

Completed acquisition by Sonoco Products Company of Weidenhammer Packaging Group GmbH

ME/6485-14

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 13 January 2015. Full text of the decision published on 25 February 2015.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

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SUMMARY

1. On 31 October 2014, Sonoco Products Company (**Sonoco**) acquired the entire share capital of Weidenhammer Packaging Group GmbH (**Weidenhammer** and together with Sonoco, the **Parties**) (the **Merger**).
2. The Competition and Markets Authority (**CMA**) considers that the Parties have ceased to be distinct and that the share of supply test is met. The four-month period for a decision has not yet expired. The CMA therefore considers that a relevant merger situation has been created.

3. The Parties overlap in the production and supply of composite cans for food products in the United Kingdom (**UK**). The CMA has assessed the impact of the Merger against a frame of reference of the production and supply of composite cans for food products in the UK and has taken into consideration competitive constraints imposed on the Parties from other forms of food packaging in its competitive assessment.
4. The Parties are the two main suppliers of composite cans for food products in the UK and the Merger results in the Parties having a combined share of supply of [85–95]% in the UK with an increment of [25–35]%.
5. The Parties are close competitors and are typically the only two bidders for contracts for the supply of composite cans for food products in the UK. A number of customers identified the Parties as the only credible suppliers of composite cans for food products in the UK. The CMA's market testing also revealed evidence that customers have benefited from competition between the Parties and there is considerable evidence of customers switching between the Parties' products.
6. The CMA finds that the remaining competitors in the supply of composite cans for food products, both in the UK and overseas, will not impose a sufficient competitive constraint to prevent the Parties from raising prices and/or worsening non-price elements of their product offering. The evidence gathered indicates that the Parties are the only credible suppliers of composite cans for food products for a number of customers. Weidenhammer is the only supplier of composite cans for food products to which Sonoco has lost existing UK customers in the past five years.
7. The CMA also considers that, although the Parties may face some competition from alternatives to composite cans for food (eg flexible packaging, paper and board packaging, rigid plastics and metal packaging) when competing for new business, other packaging formats are not a significant threat to its existing business. In the last five years, Sonoco has lost less than 5% of its existing business to other packaging formats.
8. Based on the evidence available to it, the CMA also finds that any potential entry or expansion of other suppliers of composite cans for food products would not be timely, likely and sufficient to prevent a realistic prospect of a substantial lessening of competition (**SLC**) from arising. Further, the CMA considers that any existing buyer power would not be sufficient to counterbalance a realistic prospect of an SLC.
9. Overall, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC within a market or markets

in the UK. Therefore, the CMA intends to refer this merger for a phase 2 investigation unless suitable undertakings in lieu of a reference are offered and these are accepted by the CMA. Sonoco has until 20 January 2015 to offer such undertakings to the CMA. If no undertakings are offered, or the undertakings offered are not accepted as being sufficiently clear-cut to remedy all the competition concerns raised, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Enterprise Act (the **Act**).

ASSESSMENT

Parties

10. Sonoco is a US corporation headquartered in Hartsville, South Carolina, and is a manufacturer of industrial and consumer packaging products and a provider of packaging services, with 335 locations in 33 countries. Its UK subsidiary, Sonoco Holdings UK Limited, operates two plants: one in Chesterfield and another in Manchester, and is present in four business segments: (i) consumer packaging; (ii) paper and industrial converted products; (iii) protective solution; and (iv) display and packaging. The only type of consumer packaging produced by Sonoco in the UK is composite cans. Sonoco's worldwide turnover in 2013 was US\$4.85 billion (approximately £3.22 billion), of which £[REDACTED] million was generated in the UK, with £[REDACTED] million being generated from the supply of composite cans.
11. Weidenhammer is the holding company of the Weidenhammer Packaging Group, headquartered in Hockenheim, Germany, which manufactures and supplies consumer packaging products in 12 countries throughout Europe, Russia and North and South America. Its UK subsidiary, Weidenhammer UK Limited, operates a plant in Bradford, which produces composite cans, drums and rigid plastic containers. Weidenhammer's worldwide turnover in 2013 was approximately €250 million (approximately £196.2 million), of which £[REDACTED] was generated in the UK, with £[REDACTED] being generated from the supply of composite cans for food products.

