppliers may focus on supplying either comfort or technical foam. REF Annex 490, slide 67.

different types or 'grades' of comfort foam which have varying degrees of hardness and density (see further paragraphs 61 below). Notwithstanding this, a larger number of third parties consistently described comfort foam as a homogenous or 'commodity' product, with customers largely able to substitute between purchasing different types of comfort foam. Moreover, most foam suppliers submitted that they are generally able to substitute between producing different types of comfort foam. As noted further below at paragraph 61, third party feedback also indicates that the Parties produce similar ranges of foam grades. The Parties' internal documents also largely indicate that business strategies are discussed at the broader comfort foam level rather than for different types or grades of comfort foam.³⁶

- *Segmentation within technical foam*

30. The evidence available to the CMA indicates that there is a greater degree of differentiation in technical foam than in comfort foam. Technical foam may be either polyester- or polyether-based, unlike comfort foam which is polyether-based only. In addition, technical foam is used for a wider range of applications (such as in automobiles and industrial equipment, sponges, scouring pads, and packaging).³⁷
31. Demand-side substitutability within technical foam is more limited as certain technical foam applications may require specific types of technical foam. In particular, third party submissions indicate that polyether- and polyester-based technical foam types have different properties and are therefore suitable for different applications. The Parties' internal documents also largely support the view that technical foam is a differentiated and specialised product that may be tailored for certain technical foam applications.³⁸
32. Further, supply-side substitutability appears more limited than within comfort foam. For example, third-party submissions suggested there is more limited supply-side substitutability between polyether-based and polyester-based technical foam, and the evidence shows that some suppliers focus on supplying one but not the other.³⁹ Third parties also noted that more specialised grades of technical foam require different production assets, eg reticulated foam requires a reticulation chamber.

³⁶ For example: REF Annex 188, Annex 413; Carpenter Annex 158, Annex 171.

³⁷ FMN, paragraph 3.7.

³⁸ For example: Carpenter Annex 178 and Annex 179; REF Annex 486, Annex 450.

³⁹ Neither Party produces polyester-based technical foam in the UK. While REF imports and sells polyester- (and polyether-) based foam in the UK, Carpenter only produces and sells polyether-based technical foam (in the UK and worldwide) and does not produce polyester-based technical foam anywhere in the world. See the FMN, paragraphs 13.57, 15.179 and 15.188. [3<].

33. However, outside of certain applications, submissions received from third parties generally indicate that technical foam suppliers are typically able to produce a range of different types of technical foam required by customers. In particular, a large number of third parties indicated that suppliers often produce a range of types of technical foam.
34. Therefore, the CMA does not believe it appropriate to segment within the category of technical foam and has instead considered any differences between different types of technical foam, where relevant, in its competitive assessment below. In any event, the outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of a merger, as the CMA may take into account constraints from outside the relevant market or segmentation within the market such that no finely balanced judgements on what is 'inside' or 'outside' the market are required.⁴⁰ In particular, when assessing closeness of competition between the Parties (and the competitive constraints they face), the CMA has considered whether the Parties overlap in the supply of any particular types of foam. As is set out in further detail below, the CMA has noted that the Parties compete particularly closely as regards the supply of technical foam used to produce sponges in the UK, and has assessed the remaining constraints in relation to the supply of this foam type in the competitive assessment.
- *Substitutability between comfort foam and converted comfort foam*
35. The CMA believes that comfort foam and converted comfort foam belong to separate product frames of reference. The evidence received on demand-side substitutability indicates that while a portion of comfort foam customers can convert comfort foam in-house so as to manufacture and supply finished consumer goods (so-called '**integrated converters**'), customers without in-house capabilities are unable to substitute between converted and unconverted comfort foam.⁴¹
36. On the supply-side, the assets required to produce unconverted comfort foam and converted comfort foam respectively are entirely different (as demonstrated by the presence of firms in the UK which convert but are unable to produce (unconverted) comfort foam).⁴² These include firms that purchase unconverted or semi-converted comfort foam which they then convert to sell to third party suppliers of finished products (**independent converters**) and the integrated converters as defined

⁴⁰ [Merger Assessment Guidelines](#), paragraph 9.4.

⁴¹ The significance of integrated converters is assessed further in the competitive assessment at paragraph 149.

⁴² For example, Clinchplain ([Clinchplain – Belfield Group \(thebelfieldgroup.com\)](#)) and Comfortex ([Company – Comfortex](#)) are two examples of firms active in the UK that convert, but do not produce, comfort foam.

above. The Parties' internal documents also support the use of separate frames of reference for (unconverted) comfort foam and converted comfort foam.⁴³ There is also a degree of differentiation between the conversion activities of vertically integrated producers of comfort foam and integrated/independent converters as explained in more detail from paragraph 136 below.

Geographic scope

Parties' submissions

37. In relation to comfort foam, the Parties submitted that the geographic scope should be at least the EEA, UK, and Switzerland on the basis that:⁴⁴
- (a) There are significant imports into the UK from a wide variety of geographic sources. Carpenter submitted that to its knowledge a large number of non-UK based suppliers from Europe import comfort foam into the UK and that the CMA had omitted a number of these non-UK based suppliers from its investigation.⁴⁵
 - (b) Carpenter also submitted that the high volume of imports detailed in third party import data sourced from Datamyne indicates that transport barriers to importing comfort foam from Europe are low, particularly where compression techniques may be used to mitigate transport costs.⁴⁶ The Parties submitted that these techniques are commonly used in the EEA.⁴⁷
 - (c) Carpenter also submitted that there are no material regulatory barriers to imports, in particular that complying with UK Fire Safety Regulations is not difficult,⁴⁸ and that a number of foam manufacturers in the EEA actively promote themselves as producing comfort foam that is compliant with these UK regulations.⁴⁹

⁴³ Discussions in the Parties' internal documents are typically separate for unconverted comfort foam (ie blocks) and converted comfort foam. See for example: Carpenter: Annex 168; REF Annex 188.

⁴⁴ FMN, paragraph 13.12.

⁴⁵ Including, Torres-Espic, Latexco, Eurospuma, Polypreen, CT Formpolster, Olmo, Orsa, Avek Foam, and Ikano. Issues Letter Response, paragraph 4.3.

⁴⁶ Issues Letter Response, paragraphs 4.4 and 4.5. This data is considered below at paragraph 82; Datamyne is part of The Descartes Systems Group Inc., which is a third party database for information on global import and export trade, see www.datamyne.com. Datamyne sources its data from Eurostat.

⁴⁷ FMN, paragraph 13.21.

⁴⁸ FMN, paragraph 13.18. [The Furniture and Furnishings \(Fire\) \(Safety\) Regulations 1988](#) (as amended in 1989, 1993 and 2020) (**UK Fire Safety Regulations**) in the UK requires upholstery components and composites such as the filling material, particularly foam, to meet a specified ignitability test and be suitably labelled; Issues Letter Response, paragraph 4.5.

⁴⁹ FMN, paragraph 13.17; Issues Letter Response, paragraph 4.5.

- (d) Carpenter itself makes substantial exports of comfort foam throughout the EEA, and from the UK exports to [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].⁵⁰

38. In relation to technical foam, the Parties submitted that the geographic frame of reference for the supply of technical foam is no narrower than the EEA, UK and Switzerland on the basis that:⁵¹

- (a) There are significant trade flows of technical foam throughout the UK, the EEA, and Switzerland,⁵² in particular, REF imported significant volumes of technical foam into the UK from [REDACTED], [REDACTED], [REDACTED] and [REDACTED] in 2021.⁵³ The Parties believe that a number of suppliers either import, or are likely to have imported, a material volume of technical foam into the UK from the EEA and outside the EEA (ie USA, Japan and Turkey).⁵⁴
- (b) Carpenter submitted that it is not aware of any prohibitive conditions preventing other competitors from importing technical foam from continental Europe and beyond.⁵⁵ Carpenter further submitted that it is aware of several of its customers importing technical foam into the UK on a regular basis, and that a Carpenter '[REDACTED]' records reticulated foam from [REDACTED].⁵⁶
- (c) Carpenter submitted that third party data sourced from Datamyne shows 24,469MT of comfort and technical foam was imported to the UK in 2021, originating from both EEA and non-EEA countries.⁵⁷ Carpenter also submitted that imports would constitute one third of the total UK market for technical foam and are likely to constrain the Merged Entity even if some non-UK based suppliers have low volumes of technical foam supplied to the UK.⁵⁸
- (d) Technical foam is a commodity and homogenous product sold widely across Europe.⁵⁹ In particular, Carpenter submitted that the market for technical foam used for cleaning sponges is not UK-wide, and even if the market for technical sponge foam was considered to be UK-wide, Carpenter submitted that this

⁵⁰ FMN, paragraph 13.26.

⁵¹ FMN, paragraph 13.55.

⁵² FMN, paragraph 13.57, and Issues Letter Response, paragraph 3.4.

⁵³ Issues Letter Response, paragraph 3.4.

⁵⁴ FMN, paragraph 13.58.

⁵⁵ Issues Letter Response, paragraph 3.5.

⁵⁶ Issues Letter Response, paragraph 3.6. The Parties did not provide a copy of this sales report.

⁵⁷ Issues Letter Response, paragraph 3.7. The CMA considers this data at paragraph 82 below.

⁵⁸ Issues Letter Response, paragraph 3.12.

⁵⁹ Issues Letter Response, paragraph 3.10. The Parties referenced the European Commission's decision in [Recticel/Greiner](#) (1997) where the European Commission concluded that the market conditions and prices for technical foam tend to be homogenous.

would not establish the whole technical foam market to be UK-wide.⁶⁰

Carpenter explained that this broader market also includes high value technical foam, for example technical foam used in automotive applications where the costs support transporting this foam into the UK.⁶¹

39. Finally, the Parties submitted that the geographic market for converted comfort foam is at least UK-wide.⁶²

CMA's assessment

- *Supply of comfort foam*

40. The CMA considers that the available evidence indicates that the appropriate geographic frame of reference for comfort foam is UK-wide for the following reasons:
- (a) As set out in more detail in the competitive assessment of Theory of Harm 1, the available evidence does not support the Parties' submissions that non-UK based suppliers (including those named by the Parties) make material sales in the UK.
 - (b) A large number of third parties, including all of the suppliers that responded to the CMA's Merger investigation, submitted that there are high transport costs associated with importing comfort foam from continental Europe to the UK that restrict non-UK based suppliers from competing in the UK. Some customers also identified the longer lead times associated with deliveries of imported foam as being a barrier to sourcing comfort foam from non-UK-based suppliers.
 - (i) In particular, as set out in the CMA's shares of supply analysis below at paragraph 57, non-UK based suppliers specifically identified by the Parties, such as Polypreen, make only negligible sales in the UK.
 - (ii) Further, while the CMA notes that several firms do, as the Parties submit, market themselves as being compliant with UK Fire Safety Regulations

⁶⁰ Issues Letter Response, paragraph 3.14.

