

Carpenter Co. / Recticel NV/SA Merger Inquiry

**Comments on the CMA's
Notice of Possible Remedies
Published on 28 September 2022 ("Remedies Notice")**

12 October 2022

1. INTRODUCTION

- 1.1 This submission sets out the comments of Carpenter Co. ("Carpenter") and Recticel NV/SA ("Recticel") (the "Parties") on the CMA's Remedies Notice published on 28 September 2022.
- 1.2 The Parties note that the CMA has at this stage identified two potential structural remedies:
 - (a) Prohibition of the proposed acquisition by Carpenter of the engineered foam business ("REF") of Recticel (the "Merger"); or
 - (b) The remedy option proposed by the Parties (the "Proposal") and set out in detail in their Proposed Phase 2 Remedy Option submission ("Remedy Submission").
- 1.3 The Parties also note that in its Provisional Findings report also published on 28 September 2022, the CMA provisionally concluded that the Merger may be expected to result in an SLC in relation to: the supply of comfort foam in the UK; the supply of technical foam in the UK; and the supply of converted comfort foam in the UK. These are the same markets in relation to which the Parties requested to concede SLCs, the CMA accepted the request on 24 August 2022 and which were then assumed by the Parties in the subsequent Remedy Submission. The Remedy Submission was therefore based on the SLCs now provisionally found by the CMA.
- 1.4 As set out in the Remedy Submission, the Parties consider that the Proposal will address effectively the conceded SLCs (and therefore the SLCs found in the Provisional Findings report). This submission is limited to certain specific comments only on the Remedies Notice and is without prejudice to that position.

2. PROHIBITION AS A "REMEDY"

- 2.1 The Parties consider that prohibition as a "remedy" would be wholly disproportionate. The business to be purchased by Carpenter from Recticel (REF) operates 11 flexible polyurethane ("PU") foam manufacturing plants and 22 flexible PU foam converting plants across EMEA, Asia Pacific and North America. Of these facilities, only three are in the UK and in 2021 REF's total turnover in the UK accounted for less than [CONFIDENTIAL]% of its total worldwide turnover. Further, of the three UK facilities, only two engage in activities relevant to the SLCs.

- 2.2 Prohibition is absolutely unnecessary in order to remedy the SLCs identified in the Provisional Findings report that the Parties have already conceded. Instead, the Parties' proposed alternative structural remedy (the Proposal) satisfies the criteria set out in *Merger Remedies*, CMA87 as explained in the Remedy Submission and below in this submission.
- 2.3 The remainder of this submission accordingly focusses on issues identified in the Remedies Notice so far as they relate to the Proposal and does not further consider issues raised by prohibition.
3. **THE PARTIES' STRUCTURAL PROPOSAL IS A DIVESTITURE OF A STAND-ALONE BUSINESS**
- 3.1 The Parties' Proposal "will satisfactorily address the SLC" because it is a divestiture of a "stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap."¹ In particular, as set out in the Remedies Notice, the Proposal includes the divestment of REF's UK subsidiary Recticel Limited (and the Alfreton 1 and Alfreton 2 businesses owned and operated by it, together with all relevant associated assets) and certain additional assets relating to current REF R&D projects plus the entry into of certain corporate separation, R&D and chemical supply transitional service and supply arrangements ("TSAs"). The Remedies Notice accurately describes this as a "structural [remedy]".
- 3.2 However, the Remedies Notice also states that the Proposal amounts to "the partial divestiture of the UK assets and operations of REF". The description of the Proposal as providing for a partial divestiture of REF's UK assets and operations is strictly accurate because REF currently also operates a technical PU foam converting facility at Corby, UK which is not included in the Proposal (as well as other operations and facilities outside the UK in EMEA, Asia Pacific and North America which are also not included). However, in practice the Proposal includes what is in effect an existing UK-based stand-alone business operating in a geographic market which, the CMA found in the Provisional Findings report, is restricted to the UK.
- 3.3 In this regard, the points made in paragraph 6 of Annex 7 to the Remedy Submission should in particular be noted. As described there, REF's other activity in the UK is its Corby technical PU foam converting facility and business which has already been carved-out of Recticel Limited into a separate company which would be retained by Carpenter. That business makes [CONFIDENTIAL] purchases from the Alfreton 1 and Alfreton 2 businesses which remain within Recticel Limited and makes [CONFIDENTIAL] sales to them, so its retention has [CONFIDENTIAL] impact on Alfreton 1 and Alfreton 2.