Transaction

12. On 31 October 2014, Sonoco purchased the entire share capital of Weidenhammer for €286 million (approximately £224 million).
13. The CMA issued an interim order on 5 November 2014 in order to prevent actions which may prejudice any reference to phase 2 or impede any remedial

action taken or required by the CMA following its phase 2 investigation.¹ The CMA granted a derogation to its interim order, consenting to the integration of the Sonoco and Weidenhammer businesses outside the UK.

14. Sonoco has stated that its rationale for purchasing Weidenhammer is to give Sonoco the ability to enter the German market. It has also stressed that its UK operations are only a small part of Sonoco's business worldwide.

Jurisdiction

15. As a result of the Merger, the enterprises of Sonoco and Weidenhammer have ceased to be distinct.
16. The Parties overlap in the production and supply of composite cans for food products.
17. The CMA considers that the share of supply test in section 23 of the Act is met on the basis that the Parties' estimated combined share of supply of composite cans for food products is approximately 85–95% (see section on 'Share of Supply' below on page 22).
18. The Merger completed on 31 October 2014. The four month deadline for a decision under section 24 of the Act is 27 February 2015.
19. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
20. The CMA opened an own-initiative investigation into the Merger by sending an enquiry letter to Sonoco on 29 September 2014.² The initial period for consideration of the Merger as defined in section 34ZA(3) of the Act started on 13 November 2014 and the statutory 40 working day deadline for a decision is therefore 13 January 2015.

Counterfactual

21. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). At phase 1 the CMA will assess the merger against the most competitive counterfactual of which there is a realistic prospect. In practice, for completed mergers, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the

¹ See the [CMA's interim order](#) regarding the Merger.

² See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9–6.19 and 6.59–60.

merger against an alternative counterfactual where, based on the evidence available to it, the CMA considers that, in the absence of the merger, the prospect of the pre-merger conditions of competition continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive, as between the merging parties, than these conditions.³

The Parties' submissions

Sonoco

22. Sonoco submitted that Weidenhammer would have exited the UK market absent the Merger. Sonoco's principal reasoning for this was as follows:

- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].
- [REDACTED].

23. [REDACTED].

24. Sonoco therefore stated that Weidenhammer's exit from the UK would have been inevitable.

Weidenhammer

25. Prior to the completion of the Merger, [REDACTED].

26. Weidenhammer also submitted that it would only consider closing its plant in Bradford if it was not possible to run it profitably in the long-run.

The CMA's view

27. In order for the CMA to accept an exiting firm argument at phase 1, the parties would need, on the basis of compelling evidence, to establish that the following cumulative conditions are met:⁴

³ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 4.3.5 et seq. The *Merger Assessment Guidelines* have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#), Annex D).

⁴ [Merger Assessment Guidelines](#), paragraph 4.3.10.

- It is inevitable that the firm will exit the market.
- There is no substantially less anti-competitive purchaser for the firm or its assets.
- The result of the exit of the firm and its assets would not be a substantially less anti-competitive outcome than the merger.

Inevitable exit from the market

28. The CMA does not consider that Weidenhammer's UK business would inevitably exit the market for the following reasons:
- [REDACTED].
 - [REDACTED].
 - [REDACTED].⁵
29. As the CMA does not consider it inevitable that Weidenhammer's UK business would have exited the UK market absent the Merger, it is not necessary to consider the additional exiting firm criteria.
30. Accordingly, there is a realistic prospect that the pre-merger conditions of competition would have continued absent the Merger, and the CMA has therefore adopted the pre-merger conditions as the counterfactual against which to assess the impact of the Merger.

Background

31. A composite can is a rigid tube with closures on each end. The tube is made of paper and any other materials required to give the product the physical properties required, for example, tamper proof protection and an aluminium moisture barrier for the storage of food products.
32. Typical uses of a composite can include packaging food (eg coffee or hot chocolate), alcohol (eg cases for spirit bottles) and other products (eg insect repellent and carpet cleaner).
33. Sonoco has two plants producing composite cans in the UK, in Manchester and Chesterfield. Sonoco's Manchester plant has [REDACTED] lines producing composite cans and its Chesterfield plant has [REDACTED] lines producing composite cans. Sonoco produces some of the paper inputs for its products in the UK at

⁵ [REDACTED].

its Stainland paper mill.⁶ [90–100]% of composite cans produced by Sonoco in the UK are for packaging food.