⁶¹ As explained at paragraph 30 above, the CMA considers that technical foam is a differentiated product, with some technical foams being specialised and tailored for certain applications. As a result of this differentiation, certain types of technical foam may be of relatively higher value. By contrast, other technical foams may be less specialised, and of relatively lower value. Carpenter submitted that technical sponge foam does not have any special characteristics, and more generally the broader types of technical foam sold by Carpenter do not require any particular technology or know-how beyond that required to manufacture comfort foam. Issues Letter Response, paragraphs 3.14.

⁶² FMN, paragraph 13.67.

(which suggests that such regulations are a less limiting barrier relative to transport costs associated with imports) several third parties indicated that compliance with such regulations is, in reality, difficult and operates as a barrier to importing comfort foam into the UK.

- (c) The Parties' internal documents largely discuss business plans and strategy related to comfort foam on a UK basis or make comments separately for the UK amongst other European countries.⁶³

41. Based on the evidence set out above, the CMA believes that the appropriate geographic frame of reference for the supply of comfort foam is the UK. The CMA has considered the competitive constraint imposed by suppliers producing comfort foam outside of the UK in its competitive assessment.

- *Supply of technical foam*

42. The CMA considers that the evidence available to it indicates that the appropriate geographic frame of reference for technical foam is UK-wide for the following reasons:

- (a) As set out in more detail in the competitive assessment of Theory of Harm 2, with the exception of REF itself, the CMA has not seen evidence of any other technical foam producer (including, those competitors based outside the UK identified by the Parties) making material imports of technical foam into the UK (see further paragraph 95 below).⁶⁴ Although the Parties submitted shares suggesting that non-UK based suppliers command a large share of UK sales of technical foam, the CMA considers that the methodology used to calculate these shares is flawed, and that the Datamyne estimates submitted also have issues that limit their probative value (see paragraph 82 below).⁶⁵
- (b) As regards the Parties' submission that several customers regularly purchase from outside of the UK, a few third parties that responded to the CMA's Merger investigation indicated that certain types of technical foam, particularly more specialised technical foam, must be sourced from outside the UK as these foam types are not produced in the UK. However, a larger number of third

⁶³ For example: Carpenter, Annex 168, Annex 171, Annex 182, Annex 243; REF, Annex 188, Annex 195 (slide 20), Annex 413.

⁶⁴ REF makes material imports of technical foam into the UK. The CMA's analysis of Annex 545 to the FMN indicates that the volumes of technical foam sold in the UK by REF in 2021 that had been produced outside of the UK were [3<] the volume of technical foam produced within the UK in 2021.

⁶⁵ In particular, the Parties have submitted that these are estimates based on 'substantial market experience'. They have submitted no formal data is available that may substantiate these (FMN, paragraph 14.27).

parties said that transport costs are a barrier to importing technical foam, with some third parties noting this in relation to technical sponge foam in particular, such that it would not be cost-effective to source such foam from outside the UK.⁶⁶

- (c) As discussed at paragraph 30 above and below, the CMA considers that, contrary to the Parties' submission that technical foam is a 'commodity and homogenous product', technical foam is a highly differentiated product. 'High value' foam for automotive applications is not an area of overlap between the Parties in the UK, and therefore has limited relevance to the CMA's competitive assessment of the constraint posed by the Parties on each other in technical foam.
- (d) The internal documents submitted by the Parties contain limited discussion of technical foam. However, one REF internal document on 'flexible foams UK' specifically discusses the market and performance for technical foam for the UK.⁶⁷ The CMA notes that the Parties' reference to a '[X]' referencing reticulated foams from [X] (paragraph 38(b)) is of limited evidentiary value to the CMA's competitive assessment because Carpenter does not produce this type of technical foam in the UK or elsewhere.

43. Based on the evidence set out above, the CMA believes that the appropriate geographic frame of reference for the supply of technical foam is the UK. The CMA has considered any competitive constraint imposed by non-UK based suppliers of technical foam as an out of market constraint in the competitive assessment below.

- *Converted comfort foam*

44. The evidence available to the CMA shows that the appropriate geographic frame of reference for the supply of converted comfort foam is UK-wide. This is because, as with comfort foam (see paragraph 40 above), third parties have submitted that there are high costs associated with transporting converted comfort foam from outside the UK into the UK. Customers consistently indicated that they would be unable to source converted comfort foam from outside the UK, and that greater geographic proximity of a supplier reduces costs and facilitates quicker deliveries.

45. Further, similar to the Parties' internal documents that discuss (unconverted) comfort foam, internal documents including the Parties' business plans and

⁶⁶ Technical sponge foam is produced by both of the Parties in the UK (see paragraph 102 below).

⁶⁷ REF Annex 413.

strategies in relation to converted comfort foam are also discussed largely on a UK basis or separately for the UK amongst other European countries.⁶⁸

46. Based on the evidence set out above, the CMA believes that the appropriate geographic frame of reference for the supply of converted comfort foam is the UK.

Conclusion on frame of reference

47. For the reasons set out above, the CMA has considered the impact of the Merger using the following frames of reference:

- (a) Supply of comfort foam in the UK;
- (b) Supply of technical foam in the UK; and
- (c) Supply of converted comfort foam in the UK.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

48. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade 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.⁶⁹ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assesses the potential competitive effects of mergers by reference to ‘theories of harm’. A theory of harm is a hypothesis about how the process of rivalry could be harmed as a result of a merger.⁷⁰
49. The CMA has focused its investigation on three theories of harm, and has assessed whether it is or may be the case that the Merger may be expected to result, in an SLC in relation to horizontal unilateral effects⁷¹ in:
- (a) the supply of comfort foam in the UK (Theory of Harm 1);

⁶⁸ For example: Carpenter, Annex 168, Annex 171, Annex 243; REF Annex 188, Annex 396, Annex 397, Annex 394.

⁶⁹ [Merger Assessment Guidelines](#), paragraph 4.1.

⁷⁰ [Merger Assessment Guidelines](#), paragraph 2.11.

⁷¹ The CMA has also considered whether it would be appropriate to assess vertical effects (arising due to, *inter alia*, the conversion of flexible PU foam being downstream from the supply of flexible PU foam) but, given the findings set out below on horizontal unilateral effects, has not found it necessary in this decision to reach a separate conclusion on a vertical theory of harm or found no concern in relation to those markets.

- (b) the supply of technical foam in the UK (Theory of Harm 2); and
- (c) the supply of converted comfort foam in the UK (Theory of Harm 3).

50. Each of these theories of harm is assessed separately in the sections below.

Horizontal unilateral effects in the supply of comfort foam in the UK (Theory of Harm 1)

51. To assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of comfort foam, the CMA considered:

- (a) the Parties' shares of supply;
- (b) closeness of competition between the Parties; and
- (c) competitive constraints imposed on the Parties by alternative suppliers.

Shares of supply

52. The Parties submitted two versions of their combined shares of supply in the UK: the first included comfort foam that had been incorporated into imported finished goods and estimated that the Parties would have a combined share of [10-20]% (with an increment of [0-5]%),⁷² the second excluded comfort foam incorporated into imports of downstream products and estimated that the Parties would have a combined share of [30-40]% (with an increment of [10-20]%).⁷³

53. As regards these shares, the CMA considers that:

- (a) The UK estimates submitted by the Parties are heavily reliant on unevidenced assumptions. The market size of UK comfort foam has been estimated by assuming 12% of the foam sold in the EEA, UK, and Switzerland was sold in the UK, based on its population share.⁷⁴
- (b) It is not appropriate to include comfort foam that comprises part of imported finished goods in the estimates of shares. This is because foam included in downstream products is not a substitute for the (unconverted) comfort foam

⁷² FMN, paragraph 14.18.

⁷³ FMN, paragraph 14.33.

⁷⁴ FMN, paragraphs 14.24-14.25. The Parties submitted that this assumption is based on population sizes, as they alleged that population sizes would indicate demand for products containing comfort foam. However, the Parties did not provide any data to substantiate the choice of the 12% figure for the UK, nor is it clear to the CMA that population size alone would dictate demand for consumer goods such as upholstered products.

that is used as an input by suppliers to manufacture finished goods in the UK. The constraint imposed by such imports is considered further at paragraph 84 below.

54. The CMA has therefore calculated its own estimates of shares of supply, which are set out in Table 1 and Table 2 below. To estimate these shares, the CMA requested data on the volume and value of UK comfort foam sales made by the Parties and other foam suppliers producing foam in the UK and Europe. The CMA reached out to a wide range of suppliers of comfort foam, including all of the suppliers identified by the Parties as being ‘primary competitors’ in the supply of comfort foam in the UK, and for whom the Parties had provided estimated shares.⁷⁵ As the CMA’s analysis is based on actual supply data from a wide range of suppliers, the CMA considers that its estimates are more accurate than those provided by the Parties (and has therefore given them more weight in its assessment). The CMA notes that while the analysis it carried out produces shares, and a market size, that differ from those submitted by the Parties to the CMA in the course of this investigation, the data gathered by the CMA relating to UK volume sales of block foam (including both comfort and technical) is very similar to Carpenter’s estimate of the size of the UK market for block foam and volume sales of its competitors in its pre-existing internal documents.⁷⁶

⁷⁵ The primary competitors identified by the Parties were: [X]; [X]; [X]; [X]. See paragraphs 14.2 and 14.12 of the FMN.

⁷⁶ For example: Carpenter Annex 239, Annex 168. The CMA has inferred that references to block foam made in these annexes relate to both comfort and technical foam on the basis that these documents discuss foams used for comfort applications (eg bedding) as well as technical applications (eg packaging).

Table 1: Comfort foam shares of supply by volume, UK

%

Year	Supplier		Parties' Combined Share	Flex-2000	Kayfoam	Neveon	Polypreen	Vita	Total
	Carpenter	REF							
2019	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[40-50]%	100%
2020	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[40-50]%	100%
2021	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[50-60]%	100%

Source: CMA analysis of data submitted by the Parties and other foam suppliers.

Table 2: Comfort foam shares of supply by value, UK

%

Year	Supplier		Parties' Combined Share	Flex-2000	Kayfoam	Neveon	Polypreen	Vita	Total
	Carpenter	REF							
2019	[30-40]%	[10-20]%	[50-60]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[40-50]%	100%
2020	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[5-10]%	[0-5]%	[0-5]%	[40-50]%	100%
2021	[30-40]%	[10-20]%	[40-50]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[40-50]%	100%

Source: CMA analysis of data submitted by the Parties and other foam suppliers.