¹ *Merger Remedies*, [CMA87](#), para. 5.7.

- 3.4 Alfreton 1 and Alfreton 2 also have no trading relationship with any other member of REF or the Recticel group as a whole². Alfreton 1 exports a small amount of foam which amounted to [CONFIDENTIAL] MT in 2021 but this was exclusively sold to third parties³.

4. RESEARCH AND DEVELOPMENT (“R&D”)

- 4.1 The Remedies Notice raises various points relating to R&D, some of which are considered in turn below.
- 4.2 In paragraph 16(a) of the Remedies Notice, the CMA states that it will ensure the business to be divested (i.e. Recticel Limited) will be able to innovate and compete effectively if it does not have its own R&D personnel, facilities and expertise. As explained in the Remedy Submission (paragraph 14 of Annex 6), it is common for manufacturers not to have significant in-house R&D capabilities⁴ and the parties consider that a manufacturer does not need its own dedicated R&D facilities, personnel and expertise to be competitive in the markets in question, which require relatively limited R&D (noting here in particular that the SLC in technical foam in practice concerns only conventional polyether PU foam for sponge applications⁵).
- 4.3 The Proposal includes (as noted in paragraph 18 of the Remedies Notice), as considered necessary by the CMA and if required by the divestment purchaser, a TSA for up to two years concerning R&D support. This TSA and its impact are described in more detail in the Remedy Submission (see paragraph 2.14(a) of Annex 5 and paragraphs 11-14 of Annex 6). This is a type of outsourcing, which, as noted at paragraph 14 of Annex 6, [CONFIDENTIAL]. The Parties consider that this TSA, offered for up to two years, provides sufficient time for a divestment purchaser (to the extent necessary) to consider and establish alternative arrangements.
- 4.4 So far as concerns alternative arrangements, the Parties consider that alternative (b) in paragraph 26 of the Remedies Notice (outsourcing to “specialist providers”) is suitable for a divestment purchaser. The Parties set out in detail in the Remedy Submission (paragraph 15 of Annex 6) various methods by which competitors which do not have significant in-house R&D capabilities engage in R&D. The first of those methods is the use of specialist providers such as Peterson Chemical Technology and Urethane Sciences (there are several others). They also noted that, in a similar fashion, R&D is commonly provided to PU foam manufacturers by upstream chemical suppliers, who have an incentive to increase demand

² Alfreton 2 purchases [CONFIDENTIAL] foam from Alfreton 1 (as an internal transfer).

³ This was [CONFIDENTIAL] foam. REF did not export [CONFIDENTIAL] or [CONFIDENTIAL] from the UK in 2021.

⁴ At the PU foam manufacturing level, all manufacturers have the ability to make minor modifications to foam grades as part of the pouring process (e.g. to change the colour or in response to specific customer requests or as required based on atmospheric or other factors to ensure the quality of the pour). These are made by technicians at the plant, who are experienced enough to make these changes without the guidance of dedicated R&D personnel.

⁵ See for example paragraph 7.52 of the Provisional Findings report. The Parties also note the CMA’s finding in paragraph 6.6 of the Provisional Findings report that “... a larger number of third parties consistently described [polyether PU] comfort foam as a homogenous or “commodity” product”. Polyether PU technical foam used for sponge applications is effectively the same product.

for their products. The Parties also noted a further option not identified directly by the CMA but used in practice, which involves the leveraging of publicly available research and similar material, perhaps supported by a consultant (who can be an individual). These options are of course not mutually exclusive and can also be used to supplement a company's internal R&D capabilities, if any. These options are also particularly appropriate for the grades of foam which are manufactured at Alfreton 1 (i.e. polyether PU comfort foam and polyether PU foam for sponge applications), which require relatively limited R&D and are widely understood.

