

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

Provisional findings report

Notified: 28 September 2022

© Crown copyright 2022

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [⌂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

Contents

Page

Summary of provisional findings	2
Provisional findings	5
1. The reference	5
2. The Parties and the Merger	5
The Parties	5
The Merger	6
Merger rationale	6
3. Concession of SLCs identified at phase 1	6
4. Relevant merger situation	7
Enterprises.....	7
Ceasing to be distinct.....	8
Turnover test.....	8
Share of supply test	9
Provisional conclusion on the relevant merger situation	9
5. The counterfactual	9
6. Market definition.....	10
7. Competitive assessment – horizontal unilateral effects	16
8. Barriers to entry and expansion	45
The supply of comfort and technical foam in the UK.....	45
The supply of converted comfort foam in the UK	48
Provisional conclusion	48
9. Provisional findings – overall conclusion.....	48

Appendices

A: Terms of reference

Glossary

Summary of provisional findings

1. The Competition and Markets Authority (**CMA**) has provisionally found that the anticipated acquisition (the **Merger**) by Carpenter Co. (**Carpenter**) of the engineered foams business (**REF**) of Recticel NV/SA (**Recticel**) may be expected to result in a substantial lessening of competition (**SLC**) in:
 - (a) The supply of comfort foam in the UK.
 - (b) The supply of technical foam in the UK.
 - (c) The supply of converted comfort foam in the UK.
2. Carpenter and Recticel (together referred to as the **Parties**) requested to concede these three SLCs which were identified in the CMA's phase 1 decision (the **Phase 1 Decision**), accepting that the Merger may result in an SLC in each of these three markets. We accepted the Parties' request.
3. In our inquiry we used evidence and information gathered in phase 1 and undertook targeted additional information gathering, including publishing an Issues Statement and making a limited number of requests for information.
4. This is not our final decision and we invite any interested parties to make submissions on these provisional findings by no later than 5pm on Wednesday 19 October 2022 by email to carpenter.recticel@cma.gov.uk. We will take all submissions received by this date into account in reaching our final decision.

Background to these provisional findings

The Parties and the Merger

5. Carpenter is a USA-headquartered manufacturer of a range of flexible polyurethane (**PU**) foam and foam-related products. In the UK, Carpenter supplies comfort foam, technical foam and converted comfort foam for a range of applications.
6. Recticel is a Belgium-headquartered manufacturer of flexible PU foam (through REF), bedding and insulation products. In the UK, REF supplies and converts both comfort and technical foam.
7. On 6 December 2021, 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).

Relevant merger situation

8. Our provisional view is that the Merger constitutes a relevant merger situation as it would result in Carpenter and REF ceasing to be distinct enterprises and because the share of supply test is met.

Provisional findings

Market outcome if the Merger did not take place

9. To determine the impact that the Merger may have on competition, we have considered what would have happened absent the Merger. This is known as the counterfactual. We have provisionally concluded that the counterfactual is the prevailing conditions of competition.

The relevant markets

10. We have considered the relevant markets by reference to which to examine the competitive effects of the Merger and we have provisionally found the following markets:
 - (a) The supply of comfort foam in the UK.
 - (b) The supply of technical foam in the UK.
 - (c) The supply of converted comfort foam in the UK.

Our competitive assessment

11. We examined whether the Merger may lead to a significant reduction in competition between the Parties by removing an important competitor and, in doing so, whether the merged entity would be likely to worsen its offering compared to the situation if the Merger did not take place. This is a horizontal, unilateral effects theory of harm.
12. In respect of each of the three markets identified above we have provisionally found that the Parties compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them which may be expected to result from the Merger.

Barriers to entry and expansion

13. We have provisionally concluded that entry or expansion will not be timely, likely and sufficient to prevent any SLC arising from the Merger in relation to

the supply of comfort foam, technical foam or converted comfort foam in the UK.

Provisional conclusion

14. As a result of our assessment, we have provisionally found that the Merger may be expected to result in an SLC in:
 - (a) The supply of comfort foam in the UK.
 - (b) The supply of technical foam in the UK.
 - (c) The supply of converted comfort foam in the UK.
15. We invite any interested parties to make submissions on these provisional findings by no later than 5pm on Wednesday 19 October 2022 by email to carpenter.recitel@cma.gov.uk.

Provisional findings

1. The reference

- 1.1 On 18 July 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under [section 33\(1\)](#) of the Enterprise Act 2002 (the **Act**), referred the anticipated acquisition (the **Merger**) by Carpenter Co. (**Carpenter**) of the engineered foams business (**REF**) of Recticel NV/SA (**Recticel**) for further investigation and report by a group of CMA panel members.
- 1.2 Carpenter and Recticel are together referred to as the **Parties** and, for statements referring to the future, the **Merged Entity**.
- 1.3 In exercise of its duty under [section 36\(1\)](#) of the Act, the CMA must decide:
- (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and
 - (b) if so, whether the creation of that relevant merger situation may be expected to result in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.
- 1.4 Our terms of reference are set out at **Appendix A**. We are required to publish our final report by 22 January 2023.
- 1.5 This document, together with its appendices, constitutes the CMA's provisional findings published and notified to Carpenter and Recticel in line with the CMA's rules of procedure.¹ Further information relevant to this inquiry can be found on the CMA case page.²

2. The Parties and the Merger

The Parties

- 2.1 Carpenter is a USA-headquartered manufacturer of a range of flexible polyurethane (**PU**) foam and foam-related products. In the UK, Carpenter supplies comfort foam, technical foam and converted comfort foam for a range of applications. Carpenter has three manufacturing plants in the UK – a flexible PU foam plant in Glossop (Derbyshire), a converted foam plant in

¹ CMA rules of procedure for merger, market and special reference groups (CMA 17), Rule 11.

² Carpenter / Recticel merger case page.

Somercotes (Derbyshire) and a converted comfort foam plant in Penallta (South Wales). Carpenter group's worldwide turnover in the financial year ended 31 December 2021 was £[<], of which £[<] was generated in the UK.³

- 2.2 Recticel is a Belgium-headquartered manufacturer of flexible PU foam (through REF), bedding and insulation products. In the UK, REF supplies and converts both comfort and technical foam. REF has three manufacturing plants in the UK – a flexible PU foam plant and a converted comfort foam plant in Alfreton (Derbyshire) and technical foam converting plant in Corby (Northamptonshire). REF's worldwide turnover in the financial year ended 31 December 2021 was £509.1 million, of which £[<] was generated in the UK.⁴

The Merger

- 2.3 On 6 December 2021, 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).

Merger rationale

- 2.4 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). 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.⁵

3. Concession of SLCs identified at phase 1

- 3.1 On 10 August 2022, the Parties requested to concede the SLCs identified in the CMA's phase 1 decision (the **Phase 1 Decision**),⁶ accepting that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in the following markets:
- (a) The supply of comfort foam in the UK.
 - (b) The supply of technical foam in the UK.

³ Final Merger Notice submitted to the CMA by the Parties on 4 April 2022 (Final Merger Notice).

⁴ Final Merger Notice, paragraphs 2.24 and 3.19.

⁵ Final Merger Notice, paragraphs 2.24 and 3.19.

⁶ [Phase 1 Decision](#), 5 August 2022.

(c) The supply of converted comfort foam in the UK.

- 3.2 The Parties agreed to waive their right to challenge this position during the phase 2 inquiry and confirmed that they intended to submit remedies to address the SLCs.
- 3.3 The process that applies where merging parties request to concede an SLC is set out in paragraphs 7.18 to 7.21 of [CMA2 revised](#).⁷
- 3.4 We accepted the Parties' request to concede the SLCs on 24 August 2022.
- 3.5 In the phase 2 inquiry we have used evidence and information gathered in phase 1. Given the comprehensive information gathered in phase 1 we have undertaken targeted additional information gathering during the phase 2 inquiry, including by publishing an Issues Statement (to which only the Parties responded) and making a limited number of requests for information.⁸ As the Parties conceded the SLCs identified in the Phase 1 Decision and waived their right to challenge the position in the phase 2 inquiry, we did not hold main party hearings.

4. Relevant merger situation

- 4.1 This chapter addresses the first of the two statutory questions which we are required to answer under section 36 of the Act and pursuant to our terms of reference (see Appendix A), namely: whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
- 4.2 The concept of a relevant merger situation has two principal elements: two or more enterprises cease to be distinct enterprises within the statutory period for reference;⁹ and the turnover test and/or the share of supply test is satisfied.¹⁰

Enterprises

- 4.3 The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.¹¹ A 'business' is defined as including 'a professional practice and includes any other undertaking which is carried on for gain or reward or which

⁷ [CMA2 revised](#), paragraphs 7.18-7.21.

⁸ [Issues statement](#), 26 August 2022 and [Parties' response to the Issues Statement](#), 21 September 2022.