55. The CMA's estimates in Table 1 and Table 2 show that Carpenter's share of supply of comfort foam in particular has been consistently high over the last three years by both volume and value, and that the Merged Entity will have high shares of supply of approximately [40-50]% and a significant increment of [10-20]% by both volume and value in 2021. Following the Merger, the only supplier with a comparable scale to the Merged Entity would be Vita (which is also the only other supplier with a UK plant). This is consistent with the market view reflected in the Parties' internal documents and third party views, as discussed further below at paragraphs 73 and 74.
56. Given the limited degree of differentiation in comfort foam (as discussed at paragraph 29 above), the CMA considers that these shares of supply provide particularly persuasive evidence that the Merger is likely to raise competition concerns (on the basis that firms with high shares of supply in undifferentiated markets are more likely to be close competitors to their rivals, and thus a merger removing these competitive constraints is more likely to raise competition concerns). The CMA therefore believes that the Parties' shares (which show the Merger will lead to a reduction of suppliers with a material share from three to two post-Merger)

are particularly informative as regards the CMA's competitive assessment of the closeness of competition between the Parties in the supply of comfort foam.⁷⁷

57. The CMA also considers that the shares of supply as set out in Table 1 and Table 2 above indicate that imports are a limited constraint on the Parties in relation to the supply of comfort foam, given the very small share attributable to those suppliers without a UK manufacturing presence (Flex2000, Neveon, Polypreen and Kayfoam). Further discussion of this is set out in paragraph 77 onwards below.

Closeness of competition

58. Carpenter submitted that the Parties are not particularly close competitors in the supply of comfort foam.⁷⁸
59. In assessing the closeness of competition between the Parties, the CMA considered:
- (a) third-party views on closeness of competition;
 - (b) evidence from internal documents; and
 - (c) data submitted by the Parties relating to customer overlaps.
60. As a starting point, the CMA notes that closeness of competition is a relative concept, with the CMA assessing overall closeness of competition between the merger firms in the context of the other constraints that would remain post-merger.⁷⁹ Where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. As anticipated above in the preceding section regarding the Parties' shares of supply, the CMA considers that the small number of significant players supports a *prima facie* expectation that the Parties are close competitors. In line with its guidelines, the CMA will require, in such a scenario, persuasive evidence that the Parties are not close competitors in order to allay any competition concerns.⁸⁰
61. In this context, the CMA notes that the vast majority of submissions from the Parties' comfort foam customers indicated that the Parties are close alternatives as regards the supply of comfort foam in the UK. All of the submissions received by the CMA

⁷⁷ [Merger Assessment Guidelines](#), paragraph 4.14.

⁷⁸ Issues Letter Response, paragraph 4.11.

⁷⁹ [Merger Assessment Guidelines](#), paragraph 4.10.

⁸⁰ [Merger Assessment Guidelines](#), paragraph 4.10.

from the Parties' competitors in the UK and Europe identified the Parties as competing to supply comfort foam in the UK. To the extent that different types of unconverted comfort foam differ in terms of density and hardness, responses indicated that both of the Parties produce very similar ranges of foam types.

62. Third parties submitted that customers' choice of a comfort foam supplier is primarily driven by price, with factors such as customer service, lead times and delivery options also being considered, and that the Parties perform similarly in terms of these parameters. For example, one customer noted [X] and that there is [X].
63. A significant and material portion of third parties – including the majority of comfort foam customers and suppliers that responded to the CMA's Merger investigation – were concerned about the Merger's impact on competition. A material portion of these customers stated that the Merger will reduce the number of UK unconverted comfort foam suppliers from three to two, and similarly a material portion of these customers stated that reduced choices will lead to a reduction in competition and higher prices.
64. The Parties' internal documents also generally indicate that the Parties view each other as close competitors in the supply of comfort foam in the UK. Carpenter's internal documents show that REF is considered to be one of three main comfort foam suppliers in the UK, alongside Vita and Carpenter itself.⁸¹ Similarly, an REF internal document demonstrates that it monitors and competes with Carpenter for comfort foam customers in the UK.⁸²
65. The CMA has additionally considered three separate datasets submitted by the Parties:
 - (a) **Data on the largest customers.** The Parties submitted data on each of their top ten largest UK comfort foam customers by value for 2021, with [X] customers being included in both REF and Carpenter's top ten comfort foam customers in this period. The CMA notes as a first limitation that this data is a relatively small subset which only details sales to the top ten of each Party's customers in the UK. Second, to the extent that customers source comfort foam from a single supplier, this customer overlap analysis will also underestimate the competitive interaction between the Parties.

⁸¹ For example: Carpenter Annex 168, Annex 158, Annex 243 (slide 4).

⁸² For example: REF Annex 395.

Notwithstanding these limitations, the data indicates that there is a degree of customer overlap between the Parties' top ten comfort foam customers.⁸³

- (b) **Data on UK customers in the most recent six months period.** The Parties submitted data that sets out that [X] customers purchased comfort foam from both Carpenter and REF in the UK, in the six-month period prior to 17 February 2022. The CMA notes, however, that this data covers a relatively short time period, and does not detail the total number of customers purchasing comfort foam from the Parties in this period. As such, while demonstrating a degree of competitive interaction, the probative value of this data is very limited.
- (c) **Data on Carpenter's most recent ten orders.** Carpenter submitted data that it had compiled in March 2022 setting out the competitors it considered itself to have competed with for a sample of their ten most recent (as of 11 March 2022) comfort foam orders in the UK. The CMA notes that ten orders is a very limited sample size, and that these competitors were not identified in contemporaneous records produced in the ordinary course of business, but as a retrospective exercise during the CMA's investigation of the Merger. Notwithstanding these limitations, the CMA notes that Carpenter identified [X] and Recticel/REF as its only competitors for nine out of these ten orders.⁸⁴

66. The CMA considers that the evidence set out above demonstrates that the Parties compete very closely as regards the supply of comfort foam in the UK. The Merger will therefore remove an important constraint on each of the Parties in an already highly concentrated market.

Competitive constraints

67. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA assessed whether there are alternative suppliers which would provide a competitive constraint on the Merged Entity.

⁸³ In 2021, [X] of these customers ([X]) were top customers of both Carpenter and REF. Sales made to these [X] customers however were limited, and accounted for only [X] of Carpenter's UK comfort foam sales in 2021, and [X] of REF's UK comfort foam sales in 2021 (FMN, Annex 565; CMA analysis of FMN, Annex 565 and FMN, Annex 541). While REF in particular made only very limited sales to [X] and [X], the CMA considers REF's more limited sales of comfort foam as reflective of REF's more fragmented comfort foam customer base, rather than as *prima facie* evidence of a lack of closeness between the Parties.

⁸⁴ [X] was identified for [X] out of the nine orders for which competitors were identified. REF was identified for [X] out of the nine orders for which competitors were identified. REF submitted that the firms it was competing against for the relevant sample of orders are [X] (FMN, Annex 568).

68. The CMA assessed the constraint from these alternatives by taking into consideration:
- (a) the Parties' submissions;
 - (b) the constraint imposed on the Parties by suppliers producing foam in the UK (namely, Vita);
 - (c) the constraint imposed on the Parties by suppliers producing foam outside of the UK; and
 - (d) additional competitive constraints imposed by imports of downstream products and alternative materials.
- *The Parties' submissions*
69. The Parties submitted that they face competition from a wide range of foam suppliers manufacturing foam in continental Europe and the UK.⁸⁵ Of these suppliers, the Parties identified Vita as producing foam in the UK,⁸⁶ and Kayfoam as producing foam in Ireland.⁸⁷
70. With respect to the constraint imposed on the Parties by suppliers producing foam outside the UK, Carpenter has submitted that third party estimates of the volume of imported foam to the UK demonstrate that a far greater volume of foam is imported to the UK than that found by the CMA in the share of supply analysis set out above (paragraphs 55-57).⁸⁸ The Parties have used data sourced from Datamyne to analyse the scale of imports to the UK of all upstream foam (ie technical and comfort foam), noting this data is used by the European Association of Flexible PU Foam Blocks Manufacturers (Europur) as evidence of its reliability. Carpenter submitted that this data shows that in 2021, roughly nine times greater volumes than that estimated by the CMA was imported into the UK.⁸⁹

⁸⁵ FMN, paragraphs 15.4- 15.53. The primary competitors identified by the Parties were: Vita group; NEVEON/Greiner; Olmo; Plama-pur; Kayfoam/Leggett & Platt; Cordex/Flex2000; MEGAFLEX Schaumstoff GmbH; Organika; Polypreen/Mecaseat; CIECH; Torres-Espic; Interplasp/Sheela; Sitab P.E.; ORSA foam SpA; Kabelwerk Eupen AG; AVEK Foam International BV; CT Formpolster GmbH; Latexco NV; Aquinos (Kesteren); and Fleixpol.

⁸⁶ FMN, paragraph 15.8.

⁸⁷ FMN, paragraph 15.2.

⁸⁸ Issues Letter Response, paragraph 3.7 and footnote 20.

⁸⁹ This data does not permit segmentation into comfort and technical foam. Carpenter has submitted that it relates to all upstream foam imports. Issues Letter Response, paragraph 4.4.

71. The Parties have additionally submitted that they are subject to competitive constraints posed by comfort foam incorporated into finished goods that are imported into the UK.
- *Constraint imposed on the Parties by suppliers producing foam in the UK (Vita)*
72. Outside of the Parties, Vita is the only comfort foam supplier that produces comfort foam in the UK. As the CMA's shares of supply at Table 1 and Table 2 illustrate, Vita is a significant supplier of comfort foam in the UK with an approximate share of [50-60]% by volume and [40-50]% by value in 2021. Post-Merger, it will be the only remaining competitor with a comparable share to that of the Merged Entity.
73. The vast majority of comfort foam customer responses and all responses from suppliers active in the UK and Europe received by the CMA identified Vita as being a competitive constraint on the Parties.
74. The Parties' internal documents show that they consider Vita to be one of the three main suppliers of comfort foam in the UK (in addition to each other).⁹⁰ For example one of Carpenter's internal documents on its UK strategy clearly identifies [X].⁹¹ REF's internal documents also show that it competes closely with Vita for customers and [X].⁹²
75. Furthermore, in the data submitted on its ten most recent orders in the UK, Carpenter identified Vita as being (in addition to REF) a competitor in [X] out of these, which – notwithstanding the limitations of this dataset, as discussed at paragraph 65(c) above – indicates that it perceives Vita as an important competitive constraint for these orders.
76. The CMA therefore considers that this evidence indicates that Vita is a strong constraint on the Parties in the supply of comfort foam in the UK.
- *Constraint imposed by suppliers producing foam outside of the UK*
77. As regards Kayfoam, a Republic of Ireland-based supplier that does not have a UK plant, the CMA's share of supply analysis indicates that Kayfoam's share does not exceed [0-5]% on either a volume or value basis and is significantly smaller than that of the Merged Entity.

⁹⁰ For example: Carpenter Annex 168, Annex 239; REF Annex 394.