- 4.5 The Remedies Notice refers in paragraph 16(b) to the related issue of whether all relevant R&D projects are included as part of the divestment package. The Parties submit that this is clearly the case and refer to Recticel's response of 30 August 2022 to the Section 109 Notice of 22 August 2022.
- 4.6 As set out in paragraphs 2.8-2.11 and paragraphs 7-9 of Annex 6 of the Remedy Submission (and as noted in paragraph 17(d) and footnote 10 of the Remedies Notice), the Proposal includes data and information relating to all current REF R&D projects relevant to the SLCs and identified by Recticel in its response as benefitting or being planned to benefit REF's UK operations only or REF's UK operations and its non-UK operations. These are identified in paragraph 45 and Table 5 of Recticel's response. This list includes projects relating to REF's [CONFIDENTIAL] ongoing comfort development initiatives ([CONFIDENTIAL] separate projects), [CONFIDENTIAL] relating to carpet underlay and [CONFIDENTIAL] relating to process control. That this is a relatively short list demonstrates the limited importance of R&D in the markets where the Provisional Findings report found SLCs.
- 4.7 For completeness, the Parties note that Recticel does not consider any of the projects identified in Table 6 of paragraph 49 of that response (the projects which could potentially benefit REF's UK operations) to be relevant because either there is no commercial nexus to the UK at present or no direct commercial output is expected. In particular, it should be noted that REF identified in that response one development project in [CONFIDENTIAL], which is not currently relevant to REF's UK operations but could *potentially* benefit this in the future⁶. Nevertheless, that benefit is not relevant to the business to be divested and covered by the Proposal. Rather, that project is driven by certain customers in the EU and the product is not intended to be sold in the UK. Further, Alfreton 1 (which produces only [CONFIDENTIAL] foam) does not have the technical capability to manufacture such a [CONFIDENTIAL] so this project is not relevant to production in the UK. The project was only classified as *potentially* of benefit to REF's UK operations on a cautious and conservative basis because, *if* the product is ultimately successful, as things stand, REF (from outside the UK) *may* import and offer the resulting product to customers in the UK.
- 4.8 Finally, the Parties submit that the CMA's consideration of the divested business's R&D operations must appropriately recognize that R&D is not a key aspect of competition in any of the relevant markets.

⁶ A REF development project is a project where the target output is commercial (e.g. a new product). The other type of REF project is a platform project, where the target output is scientific knowledge.

- 4.9 This is demonstrated, for example, in the Provisional Findings report, which recounts third-party views that comfort foam is “a homogenous or ‘commodity’ product with customers largely able to substitute between purchasing different types of comfort foam.”⁷ The Parties submit that the uniformity of these products and customers’ willingness to substitute among products that do have any slight differentiations indicate that R&D is not a key aspect of competition in this market. Instead, “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”.⁸
- 4.10 Likewise with respect to technical foam, the Provisional Findings report correctly acknowledged “that technical foam suppliers are typically able to produce a range of different types of technical foam required by customers”, with the exception of certain specialized types of technical foam.⁹ Again, the Parties submit that the range of supply-side substitutability among producers of technical foam demonstrates that R&D is not a key aspect of competition in many segments of this market (including in particular polyether PU foam for sponge applications, which is essentially a type of comfort foam).
- 4.11 To be clear, the Parties do not dispute that R&D is to some degree necessary to commercialize products in the relevant markets or that they and other competitors are engaged in R&D. They note here only that R&D is not a key aspect of competition in the relevant markets, and so there should not be a disproportionate focus on R&D while analysing the Proposal in the Remedy Submission. It should also be noted that REF is active in a wide range of polyether and polyester foams and technical foam conversion all of which is not relevant to the SLCs, with the result that its R&D activities are necessarily more significant than is necessary for production at Alfreton 1 and 2. With that proper frame of reference, the Parties submit that, for the reasons described at length above, the R&D offerings included in the Parties’ Proposal and the options available to it to engage in R&D on an ongoing basis are sufficient to equip any divestment purchaser to compete in the relevant markets.