⁹ Sections 23 and 24 of the Act.

¹⁰ Section 23 of the Act.

¹¹ Section 129(1) of the Act.

is an undertaking in the course of which goods or services are supplied otherwise than free of charge'.¹²

- 4.4 Each of Carpenter and REF is active in the supply of (among other products) various types of flexible PU foam in the UK and generates turnover worldwide and in the UK (see Chapter 2 above). We are therefore satisfied that each of Carpenter and REF is a 'business' within the meaning of the Act and that, accordingly, the activities of each of Carpenter and REF are an 'enterprise' for the purposes of the Act.

Ceasing to be distinct

- 4.5 The Act provides that two enterprises cease to be distinct if they are brought under common ownership or common control.¹³
- 4.6 The Merger concerns the acquisition by Carpenter of the entire issued share capital of the relevant Recticel companies that currently own all assets and liabilities of, and operate, REF. On completion of the Merger, these enterprises, will be under the common ownership and control of Carpenter.¹⁴ Accordingly, we are satisfied that arrangements are in progress or in contemplation which, if carried into effect, will result in the enterprises of Carpenter and REF ceasing to be distinct.
- 4.7 The Merger has not yet completed, so Carpenter and REF remain independent enterprises. Therefore, we are satisfied that the four-month time limit (the statutory period for reference) for a relevant merger situation under the Act is not engaged in the present circumstances.¹⁵

Turnover test

- 4.8 The turnover test is satisfied where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million.¹⁶ In this case, the turnover test is not satisfied as the turnover in the UK of REF does not exceed £70 million (see Chapter 2 above).

¹² Section 129(1) and (3) of the Act.

¹³ Section 26 of the Act.

¹⁴ On completion of the Merger, Carpenter will have a 'controlling interest' in the relevant Recticel companies within the meaning of that term in section 26 of the Act.

¹⁵ Section 24 of the Act. In summary, the four-month time limit applies only where the enterprises *have ceased* to be distinct.

¹⁶ Section 23(1)(b) of the Act.

Share of supply test

- 4.9 The share of supply test is satisfied where the merger would result in the creation or enhancement of at least a 25% share of supply or acquisition of goods or services of any description either in the UK or in a substantial part of the UK.¹⁷
- 4.10 The Parties have overlapping activities in the UK in respect of various types of flexible PU foam, namely (i) comfort foam, (ii) technical foam and (iii) converted comfort foam. On the basis of any of our approaches to estimating shares of supply, as a result of the Merger the Parties would have a combined share of supply of more than 25% and the Merger would result in an increment in the share of supply.¹⁸ Accordingly, we have provisionally found that the share of supply test in section 23 of the Act is satisfied.

Provisional conclusion on the relevant merger situation

- 4.11 In view of the above, we have provisionally found that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

5. The counterfactual

- 5.1 Applying the SLC test involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'.¹⁹
- 5.2 The Phase 1 Decision found that the counterfactual was the prevailing conditions of competition.²⁰
- 5.3 We did not find any evidence that the pre-Merger competitive conditions would not prevail absent the Merger. We therefore analyse the competitive effects of the Merger against the prevailing conditions of competition.

¹⁷ Section 23 of the Act and paragraph 4.60 of [CMA2 revised](#). The concept of goods or services of 'any description' is very broad. The CMA is required by the Act to measure shares of supply by reference to such criterion or such combination of criteria as the CMA considers appropriate (section 23(5) of the Act).

¹⁸ We have estimated shares of supply in the UK using four approaches: first, share of supply of comfort foam by volume (see Table 1 at page 19 below); second, share of supply of comfort foam by revenue (see Table 2 at page 19 below); third, share of supply of technical foam by volume (see Table 3 at page 28 below); and fourth, share of supply of technical foam by revenue (see Table 4 at page 28 below). These tables also demonstrate that for each of these metrics the Merger will result in an increment to the share of supply of over 10%. We consider these to be reasonable descriptions of sets of goods for the purposes of determining the share of supply test.

¹⁹ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 3.1.

²⁰ [Phase 1 Decision](#), paragraph 20.

6. Market definition

- 6.1 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.²¹ 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.²²
- 6.2 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).²³

Product market

- 6.3 We have considered the relevant product market, in particular whether product markets should be defined separately in terms of: (i) the supply of comfort foam; (ii) the supply of technical foam; and (iii) the supply of converted comfort foam.

Substitutability between comfort and technical foam

- 6.4 We provisionally find that comfort foam and technical foam belong to separate product markets, based on limited demand-side substitutability. We have not seen any evidence from third parties that customers are able to substitute between comfort and technical foam, or examples of customers purchasing both of these products.²⁴ This evidence is also supported by the Parties' internal documents, which typically discuss comfort foam and technical foam separately.²⁵
- 6.5 As regards supply-side substitutability, all foam suppliers that responded to the CMA's phase 1 investigation stated that they are unable to substitute between supplying comfort and technical foam.²⁶ Whilst some suppliers (such

²¹ [Merger Assessment Guidelines](#), paragraph 9.1.

²² [Merger Assessment Guidelines](#), paragraph 9.2.

²³ The Parties also overlap in the supply of a number of other foam-related products such as polyester fibre products, mattresses and mattress toppers. We have not identified concerns related to these overlaps and no third parties identified any concerns in these areas in response to our Issues Statement. They are therefore not covered further in our provisional findings.

²⁴ [3<] phase 1 call note.

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

²⁶ [3<] phase 1 third party CMA questionnaire responses.

as the Parties and Vita) supply both comfort and technical foam, some suppliers stated that a focus on one type more than another is common.²⁷

Segmentation within comfort foam

- 6.6 We provisionally find that it is not appropriate to find separate markets within the category of comfort foam. In phase 1, a few third parties indicated that there exist different types or ‘grades’ of comfort foam which have varying degrees of hardness and density (see further paragraph 7.12 below).²⁸ Notwithstanding this, in phase 1 a larger number of third parties consistently described comfort foam as a homogenous or ‘commodity’ product,²⁹ with customers largely able to substitute between purchasing different types of comfort foam.³⁰ Moreover, in phase 1 most foam suppliers submitted that they are generally able to substitute between producing different types of comfort foam.³¹ As noted further below at paragraph 7.12, third party feedback received by the CMA in phase 1 also shows that the Parties produce similar ranges of foam grades. The Parties’ internal documents also largely demonstrate that business strategies are discussed at the broader comfort foam level rather than for different types or grades of comfort foam.³²

Segmentation within technical foam

- 6.7 The evidence received by the CMA in phase 1 shows 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).³³
- 6.8 Demand-side substitutability within technical foam is more limited as certain technical foam applications may require specific types of technical foam.³⁴ In particular, third party submissions in phase 1 indicate that polyether- and polyester-based technical foam types have different properties and are therefore suitable for different applications.³⁵ The Parties’ internal documents

²⁷ 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; [REDACTED] phase 1 call note, 21 March 2022; [REDACTED] phase 1 third party email dated 25 March 2022; and [REDACTED] phase 1 third party response to CMA questionnaire.

²⁸ [REDACTED] phase 1 call note; [REDACTED] phase 1 call note.

²⁹ [REDACTED] phase 1 third party email; [REDACTED] phase 1 call note; [REDACTED] phase 1 call note; and [REDACTED] phase 1 call note.

³⁰ [REDACTED] phase 1 call note; [REDACTED] phase 1 third party CMA questionnaire response; [REDACTED] phase 1 third party CMA questionnaire response.

³¹ [REDACTED] phase 1 call note; [REDACTED] phase 1 call note.

³² For example: REF Annex 188, Annex 413; Carpenter Annex 158, Annex 171.

³³ FMN, paragraph 3.7.

³⁴ [REDACTED] phase 1 call note; [REDACTED] phase 1 call note.

³⁵ [REDACTED] phase 1 call note; and [REDACTED] phase 1 third party questionnaire response.

also largely support the view that technical foam is a differentiated and specialised product that may be tailored for certain technical foam applications.³⁶

- 6.9 Further, supply-side substitutability appears more limited than within comfort foam. For example, third-party submissions indicated 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.³⁷ Third parties also noted in phase 1 that more specialised grades of technical foam require different production assets, eg reticulated foam requires a reticulation chamber.³⁸
- 6.10 However, outside of certain applications, submissions received by the CMA from third parties in phase 1 generally show that technical foam suppliers are typically able to produce a range of different types of technical foam required by customers.³⁹ In particular, a large number of third parties submitted that suppliers often produce a range of types of technical foam.⁴⁰
- 6.11 Therefore, we do not consider it appropriate to segment within the category of technical foam and we have instead considered any differences between different types of technical foam, where relevant, in the competitive assessment below. In any event, the outcome of any market definition exercise does not determine the outcome of the assessment of the competitive effects of a merger, as it is possible to take into account constraints from outside the relevant market or segmentation within the market such that the CMA will generally not need to come to finely balanced judgements on what is 'inside' or 'outside' the market.⁴¹ In particular, when assessing closeness of competition between the Parties (and the competitive constraints they face), we have considered whether the Parties overlap in the supply of any particular types of foam. As is set out in further detail below, we have noted that the Parties compete particularly closely as regards the supply of technical foam used to produce sponges in the UK, and we have assessed the remaining constraints in relation to the supply of this foam type in the competitive assessment.