⁹¹ For example, Carpenter Annex 168.

⁹² REF Annex 394, Annex 258, Annex 395.

78. Evidence from third parties indicates that Kayfoam competes only to a very limited extent with the Parties in the UK. None of the Parties' customers that submitted a response to the CMA's Merger investigation identified Kayfoam as an alternative supplier for purchases they had made from the Parties, and only a minority submitted that they had purchased comfort foam from Kayfoam in the last three years. Only one competitor identified Kayfoam as competing to supply comfort foam in the UK. In addition, Kayfoam is not commonly referred to as a significant threat in Carpenter's internal documents, with Carpenter referring to Kayfoam as a [redacted] in the UK.⁹³ REF mentions Kayfoam in its internal documents to a much lesser extent than it mentions Carpenter or Vita.⁹⁴
79. As regards non-UK based suppliers more generally, the vast majority of both customers and competitors that responded to the CMA's Merger investigation consistently submitted that such suppliers are not able to compete to supply comfort foam in the UK. Customers and competitors identified the transport costs associated with importing comfort foam as being the primary reason for this and some also referenced the UK's Fire Safety Regulations, although the CMA believes these regulations may be a less significant barrier.⁹⁵
80. Consistent with this evidence, only a small minority of the responses received from the Parties' comfort foam customers submitted that they source comfort foam from outside the UK. The CMA's analysis of these customers' purchases of comfort foam indicates that these imported purchases appear to supplement larger scale purchases made by these customers from suppliers producing foam in the UK (namely, the Parties and Vita). Indeed, the majority of these customers indicated that (i) they imported only specialty foam types that are not produced in the UK; or (ii) they had been forced to source foam from overseas during 2020 due to lockdown measures imposed in the UK. In these instances, the CMA does not

⁹³ For example, as cited at paragraph 74 above, one of Carpenter's internal documents titled 'UK Strategic Plan' identifies [redacted], by contrast noting Kayfoam as simply another [redacted]. Carpenter Annex 168. Carpenter's Annex 182 mentions Kayfoam with a share of supply of '[redacted]' which is the smallest out of the suppliers mentioned ie Carpenter, Recticel and Vita. The CMA additionally notes the Carpenter sales report of 6 June 2022, which Carpenter has submitted demonstrates that Kayfoam is competing with Carpenter to supply [redacted] customers. See the Issues Letter Response, paragraph 4.8. While this document has not been provided to the CMA, and the CMA has therefore been unable to assess its contents, the CMA does not consider Kayfoam competing for [redacted] customers demonstrative of it exerting a strong constraint on Carpenter.

⁹⁴ For example REF documents Annex 258 and Annex 395.

⁹⁵ The UK's Fire Safety Regulations were also noted as a barrier by several third parties who, as noted at paragraph 40(b)(ii), indicated that compliance with such regulations could be difficult. The CMA believes, however, that these regulations impose a less limiting barrier to importing foam to the UK than the transport costs mentioned previously, as a number of suppliers based outside of the UK appear to at least have the capability to produce foam that is compliant with these regulations.

consider that these imported foams are substitutable with the comfort foams produced by the Parties in the UK.

81. Finally, the Parties' internal documents make only very limited reference to constraints from competitors other than the other Party or Vita.⁹⁶
82. Regarding the Datamyne data cited by the Parties on the total volume of imports, an industry association has indicated that the volumes included by the Parties in their estimate were based on a product classification code that includes products not relevant to the CMA's Merger investigation.⁹⁷ As a result, the CMA considers that this data likely overstates the true volume of imports of flexible PU foam (including, comfort foam) made to the UK. The Datamyne data is also not consistent with the wide range of evidence set out above that suggests that non-UK based suppliers do not impose a material constraint in the supply of comfort foam in the UK. The CMA has therefore placed limited evidential weight on this data.
83. The CMA therefore considers that suppliers producing foam outside of the UK do not impose a material competitive constraint on the Parties (whether individually, or in aggregate).
- *Constraint imposed by imports of downstream products*
84. The CMA does not consider that comfort foam incorporated into finished goods that are imported into the UK will pose a strong constraint on the Parties, as any foam that has already been incorporated into a finished product will not constitute a substitute for the Parties' customers, ie firms purchasing comfort foam to use as an input into their own finished goods.

Conclusion on Theory of Harm 1

85. For the reasons set out above, the CMA considers that:
- (a) the Parties have a very high combined market share (which has been stable over time) in a highly concentrated market comprised of three main players: the Parties and Vita;

⁹⁶ Non-UK based suppliers listed by the Parties as competing in the UK, for example Neveon, Polypreen, Megaflex, are generally only discussed in their internal documents as competitors in relation to the Parties' activities in other European countries and not specifically in the UK. See for example: Carpenter Annex 172, Annex 159, Annex 163. Carpenter's internal document, Annex 183, only briefly mentions 'Plama-Pur, Slovenia' as part of 'other foamers'; REF Annex 390, Annex 493.

⁹⁷ For example, imports of moulded foam (which the Parties' explained is not relevant to their overlap, FMN, paragraph 12.7), rebonded foam and foam trim.

- (b) pursuant to the concentrated nature of the market, and the homogeneity of the product, the Parties necessarily compete closely, imposing an important competitive constraint on each other (supported also by evidence from in particular, third parties and the Parties' internal documents); and
- (c) other than Vita (the only other supplier that produces comfort foam in the UK), which imposes a strong constraint on the Parties, other suppliers (including non-UK based suppliers such as Kayfoam) do not impose a material competitive constraint on the Parties.

86. Accordingly, the CMA considers that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of comfort foam in the UK.

Horizontal unilateral effects in the supply of technical foam in the UK (Theory of Harm 2)

87. To assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of technical foam, the CMA assessed:

- (a) the Parties' shares of supply;
- (b) closeness of competition between the Parties; and
- (c) competitive constraints imposed on the Parties by alternative suppliers.

88. As noted in paragraph 34, the Parties overlap in the supply of standard polyether technical foam (the type used to produce sponges) in the UK.

Shares of supply

89. The Parties submitted two versions of UK-only estimates:

- (a) The first version included technical foam incorporated in imported finished goods, and estimated that the Parties would have a combined share of [5-10]% (with an increment of [0-5]%).⁹⁸ The Parties submitted that their methodology used to estimate these shares 'largely mirrors' the methodology they used to estimate shares for the supply of comfort foam.⁹⁹ The CMA considers that the

⁹⁸ FMN paragraph 14.48.

⁹⁹ FMN, paragraph 14.36.

same limitations with this methodology set out in paragraphs 53 above apply here.

- (b) The second version excluded technical foam incorporated in imports of downstream products, and used a different methodology.¹⁰⁰ The Parties' figures estimated that the Parties would have a combined share of approximately [10-20]% (with an increment of [5-10]%).¹⁰¹ To estimate the total market size for these shares, the Parties used data sourced from IAL Consultants and Datamyne.¹⁰² Specifically, IAL Consultants' data on UK foam production values were used to estimate the UK's total technical foam production, with this value (minus the volumes produced by the Parties) being attributed to Vita as the only other producer of technical foam in the UK. Datamyne data was used to estimate the scale of net imports.¹⁰³

90. As a starting point for its share of supply analysis, the CMA notes that technical foam is a differentiated product (paragraph 30 above and 97 below) and as such, shares of supply may be less informative as a source of evidence on closeness of competition.¹⁰⁴ The CMA has, therefore, considered the shares of supply together with other, more probative sources of evidence on closeness of competition between the Parties in this market.¹⁰⁵

91. In this context, the CMA notes first in relation to the Parties' submitted shares that:

- (a) An industry association has indicated that IAL Consultants' methodology is likely to result in inaccuracies because: the definitions used by IAL to identify different types of foam, including to distinguish between polyether and polyester foams, are unclear; and rather than using production data directly, IAL estimates volumes of foam produced by assuming the formulation of raw materials required to make the foam, and using this assumption to estimate the volume of foam being produced, based upon the consumption of raw materials. Data submitted by an industry association setting out UK production

¹⁰⁰ Issues Letter Response, paragraph 3.19.

¹⁰¹ Issues Letter Response, paragraph 3.19.

¹⁰² Issues Letter Response, paragraph 3.19, and footnote 16; IAL Consultants is a third party market research, data and intelligence for the chemicals industry, see [IAL \(ialconsultants.com\)](http://ialconsultants.com).

¹⁰³ Issues Letter Response, paragraph 3.19. As noted at paragraph 70, this data does not segment between comfort and technical foam. In estimating their shares, the Parties allocated the total value of the import data between comfort and technical foam using the same proportions of comfort versus technical they had concluded in their estimates of the UK production of comfort and technical foam.

¹⁰⁴ [Merger Assessment Guidelines](#), paragraph 4.14 and 4.15.

¹⁰⁵ This is in line with the principles noted in the [Merger Assessment Guidelines](#), paragraph 2.25, which states that in attaching weight to different pieces of evidence, there is no set hierarchy between quantitative evidence and qualitative evidence, and the CMA may attach greater weight to one or the other as appropriate in the circumstances, depending on the relative quality of such evidence.

of polyester-based technical foam is, by contrast, consistent with that gathered by the CMA.

- (b) The CMA also considers that the Datamyne data includes data relating to imports of products not relevant to the CMA's Merger investigation and therefore overstates the scale of relevant imports (as discussed previously at paragraph 82 above).

92. The CMA has therefore calculated its own estimates of the shares of supply, which are set out in Table 3 and Table 4 below. These shares (and the total market size) have been calculated using sales volume and value data submitted by the Parties and other foam producers based in the UK and Europe. The CMA reached out to a wide range of suppliers of technical foam (including all of the suppliers identified by the Parties as being 'primary competitors' in the supply of technical foam in the UK).¹⁰⁶ As the CMA's analysis is based on actual supply data from a wide range of suppliers, the CMA considers that its estimates are more accurate than those provided by the Parties (and has therefore given them more weight in its assessment).
93. As noted at paragraph 54 in relation to comfort foam, while the analysis the CMA has carried out produces shares, and a market size, that differ from those submitted by the Parties to the CMA in the course of this investigation, the data gathered by the CMA relating to UK volume sales of block foam (including both comfort and technical) is very similar to Carpenter's estimate of the size of the UK market for block foam and volume sales of its competitors in its pre-existing internal documents.¹⁰⁷

¹⁰⁶ These were Vita; Neveon/Greiner/Eurofoam; Olmo/Toscana Gomma; Plama-pur; and Flexipol. See FMN, paragraph 15.141.

¹⁰⁷ For example: Carpenter Annex 239, Annex 168. The CMA has inferred that references to block foam made in these annexes relate to both comfort and technical foam on the basis that these documents discuss foams used for comfort applications (eg bedding) as well as technical applications (eg packaging).