5. SUPPLY OF CHEMICALS AND ADDITIVES

- 5.1 In paragraph 16(c) of the Remedies Notice, the CMA states that it will ensure the business to be divested (i.e. Recticel Limited) has the ability to “spread out the cost of chemicals and additives used to manufacture flexible polyether PU foam at [Alfreton 1]”. The Parties understand this to refer to whether REF may in theory have a cost advantage in its procurement of chemicals and additives for Alfreton 1 which would not be available to the divestment business on a stand-alone basis.
- 5.2 The Parties first refer to the Final Remedies Form submitted on 11 July 2022 (see in particular the response to question 7). It is explained there (with detailed reasons) that the

⁷ [Provisional Findings Report](#), para. 6.6.

⁸ [Provisional Findings Report](#), para. 7.13.

⁹ [Provisional Findings Report](#), para. 6.10.

Parties do not consider that the divestment purchaser will encounter difficulties in obtaining competitive supplies (regardless of the type of purchaser). One of the points noted is that there are numerous “single site” foamers in the EU which are competitive, profitable and long-established. These include for example Kayfoam, Polypreen, Kabelwerk Eupen, Avek International and MEGAFLEX Schaumstoff. Another example is Breckle GmbH, a vertically integrated manufacturer of products including foam mattresses (<https://www.breckle.de/unternehmen/>). Strandfoam in the UK will become another example; that company presumably has no concerns about being able to obtain chemical/additive supplies for its single-site operation in the UK which will allow it to be competitive against the existing suppliers (the group has a facility in South Africa but has no other operations in the EU/EEA or elsewhere so cannot procure chemicals/additives on an EU/EEA+UK-wide basis). It’s important to note that Strandfoam is a sophisticated manufacturer; according to its website it is “South Africa’s largest independent polyurethane & plastic foam manufacturer with more than half a century of experience” (see <http://strandfoam.co.za/>) and, as noted by the CMA in the Provisional Findings report (paragraph 8.9), is making “very significant” investment in its new UK facility.

- 5.3 REF has (via Recticel NV/SA) [CONFIDENTIAL] supply contracts for chemicals/additives (see the response to question 7, Final Remedies Form). Other purchases of chemicals/additives are made purely on a spot basis. The supply contracts set general supply terms, with prices usually negotiated on a [CONFIDENTIAL] basis at the end of each [CONFIDENTIAL] or in some cases a formula is used¹⁰. Further, only some of the supply contracts have a provision for volume discounts/rebates and REF does not obtain volume rebates/discounts save under a contract (i.e. none of its spot purchases give rise to a volume discount/rebate)¹¹.
- 5.4 So far as concerns purchases for use at Alfreton 1 in particular, during January – August 2022 the only chemicals/additives covered by a contract and in relation to which there is a volume discount/rebate or a formula have been [CONFIDENTIAL] and [CONFIDENTIAL] (but only some of the relevant [CONFIDENTIAL] contracts have such clauses; see below)¹². Three contracts for [CONFIDENTIAL] have been used; with [CONFIDENTIAL], [CONFIDENTIAL] and [CONFIDENTIAL]. [CONFIDENTIAL] of these includes a volume discount/rebate provision. The [CONFIDENTIAL] contract includes a formula to set the price. This contract is of limited importance; for 2022 as a whole, Recticel estimates that the value of purchases under it will account for only around [CONFIDENTIAL]% of total chemical/additive purchases for use at Alfreton 1¹³.

¹⁰ A fixed price is not practical due to changes in the chemical/additive supplier’s own input prices. Therefore, apart from any formula prices, all other prices are negotiated (usually each [CONFIDENTIAL]).

¹¹ Some contracts have an early payment discount, but this is generally available to all purchasers and is limited (up to around [CONFIDENTIAL]% of monthly invoice value). REF does not have an early payment discount in all of its chemical/additive supply contracts.

¹² REF does purchase [CONFIDENTIAL] and [CONFIDENTIAL] on a spot basis; not all of its supplies of [CONFIDENTIAL] and [CONFIDENTIAL] are purchased under contracts.

