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

Summary of Final Report

Notified: 16 November 2022

Overview of our findings

1. The Competition and Markets Authority (**CMA**) has decided 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. For the purposes of the phase 2 investigation, Carpenter and Recticel (together referred to as the **Parties**) requested to concede that the Merger may be expected to result in an SLC in each of the three markets in which competition concerns had been identified in the CMA's phase 1 decision (the **Phase 1 Decision**). 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. We published our provisional findings, notice of possible remedies and the Parties' remedy proposal (the **'Parties' Remedy Proposal')** on 28 September 2022. We have applied a 'balance of probabilities' standard when assessing the evidence before us.

Background to these findings

The Parties and the Merger

4. 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.

5. 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.

6. 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

7. We have decided 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 has been met.

Findings

Market outcome if the Merger did not take place

8. 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 concluded that the counterfactual is the prevailing conditions of competition.

The relevant markets

9. We have considered the competitive effects of the Merger within 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

10. 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.

11. In respect of each of the three markets identified above we have 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

12. We have 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.

Conclusion

13. As a result of our assessment, we have decided 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.

Remedies

14. Having decided that the Merger may be expected to result in SLCs, we considered what action should be taken to remedy, mitigate or prevent the SLCs and their resulting adverse effects.

15. The Parties' Remedy Proposal included a partial divestiture of REF's UK assets and operations, principally comprising the divestiture of REF's UK subsidiary Recticel Limited. It included assets and operations that the Parties have submitted are sufficient to address effectively each of the SLCs, namely:

    (a) REF's plant, assets and business in Alfreton, Derbyshire, UK, that manufactures and supplies unconverted flexible polyether PU comfort and technical foam (Alfreton 1);

(b) REF’s plant, assets and business in Alfreton, Derbyshire, UK, that manufactures and supplies converted flexible polyether PU comfort foam (Alfreton 2);

(c) Data and information arising out of completed REF Research and Development (**R&D**) projects which are used by the divestiture package. For relevant current REF R&D projects, the following is included:

(i) Where the project is planned to benefit REF’s UK operations only, a full transfer of rights with the Parties retaining no rights.

(ii) Where the project is planned to benefit both REF’s UK operations and REF’s non-UK operations, a perpetual, irrevocable royalty-free licence to the purchaser for use in UK applications only.

16. The Parties’ Remedy Proposal also provided that Carpenter will enter into Transitional Service and Supply Agreements (**TSA**) for a fixed period with the purchaser for:

(a) R&D services in relation to current R&D projects and new projects relating to unconverted and converted comfort foam and unconverted polyether sponge foam subject to a cap set at a specified number of hours annually across all projects;

(b) supply arrangements relating to chemicals and additives used in manufacturing flexible polyether PU foam at Alfreton 1 facility;

(c) consulting arrangements to provide expertise to the potential purchaser to conduct its own negotiations with suppliers of chemicals; and

(d) information technology, finance and HR support services.

17. We concluded that the Parties’ Remedy Proposal contains most of the elements necessary to enable the divestiture business to compete effectively. However, we found that the proposed TSAs relating to R&D and to chemicals purchasing risked diminishing the level of competition between the Parties and the divested business and should be excluded from the scope of any potentially effective partial divestiture.

18. We found that the absence of R&D operations and experience in chemicals purchasing within the assets and operations to be divested gives rise to material effectiveness risks. Given the nature of these risks, we found that they are capable of being adequately mitigated by a suitable purchaser, and have reflected this in the criteria that a suitable purchaser will be required to possess. Any such purchaser would be likely to be active either in foam

manufacturing or vertically related industries, another plastics manufacturing industry, and would be readily able to utilise and apply its experience to the divestiture business.

19. We therefore concluded that the divestiture under the Parties’ Remedy Proposal (excluding the TSA elements relating to R&D and chemical procurement) to a suitable upfront purchaser, who has sufficient R&D capabilities and chemical procurement experience, would be effective in addressing the SLCs and the resulting adverse effects.

20. We also concluded that this would be an effective and proportionate remedy, and thereby as comprehensive a solution as is reasonable and practicable, to the SLCs and the resulting adverse effects we have found.