³⁶ For example: Carpenter Annex 178 and Annex 179; REF Annex 486, Annex 450.

³⁷ 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. [36].

³⁸ [36] phase 1 call note; [36] phase 1 call note.

³⁹ [36] phase 1 third party CMA questionnaire responses.

⁴⁰ [36] phase 1 third party CMA questionnaire responses.

⁴¹ [Merger Assessment Guidelines](#), paragraph 9.4.

Substitutability between comfort foam and converted comfort foam

- 6.12 We provisionally find that comfort foam and converted comfort foam belong to separate product markets. The evidence received by the CMA in phase 1 on demand-side substitutability shows 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**'),⁴² customers without in-house capabilities are unable to substitute between converted and unconverted comfort foam.⁴³
- 6.13 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).⁴⁴ 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 above. The Parties' internal documents also support the use of separate product markets for (unconverted) comfort foam and converted comfort foam.⁴⁵ 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 7.79 below.

Geographic market

- 6.14 We have considered the scope of the relevant geographic market, in particular whether it should extend to the EEA, UK and Switzerland or whether it should be narrower (ie UK only).

Supply of comfort foam

- 6.15 The evidence points to the market for comfort foam being UK-wide for the following reasons:
- (a) As set out in more detail in the competitive assessment of Theory of Harm 1 (horizontal unilateral effects in the supply of comfort foam in the

⁴² [§<] phase 1 third party CMA questionnaire responses.

⁴³ The significance of integrated converters is assessed further in the competitive assessment at paragraph 7.94. [§<] phase 1 call note; [§<] phase 1 call note.

⁴⁴ For example, Clinchplain ([Clinchplain – Belfield Group \(thebelfieldgroup.com\)](http://thebelfieldgroup.com)) and Comfortex ([Company – Comfortex](#)) are two examples of firms active in the UK that convert, but do not produce, comfort foam.

⁴⁵ 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.

UK), the phase 1 evidence shows that non-UK based suppliers do not make material sales in the UK.

- (b) A large number of third parties, including all of the suppliers that responded to the CMA's phase 1 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.⁴⁶ 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.⁴⁷
 - (i) In particular, as set out in the shares of supply analysis below at paragraph 7.9, non-UK based suppliers specifically identified by the Parties, such as Polypreen, make only negligible sales in the UK.
 - (ii) Further, while we note that several firms do market themselves as being compliant with UK Fire Safety Regulations (which suggests that such regulations are a less limiting barrier relative to transport costs associated with imports) in phase 1 several third parties stated that compliance with such regulations is, in reality, difficult and operates as a barrier to importing comfort foam into the UK.⁴⁸
- (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.⁴⁹

6.16 Based on the evidence set out above, we provisionally find that the relevant geographic market for the supply of comfort foam is the UK. We have considered the competitive constraint imposed by suppliers producing comfort foam outside of the UK in the competitive assessment.

Supply of technical foam

6.17 The evidence points to the market for technical foam being UK-wide for the following reasons:

- (a) As set out in more detail in the competitive assessment of Theory of Harm 2 (horizontal unilateral effects in the supply of technical foam in the UK), with the exception of REF itself, we have not seen evidence of any

⁴⁶ [REDACTED] phase 1 call note; [REDACTED] phase 1 third party email; [REDACTED] phase 1 call note; [REDACTED] phase 1 third party CMA questionnaire responses.

⁴⁷ [REDACTED] phase 1 third party CMA questionnaire responses.

⁴⁸ [REDACTED] phase 1 call note; [REDACTED] phase 1 call note; and [REDACTED] phase 1 call note.

⁴⁹ For example: Carpenter, Annex 168, Annex 171, Annex 182, Annex 243; REF Annex 188, Annex 195 (slide 20), Annex 413.

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 7.44 below).⁵⁰ We have also considered Datamyne data relating to volumes of imports, but we consider that there are issues with this dataset which limits its evidentiary value (see paragraph 7.31 below).

- (b) A few third parties that responded to the CMA's phase 1 investigation submitted 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.⁵¹ However, a larger number of third parties stated 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.⁵²
- (c) As discussed at paragraph 6.7 above and below, we consider that 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 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.⁵³ One Carpenter internal document refers to a [REDACTED] referencing reticulated foams from [REDACTED].⁵⁴ We consider that this document is of limited evidentiary value to the competitive assessment because Carpenter does not produce this type of technical foam in the UK or elsewhere.

6.18 Based on the evidence set out above, we provisionally find that the relevant geographic market for the supply of technical foam is the UK. We have considered any competitive constraint imposed by non-UK based suppliers of

⁵⁰ 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 [REDACTED] the volume of technical foam produced within the UK in 2021; [REDACTED], phase 1 third party CMA questionnaire responses.

⁵¹ [REDACTED] phase 1 third party CMA questionnaire responses.

⁵² Technical sponge foam is produced by both of the Parties in the UK (see paragraph 7.47 below); [REDACTED] phase 1 third party CMA questionnaire responses.

⁵³ REF Annex 413.

⁵⁴ Carpenter set out a quote from the sales report in the Phase 1 Issues Letter Response, paragraph 3.6.

technical foam as an out of market constraint in the competitive assessment below.

Converted comfort foam

- 6.19 The evidence received by the CMA in phase 1 points to the relevant geographic market for the supply of converted comfort foam being UK-wide. This is because, as with comfort foam (see paragraph 6.15 above), third parties submitted that there are high costs associated with transporting converted comfort foam from outside the UK into the UK. Customers consistently stated that they would be unable to source converted comfort foam from outside the UK,⁵⁵ and that greater geographic proximity of a supplier reduces costs and facilitates quicker deliveries.⁵⁶
- 6.20 Further, similar to the Parties' internal documents that discuss (unconverted) comfort foam, internal documents including the Parties' business plans and strategies in relation to converted comfort foam are also discussed largely on a UK basis or separately for the UK amongst other European countries.⁵⁷
- 6.21 Based on the evidence set out above, we provisionally find that the relevant geographic market for the supply of converted comfort foam is the UK.

Provisional conclusion on market definition

- 6.22 For the reasons set out above, for the purposes of our assessment of the Merger, we have provisionally found the following relevant markets:
- (a) The supply of comfort foam in the UK.
 - (b) The supply of technical foam in the UK.
 - (c) The supply of converted comfort foam in the UK.

7. Competitive assessment – horizontal unilateral effects

- 7.1 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

⁵⁵ [redacted] phase 1 call note; [redacted] phase 1 call note; [redacted] phase 1 third party CMA questionnaire responses.

⁵⁶ [redacted] phase 1 third party CMA questionnaire responses.

⁵⁷ For example: Carpenter, Annex 168, Annex 171, Annex 243; REF Annex 188, Annex 396, Annex 397, Annex 394.

own and without needing to coordinate with its rivals.⁵⁸ 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.⁵⁹

- 7.2 We have focused our inquiry on three theories of harm identified in the Phase 1 Decision. We have assessed whether the Merger may be expected to result in an SLC in:
- (a) the supply of comfort foam in the UK (Theory of Harm 1);
 - (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).
- 7.3 These are each horizontal unilateral effects theories of harm. Each of these theories of harm is assessed separately in the sections below.
- 7.4 As set out in Chapter 3, we accepted the Parties' request to concede the SLC in all three cases and have used evidence and information gathered in phase 1. [CMA2 revised](#) states that, in some cases, it may not be necessary to significantly expand this evidence base in order to reach a properly informed decision on the phase 2 statutory competition questions; in other cases, it will be necessary to expand this evidence base, but the CMA will seek to do so in a proportionate and targeted manner.⁶⁰ We have had regard to this in conducting our assessment of the Merger.

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

- 7.5 To assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of comfort foam, we have 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.

⁵⁸ [Merger Assessment Guidelines](#), paragraph 4.1.

⁵⁹ [Merger Assessment Guidelines](#), paragraph 2.11.

⁶⁰ [CMA2 revised](#), paragraph 11.2.