Table 3: Technical foam shares of supply by volume, UK

%

Year	Supplier		Parties' Combined Share	Kayfoam	Neveon	Plama-pur	Vita	Total
	Carpenter	REF						
2019	[30-40]%	[20-30]%	[60-70]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	100%
2020	[30-40]%	[20-30]%	[60-70]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	100%
2021	[30-40]%	[30-40]%	[60-70]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	100%

Source: CMA analysis of data submitted by the Parties and other foam suppliers

Table 4: Technical foam shares of supply by value, UK

%

Year	Supplier		Parties' Combined Share	Kayfoam	Neveon	Plama-pur	Vita	Total
	Carpenter	REF						
2019	[30-40]%	[20-30]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	100%
2020	[20-30]%	[30-40]%	[50-60]%	[0-5]%	[0-5]%	[0-5]%	[40-50]%	100%
2021	[30-40]%	[20-30]%	[60-70]%	[0-5]%	[0-5]%	[0-5]%	[30-40]%	100%

Source: CMA analysis of data submitted by the Parties and other foam suppliers

94. The CMA's estimates in Table 3 and Table 4 show that that the Parties are, along with Vita, two of just three sizeable suppliers of technical foam in the UK, which contradicts the Parties' position that Carpenter in particular has a limited role in the technical foam market.¹⁰⁸ REF's consistently strong share is also supported by feedback from third parties on its strength and reputation in technical foam (discussed below), and the Parties' own Merger rationale.¹⁰⁹ Each Party's high share has been consistent over the time period for which data is available.
95. These shares also indicate that the market presence of non-UK based suppliers of technical foam in the UK market (namely, Kayfoam, Neveon and Plama-pur) is limited.

¹⁰⁸ FMN, paragraph 15.183. The Parties submitted that the CMA's estimates understated Vita's scale in particular. However, the CMA notes that [3<]. The CMA is therefore satisfied that the data does not understate Vita's presence in the supply of technical foam.

¹⁰⁹ See [press release](#) announcing the transaction dated 7 December 2021, in which Brad Beauchamp (CEO of Carpenter) references REF's 'strong know how in technical foams' and 'its excellent R&D track record.'

Closeness of competition

96. The CMA has examined the closeness of competition between the Parties and considered within its assessment:
- (a) the Parties' submissions;
 - (b) the Parties' product offerings;
 - (c) third-party views on closeness of competition; and
 - (d) data submitted by the Parties relating to customer overlaps.
97. As described at paragraph 30 above, the CMA considers that technical foam is a differentiated product. Different types of technical foam may be required for different applications, and different production methods may be used to produce different types of technical foam, eg polyester versus polyether technical foam.
98. The Parties submitted that they are not close competitors in relation to the supply of technical foam in the EEA, UK and Switzerland on the basis that:
- (a) Carpenter has limited strategic focus and activities in the supply of technical foam,¹¹⁰ and is active in this segment only as an extension of its comfort foam production.¹¹¹ In particular, Carpenter highlighted that it only produces and sells standard polyether technical foam types.¹¹²
 - (b) By contrast, REF has greater expertise in higher value technical foam,¹¹³ and sells a far wider range of technical foam in the UK (including both polyether- and polyester- based foam). Carpenter submitted that as it does not sell polyester-based technical foam in the UK, Carpenter does not compete with REF for this (polyester-based) portion of REF's UK sales.¹¹⁴ Carpenter submitted that this is because polyether and polyester foams have different technical properties, with polyester-based foams being more rigid, stronger, more supportive, and having higher resiliency.¹¹⁵

¹¹⁰ See FMN, paragraphs 14.41, 15.175 – 15.200.

¹¹¹ Issues Letter Response, paragraph 3.28.

¹¹² With exception of a small quantity of sales of post-treated foam. Issues Letter Response, paragraph 3.27.

¹¹³ See FMN, paragraphs 15.175 – 15.200.

¹¹⁴ Issues Letter Response, paragraph 3.34. Or those sales made by REF to its own technical foam converting operations. In particular, the Parties submitted that Carpenter competed with REF for 'at most [3<]' of REF's UK sales of technical foam in 2021.

¹¹⁵ Carpenter's submission on technical foam dated 24 June 2022, paragraph 2.2.

- (c) Carpenter also submitted that it does not supply any technical foam in the UK that is a close alternative to the specialised polyether-based technical foams imported by REF.¹¹⁶

99. In relation to the Parties' activities in technical sponge foam, Carpenter submitted that the Parties are not close competitors and that they each make sales of this type of foam to only a very limited number of customers in the UK:¹¹⁷ [X] customers for Carpenter in 2021,¹¹⁸ and [X] customers for REF in 2021.¹¹⁹ Only [X] of these customers bought foam from both Parties.¹²⁰ Carpenter additionally noted that [X] of REF's technical sponge foam customers purchases polyester-based technical sponge foam from REF (rather than polyether-based technical sponge foam). Carpenter explained that this type of technical sponge foam is of a higher density to the technical sponge foam produced by Carpenter, with this difference leading these foam types to be used in different sponge applications.¹²¹
100. The CMA considers that REF sells a greater range of technical foam, for a wider range of applications in the UK, than Carpenter does. This difference in the Parties' product portfolios is supported by sales data submitted by the Parties, which shows that a material portion of REF's UK sales of technical foam are for applications for which Carpenter does not produce substantial volumes of foam. Almost [X] of REF's total sales of technical foam in the UK were sales of falling within its 'Mobility Performance' portfolio, which are used in conventional and electric vehicles, aircraft, aerospace and a wide range of public transport applications.¹²² The [X] of the foams REF sells for these applications are polyester-based.¹²³ By contrast, [X] of Carpenter's (entirely polyether-based) technical foam sales in the UK in 2021 were accounted for by applications relating to: Consumer & Medical Care; and Industrial Solutions.¹²⁴
101. The CMA notes that as a general principle, the question of closeness of competition relates to whether suppliers compete closely to supply certain categories of

¹¹⁶ Carpenter's submission on technical foam dated 24 June 2022, paragraphs 3.1-3.14.

¹¹⁷ Issues Letter Response, paragraph 3.43.

¹¹⁸ With one of these customers ([X]) accounting for [X] of Carpenter's 2021 UK sales of this foam type, Issues Letter Response, paragraph 3.43.

¹¹⁹ Issues Letter Response, paragraph 3.31.

¹²⁰ [X]. Carpenter submitted that Carpenter made only minimal sales to this customer in 2021, amounting [X]. Issues Letter Response, paragraph 3.44.

¹²¹ Specifically, polyester-based technical sponge foam is used when a plastic handle is attached to the sponge. Carpenter's submission on technical foam dated 24 June 2022, paragraph 2.8.

¹²² CMA analysis of FMN, Annex 570. REF's portfolios of technical foam are described on its website at [Products | Recticel Engineered Foams](#).

¹²³ Issues Letter Response, paragraph 3.32.

¹²⁴ FMN, Annex 570.

products, or certain categories of customers. The proportion of one merging party's business that is dedicated to that particular category of product or customer is typically less relevant to the question of whether that firm competes closely against other market participants to supply that particular category of product or customer.

102. In the UK, Carpenter and REF both sell conventional polyether-based technical foam (and in particular, technical sponge foam). The evidence, discussed further below, indicates that the Parties compete closely to supply this particular category of products. Some third parties consider the Parties to be the only options for their purchases of technical sponge foam. The majority of third parties (both technical foam customers and competitors) indicated that the Merger would have a negative effect on competition in the supply of technical foam generally in the UK.
103. Moreover, while not necessary to support its assessment of closeness of competition between the Parties in polyether-based technical foam (and specifically, in technical sponge foam), the CMA notes that sales of these foam types represent a material portion of REF's business (as well as that of Carpenter's).¹²⁵
104. In addition to the submissions received from third parties, the CMA considered three datasets submitted by the Parties which were equivalent to those submitted in relation to comfort foam, the limitations in evidentiary value of which are discussed at paragraph 65 above. The CMA considers that the same limitations that affect the insight that the comfort foam analysis can be considered to provide are equally applicable here in relation to technical foam, and in addition notes the following:
 - (a) **Data on the largest customers.** The Parties submitted data on their top ten UK technical foam customers in 2021. Carpenter submitted that this dataset showed limited competitive interaction between the Parties, with only [§<] being a top ten customer of both Carpenter and REF.¹²⁶ However, this sample dataset is not limited to sales of polyether-based technical foam (in particular technical sponge foam) and includes sales of other types of foam in which the Parties do not overlap. This dataset, therefore, is not informative of closeness of competition between the Parties in the specific category of products and customers in which they overlap. Furthermore, where this overlap analysis does include customers for technical sponge foam, to the extent customers source this foam from a single supplier, the analysis will also underestimate the competitive interaction between the Parties.

¹²⁵ Sales of technical sponge foam accounted for [§<] (by volume) of both Carpenter's and REF's 2021 UK sales.

¹²⁶ Issues Letter Response, paragraph 3.33.

- (b) **Data on the most recent six months period.** The second of these datasets sets out that [X] customers purchased technical foam from both Carpenter and REF, in the six-month period prior to 17 February 2022.¹²⁷ The Parties have submitted that in the vast majority of these instances, Carpenter does not supply a comparable type of technical foam to the foam the relevant customer purchased from REF.¹²⁸ However, this sample dataset is not limited to sales of polyether-based technical foam (in particular technical sponge foam) and includes sales of other types of foam (such as polyester-based technical foam) in which the Parties do not overlap. As the focus of the CMA's closeness of competition assessment in technical foam pertains to the former polyether-based technical foam category of products, this dataset is therefore not informative of closeness of competition between the Parties in the specific category of products and customers in which they overlap.¹²⁹
- (c) **Data on the most recent ten orders.** Both Parties also submitted data that they had compiled in March 2022, setting out who the Parties considered themselves to have competed with for a sample of their ten most recent (as of 11 March 2022) technical foam orders in the UK.¹³⁰ The CMA notes that the same limitations flagged at paragraph 65(c) apply to this dataset. The CMA also notes that this dataset is not limited to sales of technical sponge foam (the area of primary overlap between the Parties) and as such, the ten most recent sales may not be informative of closeness in that segment. Notwithstanding this, the CMA notes that the Parties do identify each other as competing in a number of these most recent orders.¹³¹

105. Overall, the CMA considers that while REF sells a broader range of technical foam than Carpenter, the Parties overlap and are close competitors in the supply of polyether-based technical foam (and technical sponge foam in particular).

Competitive constraints

106. The CMA assessed the constraint from alternative suppliers by taking into consideration:

¹²⁷ FMN, Annex 574.

¹²⁸ Parties' response to question 1 of CMA's request for information dated 22 June 2022.

¹²⁹ The CMA also notes that this data covers a relatively short time period and also does not detail the total number of customers purchasing technical foam from the Parties in this period. As such, while demonstrating a degree of competitive interaction, the probative value of this data is very limited.