¹³ In 2022, the estimated total value of purchases under this contract for use at Alfreton 1 is around €[CONFIDENTIAL] (this incorporates actual figures for January – August). This is the *total* estimated value and the benefit (if any) to REF from the formula at most amounts to a small percentage of this figure (as against what could have been obtained from the spot market by another purchaser).

- 5.5 Three contracts for [CONFIDENTIAL] have been used in the same period; with [CONFIDENTIAL], [CONFIDENTIAL] and [CONFIDENTIAL]. The [CONFIDENTIAL] contract includes a [CONFIDENTIAL]% monthly discount over the total volume purchased if a set minimum monthly volume is reached (but which is subject to a claw-back in certain circumstances if an annual total volume figure is not reached), which at best gives rise to a small reduction¹⁴. The [CONFIDENTIAL] contract includes an annual rebate on annual total volumes which are purchased above a threshold (i.e. only on the volumes *above* the threshold), but this level was not reached in 2020 or 2021 and Recticel will likely also not meet it in 2022 so this rebate is in practice not relevant. This contract has a price formula for a portion of the product purchased for use by Alfreton 1 (the price for the remainder is negotiated [CONFIDENTIAL] as under most contracts). For 2022 as a whole, Recticel estimates that use of the formula will result in a reduction in the total value of chemical/additive purchases for use at Alfreton 1 of around €[CONFIDENTIAL] or around [CONFIDENTIAL]% of the estimated value of total chemical/additive purchases¹⁵. The [CONFIDENTIAL] contract includes no volume discount/rebate provision or price formula.
- 5.6 Accordingly, as can be seen, the impact of volume discount/rebate provisions and price formulae on purchases of chemicals/additives for use at Alfreton 1 is limited. Recticel considers that even a divestment purchaser with no existing relevant purchases would not be materially disadvantaged (if at all) by no longer being part of Recticel/REF (noting again that this is presumably the view of long-established South African manufacturer Strandfoam, which has no other EU/EEA facility and will be purchasing for a single site in Europe). A divestment purchaser which already makes purchases of chemicals/additives for use in the UK or Europe may be able to add purchases for Alfreton 1 to its relevant existing contracts (if any).
- 5.7 So far as concerns the fixed costs of procurement, the Parties likewise do not consider this to be a concern because the costs are minimal. Responsibility for negotiations with REF's chemical suppliers worldwide currently sits with [CONFIDENTIAL] located in Recticel's Belgium office (and [CONFIDENTIAL] with a much wider range of products than are

¹⁴ In January – August 2022, the actual total value of purchases under this contract for use at Alfreton 1 amounted to around £[CONFIDENTIAL]. The minimum monthly volume giving rise to a discount has been reached each [CONFIDENTIAL] during the period on a group-wide basis, giving rise to a *total* discount in relation to Alfreton 1 purchases of around £[CONFIDENTIAL] for the *whole period* (on average around £[CONFIDENTIAL] per [CONFIDENTIAL]). That is a *de minimis* figure in absolute terms and when compared with total purchases of chemicals/additives. Further, the discount is on the value of actual purchases at the negotiated price under the contract, which price in practice may be above or below the spot price that could have been obtained by another purchaser. Note that the price of the [CONFIDENTIAL] supplied by [CONFIDENTIAL] to Alfreton 1 under this contract is set at a fixed premium above the price of the cheapest standard [CONFIDENTIAL] purchased by REF from [CONFIDENTIAL] (as negotiated each [CONFIDENTIAL]).

¹⁵ The value of total purchases has been calculated with the €[CONFIDENTIAL] added to total estimated actual purchases during 2022 as a whole. The €[CONFIDENTIAL] reduction has been calculated by reference to the actual [CONFIDENTIAL] negotiated price for the remainder of the supply (using actual figures for January – August and estimated for September – December), not the spot price. In practice, the negotiated price may be above or below the spot price that could have been obtained by another purchaser.

relevant to Alfreton 1). However, in any event, Recticel Limited already employs [CONFIDENTIAL] all the non-chemical procurement for Alfreton 1 and Alfreton 2 (see the response to question 6(i) of the Final Remedies Form submitted on 11 July 2022).