Shares of supply

7.6 The CMA calculated its own estimates of shares of supply in phase 1, 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 contacted 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.⁶¹ As this analysis is based on actual supply data from a wide range of suppliers, we consider that its estimates are more accurate than those provided by the Parties (and we have therefore given them more weight in our assessment). We note that while this analysis produced shares and a market size that differ from those submitted by the Parties in phase 1, the data from our analysis relating to UK volume sales of block foam (including both comfort and technical) is very similar to Carpenter’s estimate in its pre-existing internal documents of the size of the UK market for block foam and volume sales of its competitors.⁶²

⁶¹ [§<]. See paragraphs 14.2 and 14.12 of the FMN.

⁶² For example: Carpenter Annex 239, Annex 168. We have 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.

7.7 The 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 [X]% (volume) and [X]% (value) [40-50]% and a significant increment of [X]% by volume and [X]% by value [10-20]% by both volume and value. 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 7.21 and 7.22.

7.8 Given the limited degree of differentiation in comfort foam (as discussed at paragraph 6.6 above), we consider that these shares of supply provide 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). These shares show that the Merger will lead to a reduction of suppliers with a material share from three to two post-Merger and we consider that they are particularly informative as regards the competitive assessment of

the closeness of competition between the Parties in the supply of comfort foam.⁶³

- 7.9 We also consider that the shares of supply as set out in Table 1 and Table 2 above show 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 7.26 onwards below.

Closeness of competition

- 7.10 In assessing the closeness of competition between the Parties, we have 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.

- 7.11 As a starting point, we note that closeness of competition is a relative concept, with overall closeness of competition between the merger firms assessed in the context of the other constraints that would remain post-merger.⁶⁴ Where there is 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, we consider that the small number of significant players supports a *prima facie* expectation that the Parties are close competitors. In line with the CMA's guidelines, we will require, in such a scenario, persuasive evidence that the Parties are not close competitors in order to allay any competition concerns.⁶⁵

- 7.12 In this context, we note that the vast majority of submissions received in phase 1 by the CMA from the Parties' comfort foam customers showed that the Parties are close alternatives as regards the supply of comfort foam in the UK.⁶⁶ All of the submissions received by the CMA 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

⁶³ [Merger Assessment Guidelines](#), paragraph 4.14.

⁶⁴ [Merger Assessment Guidelines](#), paragraph 4.10.

⁶⁵ [Merger Assessment Guidelines](#), paragraph 4.10.

⁶⁶ [3<] phase 1 third party CMA questionnaire responses.

unconverted comfort foam differ in terms of density and hardness, responses indicated that both of the Parties produce very similar ranges of foam types.⁶⁷

- 7.13 In phase 1, 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 that [REDACTED] and that [REDACTED].⁶⁸
- 7.14 A significant and material portion of third parties - including the majority of comfort foam customers and suppliers that responded to the CMA's phase 1 investigation - were concerned about the Merger's impact on competition.⁶⁹ A material portion [REDACTED] 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 [REDACTED] of these customers stated that reduced choices will lead to a reduction in competition and higher prices.⁷⁰
- 7.15 The Parties' internal documents also generally illustrate 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.⁷¹ Similarly, an REF internal document demonstrates that it monitors and competes with Carpenter for comfort foam customers in the UK.⁷²
- 7.16 We have additionally considered three separate datasets submitted by the Parties in phase 1:
- (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 [REDACTED] customers being included in both REF and Carpenter's top ten comfort foam customers in this period. We note 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. Notwithstanding these limitations, the data shows that there is a

⁶⁷ [REDACTED] phase 1 third party CMA questionnaire response.

⁶⁸ [REDACTED] phase 1 call note.

⁶⁹ [REDACTED] phase 1 third party CMA questionnaire responses.

⁷⁰ [REDACTED] phase 1 third party CMA questionnaire responses and phase 1 response to the invitation to comment published on the CMA case page.

⁷¹ For example: Carpenter Annex 168, Annex 158, Annex 243 (slide 4).

⁷² For example: REF Annex 395.

degree of customer overlap between the Parties' top ten comfort foam customers.⁷³

- (b) **Data concerning UK customers in a recent six month 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. We note, 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 concerning a sample of ten recent Carpenter 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. We note that ten orders is a very limited sample size,⁷⁴ 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 phase 1 investigation of the Merger. Notwithstanding these limitations, we note that Carpenter identified [X] and Recticel/REF as its only competitors for nine out of these ten orders.⁷⁵

7.17 We provisionally find 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

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

⁷³ 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], we consider REF's more limited sales of comfort foam as reflective of REF's more fragmented comfort foam customer base, rather than as evidence of a lack of closeness between the Parties.

⁷⁴ We also note that the total value of these orders was just £[X] (see FMN, Annex 568). For comparison, Carpenter's total revenues from the supply of comfort foam in the UK in 2021 were £[X].

⁷⁵ [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).

- 7.19 We have assessed the constraint from these alternatives by taking into consideration:
- (a) the constraint imposed on the Parties by suppliers producing foam in the UK (namely, Vita);
 - (b) the constraint imposed on the Parties by suppliers producing foam outside of the UK; and
 - (c) additional competitive constraints imposed by imports of downstream products and alternative materials.

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

- 7.20 Outside of the Parties, Vita is at present the only comfort foam supplier that produces comfort foam in the UK. As the shares of supply calculations 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. Post-Merger, it will be the only remaining competitor with a comparable share to that of the Merged Entity.
- 7.21 The vast majority of comfort foam customer responses and all responses from suppliers active in the UK and Europe received by the CMA in phase 1 identified Vita as being a competitive constraint on the Parties.
- 7.22 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).⁷⁶ For example one of Carpenter's internal documents on its UK strategy clearly identifies [X].⁷⁷ REF's internal documents also show that it competes closely with Vita for customers and [X].⁷⁸
- 7.23 Furthermore, in the data submitted in phase 1 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 7.16(c) above – shows that it perceives Vita as an important competitive constraint for these orders.
- 7.24 We therefore provisionally find that Vita is a strong constraint on the Parties in the supply of comfort foam in the UK.

⁷⁶ For example: Carpenter Annex 168, Annex 239; REF Annex 394.

⁷⁷ For example, Carpenter Annex 168,

⁷⁸ REF Annex 394, Annex 258, Annex 395.

7.25 We note that Strandfoam is expected imminently to open a new comfort foam plant in the UK. We discuss Strandfoam's expected entry in greater detail below in Chapter 8 (Barriers to entry and expansion). For the reasons set out at paragraphs 8.10 to 8.12 below, we provisionally conclude that Strandfoam's planned entry would likely exert only a limited constraint on the Parties (and that, post-Merger, it would likely exert only a limited constraint on the Merged Entity).

Constraint imposed by suppliers producing foam outside of the UK

7.26 As regards Kayfoam, a Republic of Ireland-based supplier that does not have a UK plant, the CMA's share of supply analysis shows 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.

7.27 Evidence received by the CMA in phase 1 from third parties shows that Kayfoam competes only to a very limited extent with the Parties in the UK.⁷⁹ None of the Parties' customers that submitted a response to the CMA's phase 1 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.⁸⁰ Only one competitor identified Kayfoam as competing to supply comfort foam in the UK.⁸¹ In addition, Kayfoam is not commonly referred to as a significant threat in Carpenter's internal documents, with Carpenter referring to Kayfoam as [redacted] in the UK.⁸² REF mentions Kayfoam in its internal documents to a much lesser extent than it mentions Carpenter or Vita.⁸³

7.28 As regards non-UK based suppliers more generally, the vast majority of both customers and competitors that responded to the CMA's phase 1 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

⁷⁹ [redacted] phase 1 call note; [redacted] phase 1 third party CMA questionnaire response.

⁸⁰ [redacted] phase 1 third party CMA questionnaire responses.

⁸¹ [redacted] phase 1 call note.

⁸² For example, as cited at paragraph 7.22 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. We additionally note the Carpenter sales report of 6 June 2022, which Carpenter has submitted demonstrates that Kayfoam is competing with Carpenter to supply [redacted]. The Phase 1 Issues Letter Response, paragraph 4.8. While this document was not provided to the CMA, and we have been unable to assess its contents, we do not consider Kayfoam competing for [redacted] customers demonstrative of it exerting a strong constraint on Carpenter.

⁸³ For example REF documents Annex 258 and Annex 395.

the primary reason for this and some also referenced the UK's Fire Safety Regulations.⁸⁴

- 7.29 Consistent with this evidence, only a small minority of the comfort foam customers that responded to the CMA's phase 1 investigation submitted that they source comfort foam from outside the UK.⁸⁵ Analysis of these customers' purchases of comfort foam shows 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 submitted that: (i) they imported only specialty foam types that are not produced in the UK;⁸⁶ or (ii) they had been forced to source foam from overseas during 2020 due to lockdown measures imposed in the UK.⁸⁷ In these instances, we do not consider that these imported foams are substitutable with the comfort foams produced by the Parties in the UK.
- 7.30 Finally, the Parties' internal documents make only very limited reference to constraints from competitors other than the other Party or Vita.⁸⁸
- 7.31 We also considered Datamyne data relating to volumes of imports which was submitted by the Parties during phase 1. However, we consider that this data likely overstates the true volume of imports of flexible PU foam (including, comfort foam) made to the UK because it includes data relating to imports of products not relevant to the Merger. 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 sufficient constraint in the supply of comfort foam in the UK. We have therefore placed limited evidential weight on this data.
- 7.32 We therefore provisionally find that suppliers producing foam outside of the UK do not exert a sufficient competitive constraint on the Parties (whether individually, or in aggregate).