¹³⁰ FMN, Annex 568.

¹³¹ Carpenter identified REF as a competitor for [X] orders; REF identified Carpenter as a competitor for [X] orders. (FMN, Annex 568).

- (a) the Parties' submissions;
- (b) the constraint imposed on the Parties by suppliers producing foam in the UK (namely, Vita);
- (c) the constraint imposed on the Parties by suppliers producing foam outside of the UK; and
- (d) additional competitive constraints imposed by imports of downstream products and alternative materials.

- *The Parties' submissions*

107. The Parties submitted that they face competition from a large number of foam suppliers manufacturing technical foam in the UK and continental Europe. Specifically, the Parties identified the following suppliers as being 'primary competitors' in the technical foam market: Vita; Neveon/Greiner/Eurofoam; Olmo/Toscana Gomma; Plama-pur; and Flexipol.¹³² Carpenter additionally identified FXI/Foamex; Inoac; Cordex/Flex2000; Kayfoam/Leggett & Platt; Polypreen/Mecaseat; and Multy.¹³³
108. Carpenter submitted that the CMA should consider constraints from all types of technical foam, including higher value foams such as those used in automotive applications, to expand the geographic market outside of the UK (on the basis that higher value foams such as those used in automotive applications are particularly amenable to being imported, as the cost of the product further supports transporting it over longer distances).¹³⁴ As noted at paragraph 89, the Parties have also submitted third party data which they contend demonstrates a far greater scale of imported technical foam than is presented in the CMA's analysis.
109. As set out at paragraphs 105 above, the CMA considers that the Parties overlap and compete closely in the supply of a specific range of polyether-based technical foam (in particular, technical sponge foam). Given this, the CMA's analysis of competitive constraints is focused on the closeness of competition between the Parties with respect to these overlapping types of technical foam, and competitive constraints in the supply of those foams.

¹³² FMN, paragraph 15.201.

¹³³ Issues Letter Response, paragraph 3.5.

¹³⁴ Issues Letter Response, paragraph 3.14.

- *Constraint imposed on the Parties by suppliers producing foam in the UK (Vita)*

110. Vita is the only foam supplier other than the Parties that produces foam in the UK. As demonstrated by the CMA's analysis of shares of supply, Vita will be the only sizable competitor remaining post-Merger.
111. Third party submissions received by the CMA indicate that Vita is generally a strong competitor in the supply of technical foam in the UK, and that it competes with the Parties to supply foam suitable for a range of applications. Vita told the CMA that Vita produces foam that may be used to produce cleaning sponges,¹³⁵ but does not supply all grades. Some customers, however, told the CMA that Vita does not produce polyether-based foam types that would be a suitable alternative to all of the technical sponge foam types produced by the Parties. As such, the Parties represent the only UK-based option for customers purchasing specific types of technical sponge foam.
112. The CMA therefore considers that while Vita is a strong competitor to the Parties in the supply of technical foam more generally, the evidence is mixed as to the strength of the competitive constraint it poses in technical sponge foam in particular.

- *Constraint imposed by suppliers producing foam outside of the UK*

113. The CMA has considered the evidence with respect to both imports in general and specific non-UK based suppliers identified by the Parties.
114. With respect to imports in general, the evidence indicates that high transport costs pose barriers to importing lower value technical sponge foam. One third party explained that this foam is of a low density, and lower price, and that it is not possible to source this product from outside of the UK. Third-party submissions have indicated that transport costs may be less prohibitive for importing higher value or more specialist types of technical foam. The economic viability of importing higher value foam products is not, however, informative with respect to the viability of importing lower value foam products such as technical sponge foam. Furthermore, higher value foam types such as those for automotive applications are unlikely to be substitutable for lower value technical sponge foam for the reasons outlined above at paragraph 31.

¹³⁵ For example, the following webpage was identified by Carpenter: <https://www.thevitagroup.com/wp-content/uploads/2020/06/DPL098-Caligen-Insert-Consumer.pdf>.

115. As noted in relation to Table 3 and Table 4 above, the CMA has been unable to identify any non-UK based suppliers making material sales of technical foam in the UK.¹³⁶ The CMA has also been unable to identify any non-UK based suppliers making material sales specifically of polyether-based technical sponge foam in the UK.
116. Carpenter submitted that Kayfoam is an effective fourth UK producer of technical foam and that the Merger is ‘at worst’ a ‘four to three’.¹³⁷ In particular, Carpenter noted that Kayfoam was identified as a competitor for [X] of Carpenter’s ten most recent upstream technical foam orders.¹³⁸ As explained above at paragraph 104(c), ten orders is a very limited sample size and the competitors included in that dataset were not identified in contemporaneous records produced in the ordinary course of business, but were instead identified as part of a retrospective exercise to prepare that dataset for submission to the CMA. As such, the CMA considers that the identification of Kayfoam as a competitor for [X] orders in that dataset is of limited evidential weight.
117. However, the CMA notes that sales data submitted by Kayfoam (see Table 3 and Table 4 above) indicates it has a limited presence in the UK. Consistent with this, third parties made minimal references to Kayfoam as an alternative to the Parties in their submissions to the CMA.
- *Additional competitive constraints*
118. As regards the constraints the Parties face in the supply of technical sponge foam, Carpenter additionally submitted that the Parties face competition from:
- (a) other materials, such as cellulose and natural sponge, that compete with technical foam at the upstream level;¹³⁹ and
 - (b) imports of downstream finished product cleaning sponges, including those made from these alternative materials.¹⁴⁰
119. As regards these submissions the CMA considers that:
- (a) No evidence submitted by third parties has indicated that such alternative materials may be a substitute for technical foam. The Parties also confirmed

¹³⁶ For the reasons outlined above at paragraph 91(b), the CMA has not placed evidential value on the Datamyne data.

¹³⁷ Issues Letter Response, paragraph 3.9.

¹³⁸ Issues Letter Response, paragraph 3.36.

¹³⁹ Issues Letter Response, paragraph 3.46.

¹⁴⁰ Issues Letter Response, paragraph 3.47.

that a customer purchasing foam to manufacture sponges could not substitute these inputs for polyether foam and produce the same end product.¹⁴¹

- (b) While imports of downstream finished good cleaning sponges may be an alternative for consumers, they are unlikely to be an alternative for suppliers purchasing technical foam from the Parties in the UK for use in manufacturing sponges. Carpenter submitted that one of its technical sponge foam customers had successfully sought price concessions by citing pressure from imported finished cleaning sponges.¹⁴² However, the CMA notes that this evidence was not substantiated with documentary evidence and is thus insufficient to support the Parties' submissions, and that, in any case, a single instance is insufficient evidence of a strong constraint.

Conclusion on Theory of Harm 2

120. For the reasons set out above, the CMA considers that:

- (a) the Parties are two of just three sizeable suppliers of technical foam in the UK;
- (b) there is material degree of competitive interaction between the Parties in the supply of technical foam in the UK, as the Parties overlap and are close competitors for the supply of polyether-based technical foam (in particular, technical sponge foam); and
- (c) the Parties face limited constraints in the supply of technical sponge foam. There is mixed evidence with respect to the strength of the constraint Vita poses in technical sponge foam, but even taking Vita into account as a competitor, there are very limited alternatives in this segment. Imports from non-UK based suppliers exert only a limited constraint in the supply of technical foam to sponge manufacturers in the UK.

121. Accordingly, the CMA considers that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of technical foam in the UK.

¹⁴¹ Carpenter's response at the Issues Meeting on 13 June 2022.

¹⁴² Issues Letter Response, paragraph 3.48.

Horizontal unilateral effects in the supply of converted comfort foam in the UK (Theory of Harm 3)

122. To assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of converted comfort foam, the CMA assessed:

- (a) the Parties' shares of supply;
- (b) closeness of competition between the Parties; and
- (c) competitive constraints imposed on the Parties by alternative suppliers.

Shares of supply

123. The Parties submitted that their combined share of supply of converted comfort foam in the UK in 2021 was [10-20]% by volume with an increment of [5-10]%.¹⁴³ The Parties calculated these shares by estimating that the market size for converted comfort foam in the UK is equal to 80% of their estimated market size for upstream unconverted comfort foam.¹⁴⁴ The Parties then used their internal sales data to calculate their own shares, which they submitted over-estimated their market presence because these figures included their internal supply of 'semi-converted product', which would have to be converted further before being used in finished goods.¹⁴⁵ The Parties then attributed the remaining share to all other suppliers of converted comfort foam and submitted that they are unable to estimate the scale of the converted foam produced by any competitors.¹⁴⁶

124. The CMA considers that the Parties' estimate of the market size is subject to the same limitations as their estimate of the market size for unconverted comfort foam in the UK, as it is reliant on the same underlying estimates.¹⁴⁷

125. The CMA therefore calculated its own estimates of the Parties' shares of supply in converted comfort foam by following the Parties' approach in assuming that the size of the UK market for converted comfort foam is equal to 80% of the size of the UK market for unconverted comfort foam but using the CMA's own estimates of the latter.¹⁴⁸ Shares for individual competitors in converted comfort foam, including the

¹⁴³ FMN, paragraph 14.65.

¹⁴⁴ FMN, paragraph 14.69.

¹⁴⁵ FMN, paragraph 14.67.

¹⁴⁶ FMN, paragraphs 14.69 and 14.70.

¹⁴⁷ The CMA's assessment of this estimate is set out above in paragraph 54.

¹⁴⁸ This value corresponds to the total sales of unconverted comfort foam (by volume) made by the suppliers identified in Table 1 in each year. The CMA has assumed that 20% of unconverted foam is lost as scrap during the foam conversion

Parties', were estimated using sales volume data submitted by these firms. The remaining share has been aggregated in the 'other' category below. As the CMA's analysis is based on actual supply data from a wide range of suppliers, the CMA considers that its estimates are more accurate than those provided by the Parties (and has therefore given them more weight in its assessment).