- 5.8 In paragraph 27 of the Remedies Notice, the CMA raises the issue of whether the proposed Chemical Supply TSA would restrict or distort competition between Carpenter/REF and the divested business (Recticel Limited as owned by the divestment purchaser). The Parties first note in this context that this TSA is offered if considered necessary by the CMA and required by the divestment purchaser. It is in practice a fail-safe proposal. The Parties explained in the Remedy Submission (paragraph 19 of Annex 6) that there is nothing unique about chemical purchasing and (as also noted above) that responsibility for negotiations with REF's chemical suppliers worldwide currently sits with [CONFIDENTIAL] located in Recticel's Belgium office. Recticel Limited already negotiates and procures other inputs itself using its own personnel and any divestment purchaser will have procurement expertise generally (including a financial buyer from its other investments). Further, for many chemicals/additives, there are well-recognised publications (in particular, ICIS-LOR and IHS Markit) which provide guidance on available prices. In any event, the Chemical Supply Negotiations TSA included in the Proposal would assist as necessary with chemical purchasing by the divestment purchaser and provide it with additional certainty that it will have no disruption in the supply of chemical inputs.
- 5.9 Nevertheless, if implemented, the Parties do not consider that the Chemical Supply TSA, lasting up to one year, would give rise to substantive competition concerns. There is nothing inherently anti-competitive about competitors entering into supply agreements for finished/traded products with each other and this arrangement concerns inputs which are not re-sold by either party. In addition, the following particular points are relevant in this context: the TSA would not be exclusive and would terminate in relation to a particular product if the divestment purchaser chose to procure from a third party (including directly from the supplier that would otherwise supply to Carpenter for on-sale under the TSA); each chemical/additive is only one element of the cost of production of upstream foam and there are other upstream cost elements (including electricity, labour etc.), plus downstream costs such as transport; the suppliers of these chemicals participate in worldwide or at least EEA/UK-wide commodity markets, in which the Parties' joint purchases represent a small percentage of all purchases; and as explained in the Proposal a firewall would in any event be in place to restrict the flow of CSI both at the Carpenter and divestment purchaser levels.

6. SUITABLE PURCHASERS

- 6.1 In paragraph 30 of the Remedies Notice, the CMA asks for views on whether the divestment purchaser needs any particular attributes, credentials or experience and whether any specific purchasers or types of purchasers should be ruled out.
- 6.2 The Parties have designed the Proposal to ensure that any independent third party that is committed and will not create further competition concerns in the UK can be considered suitable. All of the TSAs are offered as considered necessary by the CMA and if required

by the divestment purchaser and even if adopted the divestment purchaser would not be committed to using any of them either at all or for the full period.

- 6.3 The Parties consider that the only purchaser which should be ruled out based on competition concerns is (on the basis of the CMA’s Provisional Findings report) Vita group due to its position in the UK upstream comfort foam and upstream technical foam markets.
- 6.4 As noted in the Remedy Submission (paragraph 10 of Annex 7), there is significant evidence of existing financial buyer interest in the sector. This includes financial buyer ownership of Vita group itself, which is a portfolio company of Strategic Value Partners, a private equity firm. There are no specific circumstances in this case which indicate that a financial buyer would not be suitable or would lack the incentive to develop the business as a viable and competitive force in the market. Recticel Limited is as noted stand-alone and has all necessary management expertise, including in relation to procurement generally. It should also be noted that procurement of chemicals/additives for Alfreton 1 is materially simpler than it is for REF as a whole. This is due to the narrower range of foam manufactured at that site (i.e. polyether PU comfort foam and polyether PU foam for sponge applications).
- 6.5 Further, the senior management and indeed other personnel of Recticel Limited are well versed in liaising with REF’s R&D function on an (in effect) outsourced basis and implementing the limited relevant results of REF R&D at Alfreton 1 and Alfreton 2 without input from the rest of REF. Like any purchaser, a financial buyer will be motivated to grow and develop the business in order to maximise its ultimate returns.
- 6.6 So far as concerns other potential purchasers, the Parties also note that an actual or potential vertical relationship between one of the upstream SLC markets in the UK and a purchaser’s existing downstream UK activities (i.e. comfort foam converting or finished products manufacture) should not rule out such a purchaser. As the CMA is aware, vertical integration is common in the industry (including by Carpenter group and Vita group in the UK, as well as Recticel Limited itself). Recticel Limited currently makes supplies of upstream foam for third parties in the UK and [CONFIDENTIAL] ([CONFIDENTIAL]). Alfreton 1 and 2 both have a diverse customer base such that if Recticel Limited were purchased by a customer, the customer would be incentivized to continue to maximize sales to third parties. Therefore, no reason exists to believe that additional vertical integration would create the incentive or ability for foreclosure.
- 6.7 There is also no reason to doubt that a purchaser—whether a financial buyer, a buyer with a vertical relationship to the divested business, or a non-UK-based international foam supplier looking to expand production to the UK—would be able to operate the divested business successfully. Indeed, and as noted at length in the Provisional Findings report, there is evidence that new entrants, like *South African* foam manufacturer Strandfoam, are looking to begin operations in the UK. For example, “Strandfoam has informed [the CMA] that it plans to enter the UK market with a UK plant in the immediate future.”¹⁶ Of course, a purchaser of the divested business would be buying a business that is already operational