⁸⁴ The UK's Fire Safety Regulations were also noted as a barrier by several third parties who, as noted at regulation 6.15(b)(ii), indicated that compliance with such regulations could be difficult; [redacted] phase 1 call note; [redacted] phase 1 third party email; [redacted] phase 1 call note; [redacted] phase 1 call note; [redacted] phase 1 third party CMA questionnaire responses.

⁸⁵ [redacted] phase 1 third party CMA questionnaire responses.

⁸⁶ [redacted] phase 1 third party CMA questionnaire responses.

⁸⁷ [redacted] phase 1 third party CMA questionnaire response.

⁸⁸ 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.

Constraint imposed by imports of downstream products

7.33 We provisionally find that comfort foam incorporated into finished goods that are imported into the UK will not pose a sufficient 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. Consistent with this, we have not found any internal documents of the Parties identifying imports of downstream products as a competitive threat.

Provisional conclusion on Theory of Harm 1

7.34 For the reasons set out above, we provisionally find 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;
- (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) the Parties do not face sufficient constraints in the supply of comfort foam. 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.

7.35 Accordingly, we provisionally consider that the Parties compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them potentially resulting from the Merger.⁸⁹

7.36 We also provisionally consider that the adverse effects which may be expected to result from any SLCs that we may find would be that the Merged Entity would be under less pressure to compete and this would result in reduced choice, and higher prices or lower quality and reduced innovation compared to what would otherwise have been the case absent the Merger.

7.37 Before reaching a provisional view on whether the Merger may be expected to result in an SLC in respect of the supply of comfort foam in the UK, we

⁸⁹ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 4.8.

consider in Chapter 8 whether there are any countervailing factors (specifically entry and/or expansion) that could prevent such an SLC arising from the Merger..

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

7.38 To assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of technical foam, we have 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.

7.39 As noted in paragraph 6.11, the Parties overlap in the supply of standard polyether technical foam (the type used to produce sponges) in the UK.

Shares of supply

7.40 As a starting point for its share of supply analysis, we note that technical foam is a differentiated product (paragraph 6.7 above and 7.46 below) and, as such, shares of supply may be less informative as a source of evidence on closeness of competition.⁹⁰ We have, therefore, considered the shares of supply together with other sources of evidence on closeness of competition between the Parties in this market.⁹¹

7.41 Table 3 and Table 4 below set out shares of supply (and the total market size) calculated using sales volume and value data submitted by the Parties and other foam producers based in the UK and Europe. The tables are based on data gathered at phase 1 relating 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).⁹²

7.42 As noted at paragraph 7.6 in relation to comfort foam, while the analysis the CMA carried out produced shares, and a market size, that differ from those submitted by the Parties in phase 1, the data gathered by the CMA relating to

⁹⁰ [Merger Assessment Guidelines](#), paragraph 4.14 and 4.15.

⁹¹ 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.

⁹² These were Vita; Neveon/Greiner/Eurofoam; Olmo/Toscana Gomma; Plama-pur; and Flexipol. See FMN, paragraph 15.141.

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.⁹³

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

7.43 The 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.⁹⁴ 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.⁹⁵ Each Party's high share has been consistent over the time period for which data is available.

7.44 These shares also show that the market presence of non-UK based suppliers of technical foam in the UK market (namely, Kayfoam, Neveon and Plama-pur) is limited.

⁹³ For example: Carpenter Annex 239, Annex 168. We have 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).

⁹⁴ FMN, paragraph 15.183. In phase 1, the Parties submitted that the CMA's estimates understated Vita's scale in particular. However, we note that [30-40]%. We are therefore satisfied that the CMA's data does not understate Vita's presence in the supply of technical foam.

⁹⁵ 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

7.45 We have examined the closeness of competition between the Parties and considered within our assessment:

- (a) the Parties' product offerings;
- (b) third-party views on closeness of competition; and
- (c) data submitted by the Parties relating to customer overlaps.

7.46 As described at paragraph 6.7 above, we consider 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.

7.47 We note that, as a general principle, the question of closeness of competition relates to whether suppliers compete closely to supply certain categories of 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.

7.48 We consider 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 in phase 1, 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.⁹⁶ The [X%] of the foams REF sells for these applications are polyester-based.⁹⁷ 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.⁹⁸

⁹⁶ CMA analysis of FMN, Annex 570. REF's portfolios of technical foam are described on its website at [Products | Recticel Engineered Foams](#).

⁹⁷ Phase 1 Issues Letter Response, paragraph 3.32.

⁹⁸ FMN, Annex 570.

- 7.49 In the UK, Carpenter and REF both sell conventional polyether-based technical foam (and in particular, technical sponge foam). The evidence, discussed further below, shows that the Parties compete closely to supply this particular category of products. Some third parties that responded to the CMA's phase 1 investigation considered 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) stated that the Merger would have a negative effect on competition in the supply of technical foam generally in the UK.⁹⁹
- 7.50 Moreover, while not necessary to support our assessment of closeness of competition between the Parties in polyether-based technical foam (and specifically, in technical sponge foam), we note that sales of these foam types represent a material portion of REF's business (as well as that of Carpenter's).¹⁰⁰
- 7.51 In addition to the submissions the CMA received in phase 1 from third parties, we have considered three datasets submitted by the Parties in phase 1 that were equivalent to those submitted in relation to comfort foam, the limitations in evidentiary value of which are discussed at paragraph 7.16 above. We consider 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. In addition, we note 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 [X] customer being a top ten customer of both Carpenter and REF.¹⁰¹ 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.

⁹⁹ [X] phase 1 third party CMA questionnaire responses; [X] phase 1 third party CMA questionnaire responses.

¹⁰⁰ Sales of technical sponge foam accounted for [X]% (by volume) of both Carpenter's and REF's 2021 UK sales.

¹⁰¹ Phase 1 Issues Letter Response, paragraph 3.33.

- (b) **Data concerning UK customers in a recent six months period.** The second of these datasets sets out that [redacted] customers purchased technical foam from both Carpenter and REF, in the six-month period prior to 17 February 2022.¹⁰² The Parties 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.¹⁰³ 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 our 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.¹⁰⁴
- (c) **Data on the sample of ten recent 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.¹⁰⁵ We note that the same limitations flagged at paragraph 7.16(c) apply to this dataset.¹⁰⁶ We also note 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, we note that the Parties did identify each other as competing in a number of these most recent orders.¹⁰⁷

7.52 Overall, our provisional view is 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).

¹⁰² FMN, Annex 574.

¹⁰³ Parties' response to question 1 of CMA's request for information dated 22 June 2022.

¹⁰⁴ We also note 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.

¹⁰⁵ FMN, Annex 568.

¹⁰⁶ We also note that the total value of these orders was just [redacted] (see FMN, Annex 568). For comparison, the Parties' combined total revenues from the supply of technical foam in the UK in 2021 were [redacted].

¹⁰⁷ Carpenter identified REF as a competitor for [redacted] orders; REF identified Carpenter as a competitor for [redacted] orders. (FMN, Annex 568)

Competitive constraints

7.53 We have assessed the constraint from alternative suppliers by taking into consideration:

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

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

7.54 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.

7.55 Third party submissions received by the CMA in phase 1 show 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.¹⁰⁸ Vita told the CMA that Vita produces foam that may be used to produce cleaning sponges,¹⁰⁹ 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.¹¹⁰ As such, the Parties represent the only UK-based option for customers purchasing specific types of technical sponge foam.

7.56 We therefore provisionally find 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

7.57 We have considered the evidence with respect to both imports in general and specific non-UK based suppliers identified by the Parties in phase 1.

¹⁰⁸ [3<] phase 1 third party CMA questionnaire responses.

¹⁰⁹ For example, the following webpage was identified by Carpenter: <https://www.thevitagroup.com/wp-content/uploads/2020/06/DPL098-Caligen-Insert-Consumer.pdf>.

¹¹⁰ [3<] phase 1 third party CMA questionnaire responses and phase 1 call note.