Table 5: Converted comfort foam shares of supply by volume for 2019-2021, UK

											%
Supplier											
Year	Carpenter	REF	Parties' Combined Share	Breasley (UK) Ltd	Clinchplains Ltd	Drury Adams Ltd	Kayfoam	Peak Converters Ltd	Vita	Other	Total
2019	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[0-5]%	[60-70]%	100 %
2020	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[60-70]%	100 %
2021	[10-20]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[5-10]%	[60-70]%	100 %

Source: CMA analysis of the Parties' and competitors' sales data

126. Carpenter submitted that the shares of supply set out in Table 5 understate Vita's presence, and in particular, that Vita (including through its recently acquired Usleep business) produces more converted comfort foam in the UK than either Party.¹⁴⁹ The CMA considers that its data, based on specific input from third parties on the volume of their sales, is more robust than estimates of their competitors' sales prepared by the Parties. The CMA notes, in particular, that [redacted], and is therefore satisfied that the data received does not understate Vita.
127. Carpenter submitted that shares of supply should provide a good indication as to the likelihood of any anti-competitive effects arising from the Merger, due to the 'commoditised' nature of the market.¹⁵⁰ While the evidence indicates that comfort foam may be a homogenous product, the final converted foam components appear more differentiated. In particular, differentiation appears to arise from the complexity of the converted foam component being produced, generally with more complex conversion at lower volumes required for furniture components (further discussion on differentiation within converted comfort foam can be found at paragraph 136 below), and less complex conversion at higher volumes being required for mattress components and semi-converted products (**simple converted components**).

process, and that it is reasonable to make this assumption based on the observation that roughly [redacted] of the volume of Carpenter's [redacted] in the UK is sold as converted foam (please see Annex 541 to the FMN).

¹⁴⁹ Issues Letter Response, paragraph 5.5.

¹⁵⁰ Issues Letter Response, paragraph 5.2.

128. Given differentiation in the supply of converted comfort foam, the CMA considers that the shares set out in Table 5 will not fully reflect the strength of the competitive constraint posed by market participants on one another.
129. Second, the shares set out in Table 5 include converted foam produced by integrated converters (ie firms that self-supply converted comfort foam and produce finished products). The CMA does not consider that integrated converters exert a strong constraint on the Parties as set out at paragraph 152 below. The CMA does not have a basis to assess what proportion of the 'other' suppliers in the market are integrated converters. As such, the CMA considers that while these shares provide a useful indication as to suppliers' relative presence, they do not give an accurate indication of suppliers' absolute scale.
130. Third, as a result of the methodology used by the CMA (see paragraph 125 above) a large proportion of the market is accounted for by the 'other' category. Carpenter submitted that the scale of this 'other' category implies that other players with shares larger than the Parties' own may exist.¹⁵¹ The CMA notes that narrative submissions received from customers and competitors have not identified any competitors likely to command a comparable presence to the Parties and, for the reasons set out below at paragraph 136, the CMA considers that the Parties may have some advantages when compared to integrated and independent converters, which may account for their comparatively larger share.
131. Notwithstanding these limitations, these shares show that the Parties are the two largest suppliers of converted comfort foam in the UK, and that the Merged Entity would be substantially larger than the next largest supplier with the remainder of the market being highly fragmented. The CMA considers that its estimated combined share of [10-20]% in 2021 may understate, for the reasons outlined above, the Parties' position in the supply of converted foam, and in particular simple converted components.

Closeness of competition

132. In assessing the closeness of competition between the Parties, the CMA considered:
- (a) the Parties' submissions;

¹⁵¹ Issues Letter Response, paragraph 5.6.

- (b) the Parties' product offerings;
- (c) third party views on closeness of competition; and
- (d) evidence from internal documents.

133. Carpenter submitted that the Parties are not particularly close competitors in the converted comfort foam market.¹⁵² Carpenter also submitted that the Parties' ability to both produce and convert comfort foam does not give them a competitive advantage in the supply of converted comfort foam.¹⁵³
134. Both Carpenter and REF supply converted comfort foam in the UK for simple converted components and for more complex components (eg components used in furniture).
135. Evidence from customers and competitors to the Parties indicates that the Parties compete closely in the supply of converted comfort foam, in part as a result of both Parties being vertically integrated suppliers of converted comfort foam. The Parties and Vita are the only vertically integrated suppliers of comfort foam based in the UK.
136. Customers and competitors told the CMA that the Parties' vertical integration leads to cost advantages (and other quality advantages) that result in the Parties competing particularly closely. Roughly half of customers explained that, as a result of the Parties' upstream activities in the supply of unconverted comfort foam, the Parties are able to provide converted comfort foam at a lower cost than suppliers that are not vertically integrated, ie independent converters. Some customers identified additional benefits to this vertical integration, such as reduced dependency on external suppliers, increased flexibility as regards delivery lead times, and the ability to better support quality requirements relating to the foam. While the Parties dispute that vertical integration results in any such advantages,¹⁵⁴ the Parties have not produced evidence negating the input from their customers.
137. Customers and competitors to the Parties have submitted that vertical integration is particularly advantageous in supplying simple converted components, which are typically supplied at higher volumes, because:

¹⁵² Issues Letter Response, paragraph 5.8.

¹⁵³ Issues Letter Response, paragraphs 5.13-5.16. However, the CMA does not consider that they have provided clear evidence negating this.

¹⁵⁴ For example, REF Annex 395.

- (a) the complexity, and therefore 'value-add', of these components is lower than for converted foam components produced for furniture, making vertically-integrated suppliers' cost advantage (as discussed below) particularly relevant. In relation to the advantages of using a vertically integrated supplier more generally, one simple converted foam component customer and one mattress supplier explained that using a vertically integrated supplier reduces the incremental transport costs (of the block foam getting sent to the converter, and then finally to the customer) that a non-integrated supplier would incur; and
 - (b) suppliers that are not vertically integrated are not able to support the quality and testing requirements of a bedding manufacturer, with one mattress supplier explaining that it prefers to purchase converted foam from vertically integrated suppliers as this allows it to work with the supplier to achieve the correct foam density.
138. A significant and material proportion of third parties, including the majority of converted comfort foam customers and all of the converters (including independent, integrated and other vertically integrated converters) that have submitted responses to the CMA, have indicated that the Merger will have a negative effect on competition in the UK.
139. In addition to these third party submissions, an REF internal document indicates that it competes closely with Carpenter in the supply of converted comfort foam in the UK. In particular, this internal document discusses potential and/or current customers, and identifies Carpenter as a current supplier for a number of these customers.¹⁵⁵
140. Overall the CMA considers that there is material degree of competitive interaction between the Parties in the supply of converted comfort foam in the UK. The Parties' vertical integration appear to give them a competitive advantage in particular in the supply of converted comfort foam for simple converted components.

Competitive constraints

141. Unilateral effects are more likely where customers have little choice of alternative supplier. The CMA assessed whether there are alternative suppliers which would provide a competitive constraint on the Merged Entity.

¹⁵⁵ For example, REF Annex 395.

142. The CMA assessed the constraint from these alternative suppliers by taking into consideration:
- (a) the Parties' submissions;
 - (b) the constraint imposed on the Parties by other vertically integrated firms that manufacture foam and supply converted foam in the UK (namely Vita);¹⁵⁶ and
 - (c) the constraint imposed on the Parties by integrated and independent converters.
- *The Parties' submissions*
143. The Parties submitted that Vita may be the largest supplier of converted comfort foam in the UK, followed by a tail of independent and integrated converters in the UK (as defined at paragraphs 35 and 36 above).¹⁵⁷ Carpenter argued that the Parties face material competitive constraints from integrated and independent suppliers, as demonstrated by a recent sales report.¹⁵⁸ Carpenter also submitted that even if the Parties were competitively advantaged by their vertical integration, Kayfoam and Vita would be similarly advantaged.¹⁵⁹
- *Constraint imposed by suppliers that manufacture and convert comfort foam*
144. As set out at paragraph 72, Vita is the only firm other than the Parties that manufactures unconverted comfort foam in the UK. Vita also supplies converted comfort foam and is therefore the only other UK-based vertically integrated supplier. As set out in Table 5 above in the discussion of the CMA's share of supply analysis, post-Merger, Vita will be the second largest firm in this market (although its market share will nevertheless be substantially smaller than that of the Merged Entity).
145. Submissions received from third parties indicate that Vita is a relatively close alternative to the Parties, albeit not as close an alternative as the Parties are to one another. A material portion (but not all) of the converted comfort foam customers that submitted responses to the CMA identified Vita as a current, or alternative, supplier of converted comfort foam. Similarly, some responses received from other suppliers of converted comfort foam identified Vita as a competitor in the supply of

¹⁵⁶ The CMA notes that Kayfoam does not manufacture or convert comfort foam in the UK, but has nonetheless considered its constraint below.

¹⁵⁷ FMN, paragraphs 14.72-14.75.

¹⁵⁸ Issues Letter Response, paragraphs 5.14-5.23. Issues Letter Response, Annex 003.

¹⁵⁹ Issues Letter Response, paragraph 5.14.

converted comfort foam. REF's internal documents similarly identify Vita as a competitor to REF in the supply of converted comfort foam.¹⁶⁰

146. In terms of vertically integrated suppliers producing foam outside of the UK, the CMA considers these suppliers impose only a very limited constraint on the Parties. The vast majority of converted comfort foam customers responding to the CMA's Merger investigation indicated that they do not source converted comfort foam from outside the UK and would not consider doing so in the future. Converted foam customers identified several reasons that sourcing converted comfort foam from outside the UK would not be a viable alternative:
- (a) many of the customers responding to the CMA's Merger investigation identified high transportation costs as a barrier to sourcing converted comfort foam from outside the UK; and
 - (b) many customers also identified long lead times as a barrier to sourcing converted comfort foam from outside the UK. Some customers explained that they do not have the storage space available that would allow them to purchase bulk shipments from outside the UK, and that is important for them to be able to source converted comfort foam locally as needed with a short lead time.
147. The CMA therefore does not consider that suppliers located outside the UK pose a material competitive constraint on the Parties' supply of converted comfort foam in the UK.
148. As regards Kayfoam in particular, the CMA has received evidence that this supplier competes to a limited extent to supply converted comfort foam in the UK. However, Kayfoam was not identified as an alternative or current supplier by any of the converted comfort foam customers that submitted responses to the CMA's Merger investigation. The CMA considers that these submissions are consistent with the competitor positioning indicated by the market shares set out above, which show that Kayfoam has a limited role in the UK with a share of only [0-5]%.

• *Constraint imposed by integrated and independent converters*
149. Integrated converters self-supply converted comfort foam that they use to manufacture end products. However (and as noted by Carpenter) the CMA is aware that a number of integrated converters also supply converted comfort foam to third

¹⁶⁰ For example, REF Annex 396, Annex 397, Annex 394.

parties.¹⁶¹ The CMA considers that integrated converters compete with the Parties to the extent that they supply converted comfort foam to third parties.