¹⁶ [Provisional Findings Report](#), para. 8.9.

and profitable and so would not face the same challenges encountered by new entrants like Strandfoam. Nevertheless, new entrants like Strandfoam demonstrate that a wide range of entities could function as suitable purchasers of the divested business.

7. DIVESTITURE PROCESS

- 7.1 In paragraph 32(b) of the Remedies Notice, the CMA asks for views on the need for a monitoring trustee. The Parties set out in detail in the Final Remedies Form submitted on 11 July 2022 the reasons why in any scenario there is no need for a monitoring trustee (see the response to question 21). The Parties also commented on divestiture risks and the ongoing trading position of Recticel Limited in Annex 7 of the Remedy Submission. P&L information for each of Alfreton 1 and Alfreton 2 for July YTD 2022A, FY 2022F, FY 2023F and FY 2024F was provided (see also Recticel’s response of 30 August 2022 to question 8 of the Section 109 Notice).
- 7.2 It is clear from this material that none of the criteria making it more likely that a monitoring trustee will be needed (paragraph 4.44 of *Merger Remedies*, CMA87) applies in this case. The business is a stable, stand-alone, existing business that is being run in the normal course. No carve-outs or exclusion of assets from Recticel Limited are needed. The proposed TSAs are all easily implemented and have been laid out in detail. Purchaser risks are not high for the reasons set out in Annex 7 of the Remedy Submission. Further, Carpenter’s investment banker Ducera Partners LLC (“Ducera”) is experienced at operating sales processes and that process is under way.
- 7.3 In paragraph 34 of the Remedies Notice, the CMA indicates that “in unusual cases” it may require that a divestiture trustee is appointed at the outset of the divestiture process. This reflects the comment at paragraph 5.44 of *Merger Remedies*, CMA87, where two cases are referred to (showing the rarity of this requirement).
- 7.4 It is clear that neither of those precedents is similar to the present case. The more recent case (*Ryanair/Aer Lingus*, 2015) raised very specific issues given that the remedy was the partial divestment of a shareholding held by Ryanair in its listed competitor Aer Lingus. The other case (*Tesco/Co-op, Uxbridge*, 2007) is 15 years old and again raised specific issues. Tesco was required to market two options for the sale of a store site simultaneously and the Competition Commission commented that Tesco would likely seek to influence the sale process to secure its preferred outcome, while at the same time “the knowledge and understanding of the existing owners [of the site] will add little, and ... we consider [the sale process] can be conducted equally effectively by a divestiture trustee.” The present case, by contrast, raises no unusual issues of this nature and is a standard business sale. Ducera already has begun the sales process and there has been interest in the business. Insertion of a divestiture trustee into the process at this point would likely slow the process down and is not necessary to ensure the divestiture will be to a suitable purchaser within the initial divestiture period.

* * *