- 7.58 With respect to imports in general, the evidence received by the CMA in phase 1 shows 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.¹¹¹ Third party submissions indicated that transport costs may be less prohibitive for importing higher value or more specialist types of technical foam.¹¹² 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 6.8.¹¹³
- 7.59 As noted in relation to Table 3 and Table 4 above, we have not seen evidence that any non-UK based suppliers make material sales of technical foam in the UK.¹¹⁴ We have also not seen any evidence that any non-UK based suppliers make material sales specifically of polyether-based technical sponge foam in the UK.
- 7.60 We have considered the position of Kayfoam in particular. We note that Kayfoam was identified as a competitor for [X] of Carpenter's ten recent upstream technical foam orders.¹¹⁵ As explained above at paragraph 7.51(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 in phase 1. As such, we provisionally find that the identification of Kayfoam as a competitor for [X] orders in that dataset is of limited evidential weight.
- 7.61 However, we note that sales data submitted by Kayfoam (see Tables 3 and 4 above) shows 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 in phase 1.¹¹⁶

¹¹¹ [X] phase 1 third party CMA questionnaire response; [X] phase 1 email; and [X] phase 1 third party CMA questionnaire response.

¹¹² [X] phase 1 call note.

¹¹³ [X] phase 1 third party CMA questionnaire response.

¹¹⁴ For the reasons outlined above at paragraph 7.31, the CMA has not placed evidential value on the Datamyne data.

¹¹⁵ Phase 1 Issues Letter Response, paragraph 3.36.

¹¹⁶ [X] phase 1 third party CMA questionnaire response.

7.62 We therefore provisionally find that imports from non-UK based suppliers exert only a limited constraint in the supply of technical foam to sponge manufacturers in the UK.

Additional competitive constraints

7.63 We have considered whether the Parties face competition from:

- (a) other materials, such as cellulose and natural sponge, that compete with technical foam at the upstream level;¹¹⁷ and
- (b) imports of downstream finished product cleaning sponges, including those made out of these alternative materials.¹¹⁸

7.64 As regards these submissions we provisionally find that:

- (a) No evidence submitted by third parties in phase 1 indicated that such alternative materials may be a substitute for technical foam. The Parties also confirmed that a customer purchasing foam to manufacture sponges could not substitute these inputs for polyether foam and produce the same end product.¹¹⁹
- (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. Consistent with this, we note that we have not found any internal documents of the Parties identifying imports of finished cleaning sponges as a competitive threat.

Provisional conclusion on Theory of Harm 2

7.65 For the reasons set out above, we provisionally find 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);

¹¹⁷ Phase 1 Issues Letter Response, paragraph 3.46.

¹¹⁸ Phase 1 Issues Letter Response, paragraph 3.47.

¹¹⁹ Carpenter's response at the phase 1 Issues Meeting on 13 June 2022.

(c) the Parties do not face sufficient 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.

7.66 Accordingly, we provisionally consider that the Parties compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them potentially resulting from the Merger.¹²⁰

7.67 We also provisionally consider that the adverse effects which may be expected to result from any SLCs that we may find would be that the Merged Entity would be under less pressure to compete and this would result in reduced choice, and higher prices or lower quality and reduced innovation compared to what would otherwise have been the case absent the Merger.

7.68 Before reaching a provisional view on whether the Merger may be expected to result in an SLC in respect of the supply of technical foam in the UK, we consider in Chapter 8 whether there are any countervailing factors (specifically entry and/or expansion) that could prevent such an SLC arising from the Merger.

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

7.69 To assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of converted comfort foam, we have 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

7.70 We have calculated estimates of the Parties' shares of supply in converted comfort foam by assuming that the size of the UK market for converted comfort foam is equal to 80% of our estimate of the size of the UK market for

¹²⁰ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 4.8.

unconverted comfort foam.¹²¹ Shares for individual competitors in converted comfort foam, including the Parties', were estimated using sales volume data submitted by these firms. The remaining share was aggregated in the 'other' category below.

7.71 We note that the methodology described above results in an estimated share of supply for 'other' suppliers' that is very large. However:

- (a) The estimated volume attributed to 'other' in Table 5 is not based on data collected from individual suppliers or on good data regarding the overall volume of converted comfort foam sales in the UK. Rather, as described above it is based on the size of the UK market for converted comfort foam and an assumption that only 20% of unconverted foam is lost during the conversion process. To illustrate the effect of this assumption Table 6 shows shares of supply based solely on data collected from individual suppliers (ie excluding 'other'). As Table 6 shows, each of the Parties is significantly larger than any supplier from whom the CMA received data, and the Merged Entity is more than [\times] bigger than any other supplier;
- (b) For the reasons given in paragraph (a) we do not have a good basis on which to assess the true size of the 'other' suppliers. However, if 'other' suppliers accounted for as large a share of supply of converted comfort foam as implied by Table 5, then we would expect to see significant evidence that these suppliers are a significant competitive constraint on the Parties. However, while we have received some evidence indicating that other suppliers compete with the Parties, narrative submissions received from customers and competitors have not identified any competitors likely to exert a significant constraint on the Merged Entity and, for the reasons set out below at paragraph 7.79, we consider that the Parties may have some advantages when compared to integrated and independent converters, which may account for their comparatively larger share; and
- (c) The 'other' suppliers' share include integrated converters, that is companies that convert comfort foam in-house for manufacturing their finished products. Some of these companies may not supply converted comfort foam to third parties (or may do so only to a limited extent), and

¹²¹ This value corresponds to the total sales of unconverted comfort foam (by volume) made by the suppliers identified in Table 5: Converted comfort foam shares of supply by volume for 2019-2021, UK in each year. The CMA assumed that 20% of unconverted foam is lost as scrap during the foam conversion process, and that it is reasonable to make this assumption based on the observation that roughly \times % of the volume of Carpenter's \times is sold as converted foam (please see Annex 541 to the FMN). However, we note that if the proportion of unconverted comfort foam lost as scrap during the conversion process were actually larger than 20% for other suppliers, the converted comfort foam market size would be smaller.

therefore may not actually compete with the Parties. We do not consider that integrated converters exert a strong constraint on the Parties as set out at paragraph 7.97(b) below. We do not have a basis to assess what proportion of the ‘other’ suppliers in the market are integrated converters.

- 7.72 For these reasons, we consider that, while these shares provide a useful indication as to suppliers’ relative presence, they do not give an accurate indication of suppliers’ absolute scale. Moreover, given differentiation in the supply of converted comfort foam, we consider that the market share estimates will not fully reflect the strength of the competitive constraint posed by market participants on one another.

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

%

Supplier											
Year	Carpenter	REF	Parties' Combined Share	Breasley (UK) Ltd	Clinchplain 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

Table 6: Converted comfort foam shares of supply by volume for 2019-2021 excluding ‘other’, UK

%

Supplier										
Year	Carpenter	REF	Parties' Combined Share	Breasley (UK) Ltd	Clinchplain Ltd	Drury Adams Ltd	Kayfoam	Peak Converters Ltd	Vita	Total
2019	[20-30]%	[20-30]%	[40-50]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	100%
2020	[30-40]%	[20-30]%	[50-60]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[10-20]%	100%
2021	[20-30]%	[20-30]%	[50-60]%	[0-5]%	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[10-20]%	100%

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

- 7.73 We have considered the robustness of the data in Table 5. The data in the table is 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 during phase 1. We note, in particular, that the CMA requested data on [X], and we are therefore satisfied that the data received does not understate Vita’s presence.
- 7.74 We note that while the evidence shows 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 7.79 below), and less complex conversion at higher volumes being required for mattress components and semi-converted products (**simple converted components**).

- 7.75 Notwithstanding the limitations discussed above, we provisionally find that these estimates show that the Parties are the two largest suppliers of converted comfort foam in the UK, and that the Merged Entity would be substantially (more than [~~3~~]) larger than the next largest supplier with the remainder of the market being highly fragmented. We consider that its estimated combined share of [~~3~~]% [10-20]% in Table 5 may understate, for the reasons outlined above, the Parties' position in the supply of converted foam, and in particular simple converted components. As shown in Table 6, each of the Parties is significantly larger than any other supplier.

Closeness of competition

- 7.76 In assessing the closeness of competition between the Parties, we have considered:

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

- 7.77 Both Carpenter and REF supply converted foam in the UK for simple converted components and for more complex components (eg components used in furniture).

- 7.78 Evidence from customers and competitors to the Parties shows 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.

- 7.79 Customers and competitors told the CMA during its phase 1 investigation 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.¹²²

- 7.80 For example, one customer explained that even though there is a large number of independent foam converters, it is far more cost-effective for it to work with firms that are vertically integrated, rather than with firms that are just converters, and that it would not be economically viable for it to purchase from independent converters.¹²³ Another customer submitted: 'We believe that having block manufacture and conversion in house brings with it significant advantages to both supplier and ourselves. It brings better internal controls, better flexibility on block sizes, reduced transport costs with conversion onsite [redacted].'¹²⁴
- 7.81 Some customers identified additional benefits to this vertical integration, such as reduced dependency on external suppliers,¹²⁵ increased flexibility as regards delivery lead times,¹²⁶ and the ability to better support quality requirements relating to the foam.¹²⁷
- 7.82 Customers and competitors to the Parties submitted that vertical integration is particularly advantageous in supplying simple converted components, which are typically supplied at higher volumes, because:
- (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 above) particularly relevant.¹²⁸ 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;¹²⁹ and
 - (b) suppliers that are not vertically integrated are not able to support the quality and testing requirements of a bedding manufacturer,¹³⁰ with one mattress supplier explaining that it prefers to purchase converted foam

¹²² [redacted] phase 1 third party CMA questionnaire responses.