150. As explained above, independent converters are converters that do not have their own foam production capabilities. These converters purchase comfort foam from third party suppliers, convert that foam, and then sell the converted comfort foam to manufacturers producing end products.
151. Evidence received by the CMA thus far suggests that there are a large number of independent converters active in the UK. The evidence gathered by the CMA indicates that independent and integrated suppliers compete to supply converted comfort foam in the UK:
- (a) Roughly half of the responses the CMA received from converted comfort foam customers indicate that independent converters either currently supply these customers or are viewed as alternative suppliers. Independent converters identified in customer responses were: Fibreline; GNG; Platt & Hill; Comfortex; Clinchplain; Horizon Foam; Peak Converters; Icon Designs; Mammoth; AeroFoam; JT Foam; AMR Textiles; Drury Adams. The majority of independent or integrated converters that responded to the CMA's Merger investigation indicated that they compete with the Parties in the supply of converted comfort foam.
 - (b) Internal documents submitted by REF indicate that it competes with independent converters for at least some converted comfort foam customers.¹⁶² The CMA has not identified any relevant Carpenter internal documents that consider independent converters as competitors in the supply of converted comfort foam, although one Carpenter document refers to integrated converters as being competitors.¹⁶³
152. However, as these suppliers are not vertically integrated, the CMA does not consider that either integrated or independent suppliers pose a strong constraint on the Parties as regards the customer segment purchasing simple converted components, eg mattress suppliers. The CMA considers this is also demonstrated by the roughly half of customers (the majority of which appeared to purchase primarily simple converted components) which did not identify any independent or

¹⁶¹ Issues Letter Response, paragraph 5.17.

¹⁶² For example, REF Annex 396, Annex 397; Independent converters identified in these documents include: [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

¹⁶³ Carpenter Annex 168.

integrated suppliers as being current or alternative suppliers. As noted at paragraph 137 above, this customer segment appears to particularly value the offerings of UK-based vertically integrated suppliers.

153. As regards Carpenter's submissions that Vita and integrated/independent converters serve the same customer types as the Parties, and in particular that these suppliers are also active in the supply of converted foam to Carpenter's top ten converted comfort foam customers,¹⁶⁴ the CMA considers that this evidence is consistent with the existence of a customer segment for which only vertically integrated suppliers are a competitive alternative. For [3] out of the ten customers included in the analysis, REF and Vita are the only other known suppliers identified.

Conclusion on Theory of Harm 3

154. For the reasons set out above, the CMA considers that:

- (a) 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.
- (b) The Parties and Vita are the only vertically integrated suppliers with UK plants. The evidence gathered by the CMA indicates that vertical integration provides an advantage, particularly 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.
- (c) Alternative suppliers are substantially smaller than the merging Parties, and evidence from customers suggest that these suppliers, with the possible exception of Vita, impose a less strong constraint on the Parties than the Parties impose on each other.
- (d) While independent and integrated converters pose a constraint on the Parties for some customers, these suppliers are not always viable alternatives, in particular for customers purchasing simple converted components.

155. Accordingly, the CMA considers that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of converted comfort foam in the UK.

¹⁶⁴ Issues Letter Response, paragraph 5.24.

BARRIERS TO ENTRY AND EXPANSION

156. If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect, the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger. In order to prevent an SLC, entry or expansion would need to be timely, likely and sufficient.¹⁶⁵

Supply of comfort and technical foam in the UK

Parties' submissions

157. The Parties submitted that (i) existing suppliers in the EEA, UK and Switzerland all have spare capacity to produce both comfort foam and technical foam, and could easily expand their activities,¹⁶⁶ and (ii) *de novo* entry is possible, specifically noting the following:¹⁶⁷
- (a) Capacity for comfort and technical foam can be increased by running additional shifts or through installing larger tanks and warehouses,¹⁶⁸ and expansion can easily be achieved, by purchasing new or second-hand machinery.¹⁶⁹
 - (b) *De novo* entry in both these types of foam could be sponsored by a large customer. A smaller plant could be set up for comfort foam at a cost of around £2 million,¹⁷⁰ and a plant for polyester technical foam could be set up at a cost of roughly EUR 10 million.¹⁷¹
 - (c) Entry in the form of self-supply by a customer of foam is also possible.¹⁷²
 - (d) International suppliers are expanding into the European market (pointing specifically to a Chinese supplier Winfun recently expanding into reticulation and exports to the EEA, and an Indian technical foam producer acquiring a Spanish producer and announcing plans to expand its product portfolio). Data

¹⁶⁵ [Merger Assessment Guidelines](#), paragraph 8.28.

¹⁶⁶ FMN, paragraph 15.54.

¹⁶⁷ FMN, paragraphs 15.54-15.65.

¹⁶⁸ FMN, paragraph 15.55.

¹⁶⁹ FMN, paragraph 15.58.

¹⁷⁰ FMN, paragraphs 15.65-15.66.

¹⁷¹ FMN, paragraph 15.209.

¹⁷² FMN, paragraph 15.67.

from Datamyne suggests that imports from Turkey, China, Israel, Russia, India etc are arriving in the EEA, UK, and Switzerland.¹⁷³

158. The Parties further submitted that they have become aware of a South African PU foam manufacturer, namely Strandfoam, that is likely to start operating in the UK in the near future.¹⁷⁴ Recticel submitted that Strandfoam is in discussions with one converter and has begun to install equipment to potentially start manufacturing in the first quarter of 2023.¹⁷⁵ The Parties submitted that the foaming machine they believe Strandfoam has purchased would have a production capacity of 1,056 tonnes, similar to [S<], and that the company expressly states that it is able to manufacture according to UK Fire Safety Regulations.¹⁷⁶ The Parties submitted that this shows that *de novo* entry is possible in the UK.¹⁷⁷

CMA's assessment

159. The CMA believes that there are high barriers to entry and expansion in the supply of both comfort and technical foam in the UK, in particular:
- (a) The fact that a supplier may have spare capacity is not, in the CMA's view, sufficient to conclude they are a strong competitor or that expansion is easily achieved. All but one competing supplier of comfort and technical foam are located outside the UK and, as such, any spare capacity they have would also be located outside the UK. As explained in the CMA's assessment above, non-UK based suppliers do not impose a material competitive constraint in the supply of comfort or technical foam in the UK. While a small number of suppliers have indicated a desire to increase capacity in the supply of comfort foam in the UK, there is no evidence to substantiate that such increases in capacity will occur. One of these competitors indicated that in the short-term this expansion plan is not being considered, and others did not indicate a time period for its expansion plans.
 - (b) The majority of the suppliers of comfort and technical foam active outside the UK that responded to the CMA's Merger investigation stated that the barriers to entering and expanding in the supply of comfort and technical foam in the UK are high. These suppliers pointed to long delivery lead times and transport costs as barriers to competing effectively in the UK from locations outside the

¹⁷³ FMN, paragraphs 15.208 and 15.80-15.82.

¹⁷⁴ Parties' email dated 21 June 2022.

¹⁷⁵ Parties' email dated 29 June 2022.

¹⁷⁶ Parties' email dated 29 June 2022.

¹⁷⁷ Parties' email dated 21 June 2022.

UK. Of these, one supplier based in Europe stated that having a production site in the UK or in a country near the UK was vital to successfully supply comfort and technical foam to customers in the UK. Another third party submitted that setting up a production plant for comfort foam in the UK is a barrier to entry and expansion and requires significant investment. The CMA therefore considers that there are high barriers for *de novo* entry to take place in the UK.

- (c) Contrary to the Parties' submissions, a large number of third parties noted that the significant capital investment required to set up a new plant to produce either comfort or technical foam is a barrier to entry in the supply of both comfort and technical foam. Estimates of the required investment submitted by third parties greatly exceeded the estimates submitted by the Parties.
- (d) A number of third parties submitted that the production of comfort and technical foam requires a high degree of 'know-how', which would be a barrier to *de novo* entry.
- (e) Only one customer of technical foam indicated that it would hypothetically sponsor entry by agreeing to purchase volumes. The majority of the customers that responded to the CMA's Merger investigation, however, did not suggest that sponsoring entry of a supplier of comfort foam or technical foam would be a strategy they would pursue.
- (f) The CMA has not seen any evidence from third parties regarding entry in the form of self-supply and therefore does not consider that entry on this basis is likely.

160. The CMA has considered whether the example of Strandfoam's planned entry into the UK would suggest that barriers to entry are lower than might be suggested by the evidence set out above. Strandfoam appears to be likely to enter the UK market with a UK-based plant in the immediate future. While the ultimate success of Strandfoam's entry is not yet clear, this is an example of a supplier that is established in another jurisdiction investing to supply comfort foam from a plant in the UK. The CMA considers that the investment required to support this planned entry was very significant ([3<]) consistent with the evidence outlined above with respect to the costs of entry. While Strandfoam's planned entry indicates that entry may be possible, it does not indicate that barriers to entry are low or that significant entry could be anticipated in response to any lessening of competition as a result of the Merger.

161. Overall, the CMA believes that the evidence does not indicate that entry or expansion will be timely, likely, or sufficient to mitigate any SLC arising from the Merger in relation to comfort and technical foam.

Supply of converted foam in the UK

28. The Parties submitted that entry and expansion in the supply of converted comfort foam is very easy with converting machinery costing as little as £300,000 (new or second-hand), that it is not resource-intensive, and that it commonly occurs in the marketplace.¹⁷⁸ The Parties listed Next, Highgrove Beds, DB Foam and Fibre as having entered converting of comfort foam in the past two-five years.¹⁷⁹
28. The CMA considers that while the factors relating to costs of setting up a conversion plant and storage space required to enter and expand in the supply of converting comfort foam in the UK may be lesser than the factors associated with entry into the supply of unconverted comfort foam, there still remain barriers to growth for independent converters due to the benefits of vertical integration, as described in the competitive assessment above (see paragraphs 136-137 above). Further, while the Parties have provided evidence of entry into the conversion of comfort foam, some of these suppliers appear to be active only in self-supply.
28. Overall, the CMA believes that the evidence does not indicate that entry or expansion will be timely, likely, or sufficient to mitigate any SLC arising from the Merger in relation to converted comfort foam.

Conclusion on barriers to entry and expansion

162. Overall, the CMA believes that the evidence received from third parties during its Merger investigation does not indicate that entry or expansion in relation to the supply of comfort and technical foam, and in relation to the supply of converted comfort foam, will be timely, likely, or sufficient to prevent a realistic prospect of an SLC arising from the Merger.

CONCLUSION ON SUBSTANTIAL LESSENING OF COMPETITION

163. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal

¹⁷⁸ FMN, paragraphs 15.259-15.271.

¹⁷⁹ FMN, paragraphs 15.265 and 15.267.

unilateral effects in relation 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.

DECISION

164. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of that situation may be expected to result in an SLC within a market or markets in the United Kingdom.
165. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised while the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.¹⁸⁰ The Parties have until 11 July 2022¹⁸¹ to offer an undertaking to the CMA.¹⁸² The CMA will refer the Merger for a phase 2 investigation¹⁸³ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides¹⁸⁴ by 18 July 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

Sorcha O'Carroll
Senior Director, Mergers
Competition and Markets Authority
4 July 2022

¹⁸⁰ Section 33(3)(b) of the Act.

¹⁸¹ Section 73A(1) of the Act.

¹⁸² Section 73(2) of the Act.

¹⁸³ Sections 33(1) and 34ZA(2) of the Act.

¹⁸⁴ Section 73A(2) of the Act.