¹²³ [redacted] phase 1 call note.

¹²⁴ [redacted] phase 1 third party CMA questionnaire response.

¹²⁵ [redacted] phase 1 third party email.

¹²⁶ [redacted] phase 1 third party CMA questionnaire response.

¹²⁷ [redacted] phase 1 third party CMA questionnaire response.

¹²⁸ [redacted] phase 1 third party email.

¹²⁹ [redacted] phase 1 third party CMA questionnaire responses.

¹³⁰ [redacted] phase 1 third party CMA questionnaire response.

from vertically integrated suppliers as this allows it to work with the supplier to achieve the correct foam density.¹³¹

- 7.83 Consistent with the above, a significant and material proportion of third parties, including the majority of converted comfort foam customers,¹³² and all of the converters (including independent, integrated and suppliers that manufacture and convert comfort foam) that have submitted responses to the CMA in phase 1,¹³³ submitted that the Merger will have a negative effect on competition in the UK.
- 7.84 In addition to these third party submissions, an REF internal document illustrates 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.¹³⁴
- 7.85 In view of the above, we provisionally find 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 appears to give them a competitive advantage in particular in the supply of converted comfort foam for simple converted components.

Competitive constraints

- 7.86 Unilateral effects are more likely where customers have little choice of alternative supplier. We have assessed whether there are alternative suppliers which would provide a competitive constraint on the Merged Entity.
- 7.87 We have assessed the constraint from these alternative suppliers by taking into consideration:
- (a) the constraint imposed on the Parties by other vertically integrated firms that manufacture foam and supply converted foam in the UK (namely Vita);¹³⁵ and
 - (b) the constraint imposed on the Parties by integrated and independent converters.

¹³¹ [X] phase 1 call note.

¹³² [X] phase 1 third party CMA questionnaire responses.

¹³³ [X] phase 1 third party CMA questionnaire responses.

¹³⁴ REF Annex 395. Other REF internal documents also mention Carpenter as a competitor. For example: REF Annex 396, Annex 397, Annex 394.

¹³⁵ We note that Kayfoam does not manufacture or convert comfort foam in the UK, but we have nonetheless considered its constraint below.

Constraint imposed by suppliers that manufacture and convert comfort foam

- 7.88 As set out at paragraph 7.20, 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 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 (around [REDACTED]) that of the Merged Entity.
- 7.89 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 in phase 1 identified Vita as a current, or alternative, supplier of converted comfort foam.¹³⁶ Similarly, some responses received from other suppliers of converted comfort foam identified Vita as a competitor in the supply of converted comfort foam.¹³⁷ REF's internal documents similarly identify Vita as a competitor to REF in the supply of converted comfort foam.¹³⁸
- 7.90 In terms of vertically integrated suppliers producing foam outside of the UK, we provisionally find that these suppliers impose only a very limited constraint on the Parties. The vast majority of converted foam customers responding to the CMA in phase 1 submitted that they do not source converted comfort foam from outside the UK and would not consider doing so in future.¹³⁹ Converted foam customers identified several reasons that sourcing converted comfort foam from outside the UK would not be a viable alternative:
- (a) Many customers 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.¹⁴⁰ 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.¹⁴¹

¹³⁶ [REDACTED] phase 1 third party CMA questionnaire responses.

¹³⁷ [REDACTED] phase 1 third party CMA questionnaire responses.

¹³⁸ For example, REF Annex 396, Annex 397, Annex 394.

¹³⁹ [REDACTED] phase 1 third party CMA questionnaire responses.

¹⁴⁰ [REDACTED] phase 1 third party CMA questionnaire responses.

¹⁴¹ [REDACTED] phase 1 third party CMA questionnaire responses.

- 7.91 Moreover, we have not found any internal documents of the Parties identifying vertically integrated suppliers producing foam outside of the UK as competitive threats.
- 7.92 We therefore provisionally find that suppliers located outside the UK do not exert a sufficient competitive constraint on the Parties' supply of converted comfort foam in the UK.
- 7.93 As regards Kayfoam in particular, evidence received by the CMA in phase 1 shows that this supplier competes to a limited extent to supply converted comfort foam in the UK.¹⁴² 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 phase 1 investigation. We provisionally find that these submissions are consistent with the competitor positioning in the market shares set out above, which show that Kayfoam has a limited role in the UK with a share substantially smaller (less than [X]) that of the Merged Entity.

Constraint imposed by integrated and independent converters

- 7.94 Integrated converters purchase unconverted comfort foam that they convert in-house for use in end products that they manufacture. However (and as noted by Carpenter) we are aware that a number of integrated converters also supply converted comfort foam to third parties.¹⁴³ We provisionally find that integrated converters compete with the Parties to the extent that they supply converted comfort foam to third parties.
- 7.95 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.
- 7.96 Evidence received by the CMA in phase 1 shows that there are a large number of independent converters active in the UK. The evidence shows that independent and integrated suppliers compete to supply converted comfort foam in the UK:
- (a) Roughly half of the responses the CMA received in phase 1 from converted foam customers show that independent converters either currently supply these customers or are viewed as alternative suppliers. Independent converters identified in customer responses were: Fibreline;

¹⁴² [X] phase 1 call note; and [X] phase 1 third party CMA questionnaire response.

¹⁴³ Phase 1 Issues Letter Response, paragraph 5.17.

GNG; Platt & Hill; Comfortex; Clinchplain; Horizon Foam; Peak Converters; Icon Designs; Mammoth; AeroFoam; JT Foam; AMR Textiles; Drury Adams.¹⁴⁴ The majority of independent or integrated converters that responded to the CMA in phase 1 submitted that they compete with the Parties in the supply of converted comfort foam.¹⁴⁵

- (b) Internal documents submitted by REF demonstrate that it competes with independent converters for at least some converted comfort foam customers.¹⁴⁶

7.97 However, the evidence implies that integrated or independent suppliers do not exert a sufficient constraint on the Parties, especially as regards the customer segment purchasing simple converted components, eg mattress suppliers. Specifically:

- (a) We have 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 it also states that 'Many of the independent converters have annual sales of less than £10 million and therefore are not required to file full accounts in the UK. It is therefore difficult to confirm their performance and profitability'.¹⁴⁷
- (b) Integrated or independent suppliers do not manufacture their own foam. As noted at paragraphs 7.79-7.82 above, customers purchasing simple converted components appear to particularly value the offerings of UK-based vertically integrated suppliers. This indicates that integrated or independent suppliers are unlikely to pose a sufficient constraint on the Parties as regards the customer segment purchasing simple converted components, eg mattress suppliers. This is consistent with the fact that roughly half of customers (the majority of which appeared to purchase primarily simple converted components) did not identify any independent or integrated suppliers as being current or alternative suppliers.¹⁴⁸
- (c) One supplier of converted comfort foam that also manufactures its own foam submitted in phase 1 that vertically integrated suppliers such as the Parties have more control over their supply chain, including access to

¹⁴⁴ [redacted] phase 1 third party CMA questionnaire responses.

¹⁴⁵ [redacted] phase 1 third party CMA questionnaire responses.

¹⁴⁶ For example, REF Annex 396, Annex 397; Independent converters identified in these documents include: [redacted].

¹⁴⁷ Carpenter Annex 168.

¹⁴⁸ [redacted] phase 1 third party CMA questionnaire responses.

innovation and more flexibility over pricing, and that they may be preferred by customers due to their vertical integration.¹⁴⁹

7.98 Finally, we note that there is some evidence that Vita and integrated/independent converters serve the same customer types as the Parties, and that these suppliers are also active in the supply of converted foam to Carpenter's top 10 converted foam customers. However, we provisionally find that this evidence is consistent with the existence of a customer segment for which only vertically integrated suppliers are a competitive alternative. In particular, we note that for [3<] out of the 10 customers included in the analysis, Carpenter identified REF and Vita as the only other known suppliers of those customers.

Provisional conclusion on Theory of Harm 3

7.99 For the reasons set out above, we provisionally find that:

- (a) The Parties are the two largest suppliers of converted comfort foam in the UK, and are substantially (almost [3<]) 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 shows that vertical integration provides an advantage, particularly in the supply of simple converted products that are typically supplied at higher volumes. The evidence further shows that there is a material degree of competitive interaction between the Parties in the supply of converted comfort foam in the UK.
- (c) The Parties do not face sufficient constraints in the supply of converted comfort foam. Alternative suppliers are substantially smaller than the Parties, and evidence from customers shows that these suppliers, with the possible exception of Vita, impose a less strong constraint on the Parties than the Parties exert on each other. While independent and integrated converters exert a constraint on the Parties for some customers, these suppliers are not always viable alternatives, in particular for customers purchasing simple converted components.

7.100 Accordingly, we provisionally consider that the Parties compete closely and that the remaining competitive constraints are not sufficient to offset the loss of competition between them potentially resulting from the Merger.¹⁵⁰

¹⁴⁹ [3<] phase 1 CMA third party questionnaire response.

¹⁵⁰ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 4.8.

- 7.101 We also provisionally consider that the adverse effects which may be expected to result from any SLCs that we may find would be that the Merged Entity would be under less pressure to compete and this would result in reduced choice, and higher prices or lower quality and reduced innovation compared to what would otherwise have been the case absent the Merger.
- 7.102 Before reaching a provisional view on whether the Merger may be expected to result in an SLC in respect of the supply of converted comfort foam in the UK, we consider in Chapter 8 whether there are any countervailing factors (specifically entry and/or expansion) that could prevent such an SLC arising from the Merger.

8. Barriers to entry and expansion

- 8.1 In assessing whether market entry or expansion would prevent an SLC, we consider whether such entry or expansion would be timely, likely and sufficient:
- (a) **Timely:** whether the effect on competition and the market will be timely. It is not just a case of entry or expansion occurring in a timely manner, but the effectiveness of that entry or expansion on market outcomes must be timely.¹⁵¹
 - (b) **Likely:** whether rival firms have the ability and incentive to enter the market.¹⁵²
 - (c) **Sufficient:** entry or expansion should be of sufficient scope and effectiveness to prevent an SLC from arising as a result of the merger.¹⁵³
- 8.2 These conditions are cumulative and must be satisfied simultaneously.¹⁵⁴

The supply of comfort and technical foam in the UK

- 8.3 We considered whether entry or expansion would be timely, likely and sufficient to prevent an SLC in the supply of comfort or technical foam in the UK.

¹⁵¹ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 8.33. The Merger assessment guidelines note that, typically, entry or expansion being effective within two years of an SLC arising would be considered by the CMA to be timely although, depending on the nature of the market, the CMA may consider a period of time shorter or longer than this.

¹⁵² [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 8.35.

¹⁵³ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 8.37.

¹⁵⁴ [Merger assessment guidelines \(CMA129\) - 2021 revised guidance](#), paragraph 8.32.

- 8.4 We note that some suppliers have spare capacity. However, all but one competing supplier of comfort and technical foam are located outside the UK. As set out in the assessment of competitive effects above,¹⁵⁵ we provisionally find that suppliers based outside the UK do not exert a material competitive constraint in the supply of comfort or technical foam in the UK. Moreover, the majority of suppliers of comfort and technical foam active outside the UK which responded to the CMA's phase 1 investigation stated that barriers to entering and expanding in the supply of comfort and technical foam in the UK are high. These suppliers pointed to long lead delivery times and transport costs as barriers to competing effectively in the UK from locations outside the UK.¹⁵⁶
- 8.5 A small number of suppliers indicated a desire to increase capacity in the supply of comfort foam in the UK.¹⁵⁷ However, the phase 1 investigation did not find any evidence to substantiate that such increases in capacity will occur. One of these competitors indicated that its expansion plan is not being considered in the short-term and others did not indicate a time period for expansion plans.¹⁵⁸
- 8.6 We also note that a large number of third parties stated that the significant capital investment is 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.¹⁵⁹ In addition, a number of third parties submitted that the production of technical and comfort foam requires a high degree of know-how, which would be a barrier to *de novo* entry.¹⁶⁰
- 8.7 Only one customer of technical foam stated that it would hypothetically sponsor entry by agreeing to purchase volumes.¹⁶¹ However, the majority of customers that responded to the phase 1 investigation did not state that sponsoring entry of a supplier of comfort foam or technical foam would be a strategy that they would pursue.¹⁶²
- 8.8 We have not seen any evidence that entry in the form of self-supply is likely.

¹⁵⁵ See Chapter 7.

¹⁵⁶ [Phase 1 Decision](#), paragraph 160. 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 UK customers. 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.

¹⁵⁷ [redacted] phase 1 third party CMA questionnaire responses.

¹⁵⁸ Phase 1 Decision, paragraph 160; [redacted] phase 1 third party CMA questionnaire response.

¹⁵⁹ [redacted] phase 1 third party CMA questionnaire responses.

¹⁶⁰ Phase 1 Decision, paragraph 160; [redacted] phase 1 third party CMA questionnaire responses.

¹⁶¹ [redacted] phase 1 third party CMA questionnaire response.

¹⁶² Phase 1 Decision, paragraph 160; [redacted] phase 1 third party CMA questionnaire responses.

- 8.9 We considered whether Strandfoam's planned entry into the UK would mean that barriers to entry are lower than might be implied by the evidence set out above. Strandfoam has informed us that it plans to enter the UK market with a UK plant in the immediate future.¹⁶³ Although the ultimate success of Strandfoam's entry is not yet clear, we note that this is an example of a supplier that is established in another jurisdiction investing to supply comfort foam from a plant in the UK. We note that the investment required to support this planned entry is very significant relative to the size of the relevant markets (in the range of £[X] to date), consistent with evidence referred to above (paragraph 8.6)¹⁶⁴ show 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.
- 8.10 We have also considered the competitive constraint on the Parties likely to be exerted by Strandfoam's imminent planned entry. This new entry is expected to occur irrespective of the Merger. In particular, we have considered whether Strandfoam has the intention, incentive and ability to expand in a timely, likely and sufficient manner to prevent any SLC arising from the Merger.
- 8.11 As a preliminary point, we note that Strandfoam's new plant will not produce technical foam or converted comfort foam. Accordingly, our assessment focuses only on the impact on the Merged Entity's position in relation to comfort foam. In relation to comfort foam, Strandfoam told us that it anticipated that it would grow to capture a share of supply of comfort foam in the UK of approximately [X]%. Strandfoam told us that the timescale that it would take to achieve this level of supply was uncertain. It stated that it anticipated that this growth would take between [X] years, and a minimum period of [X]. Strandfoam also indicated that [X].¹⁶⁵
- 8.12 We note that the comfort foam segment will remain concentrated even following Strandfoam's entry: there will be four UK-based suppliers of comfort foam, which the Merger would reduce to three. Further, we note that even assuming that Strandfoam fully achieves its launch ambitions in the shortest anticipated period, Strandfoam would remain a significantly smaller supplier than the Merged Entity (and Vita). The maximum constraint that it could exert is therefore likely to be limited in scale. Moreover, taking account of the uncertainty as to Strandfoam's degree of success and (in particular) how quickly it will be able to grow its share of supply, we consider that the constraint it would likely exert is still more limited. Accordingly, we provisionally conclude that, whilst Strandfoam's entry is likely to occur, its

¹⁶³ [X].

¹⁶⁴ [X] phase 1 call note.

¹⁶⁵ Strandfoam phase 1 call note.

planned entry would likely exert only a limited constraint on the Parties (and that, post-Merger, it would likely exert only a limited constraint on the Merged Entity).

- 8.13 We provisionally conclude that entry or expansion will not be timely, likely and sufficient to prevent any SLC arising from the Merger in relation to the supply of comfort or technical foam in the UK.

The supply of converted comfort foam in the UK

- 8.14 The Phase 1 Decision noted that while the factors relating to the cost of setting up a conversion plant and storage space required to enter and expand in the supply of converted foam in the UK may be less 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 at paragraphs 7.76 to 7.85 above). Further, while the Parties provided evidence of entry into the conversion of comfort foam, the Phase 1 Decision noted that some of these suppliers appeared to be active only in self-supply.¹⁶⁶
- 8.15 We have not seen any evidence to the contrary. Accordingly, we provisionally conclude that entry or expansion will not be timely, likely and sufficient to prevent an SLC arising in the supply of converted comfort foam in the UK.

Provisional conclusion

- 8.16 We provisionally conclude that entry or expansion will not be timely, likely and sufficient to prevent an SLC arising in the supply of comfort, technical or converted comfort foam in the UK.

9. Provisional findings – overall conclusion

- 9.1 As a result of our assessment we provisionally conclude that:
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation;
 - (b) the relevant merger situation may be expected to result in an SLC in relation to:
 - (i) The supply of comfort foam in the UK.

¹⁶⁶ [Phase 1 Decision](#), paragraph 163.

- (ii) The supply of technical foam in the UK.
- (iii) The supply of converted comfort foam in the UK.