34. Weidenhammer produces composite cans and plastic containers in the UK. It has [X] composite can production lines and [X] plastic presses in its only UK factory in Bradford. Weidenhammer produces both composite cans for food and non-food products at this Bradford plant. Although [40–50]% of composite cans produced by Weidenhammer in the UK are for non-food products, all of these composite cans are exported.

Frame of reference

35. The CMA considers that market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁷

Product scope

36. The CMA's approach to market definition is to begin with the overlapping products of the Parties in the narrowest plausible candidate product market and then to see if this can be widened on the basis of demand-side considerations. If appropriate, the CMA then considers if supply-side substitution allows several products, which are not demand-side substitutes, to be aggregated into a wider market.⁸
37. As mentioned above in paragraph 3, the Parties overlap in the production and supply of composite cans for food products in the UK. The CMA has therefore assessed whether the frame of reference should be wider than the production and supply of composite cans for food products.

⁶ Sonoco does not supply paper inputs to third parties in the UK.

⁷ *Merger Assessment Guidelines* (OFT1254/CC2), September 2010, paragraph 5.2.2. The *Merger Assessment Guidelines* were adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).

⁸ *Merger Assessment Guidelines*, paragraph 5.2.17.

Composite cans v other types of packaging

Demand-side substitution

38. The CMA has first considered whether customers of composite cans for food products would be likely to switch from composite cans to an alternative packaging format in response a small but significant and non-transitory increase in price (**SSNIP**).⁹
39. The CMA has assessed whether the relevant product frame of reference should include packaging formats other than composite cans for food products.
- *The Parties' submissions*
40. The Parties submit that the appropriate product frame of reference in this case is all consumer packaging products, including flexible packaging, paper and board packaging, rigid plastics and metal packaging. The Parties submit that glass packaging should be excluded from this frame of reference as in their experience customers do not readily switch to glass from other types of consumer packaging.
41. The Parties stated that:
- In general, customers that use composite cans as a packaging solution also use or are able to use alternative forms of packaging such as tin, rigid plastic and flexibles. Sonoco gave the following examples of switching:
 - [X] switched from tin to paper and then switched again back to tin.
 - [X] switched from a narrow drum to a cardboard carton.
 - [X] switched from a composite can to a shaped plastic jar.
 - [X] confectionary switched from a composite can to a cardboard carton.
 - [X] switched from a non-round paper package to plastic.

⁹ When applying the hypothetical monopolist test, the CMA will assess whether the hypothetical monopolist could profitably raise the price of at least one of the products in the candidate market by at least a small but significant amount (normally 5%) over a non-transitory period of time. See [Merger Assessment Guidelines](#), paragraph 5.2.10 to 5.2.11.

- [X] threatened Sonoco that it would switch part of its business to plastic.
 - [X] recently informed Sonoco that it will switch part of its confectionery business to carton.
- Some large customers hold workshops when looking for new packaging ideas, not limited to composite cans.
 - On a global basis, composite cans are dropping as a percentage of overall packaging ([X]).¹⁰ Sonoco submits that although the main trend appears to be transitioning from composite cans to rigid plastic, there is also movement from metal cans to composite cans.
 - There are a number of products that are packaged and sold in more than one form of packaging (eg coffee, tea, salt, crisps, icing sugar, cocoa powder).
 - Sonoco estimates that composite cans are approximately [X]% more expensive than a cardboard pack or flexible pouch format and submits that this substantial price differential means that switching packaging format from composite can to flexible packaging or cardboard pack is highly likely, where cost is a primary concern.
 - The cost of demand-side switching is low and often paid for by suppliers (around €20,000). Sonoco estimates that switching costs for smaller customers are less significant, as a result of lower brand visibility and a smaller customer base.
 - *Third party submissions*
42. The CMA's market investigation indicated that a significant number of customers would not consider switching from composite cans to other packaging types in response to a SSNIP. In addition, of those who stated that they would consider switching, significant barriers to switching were identified suggesting that although they may consider switching, they might not actually do so. Furthermore, whilst some customers stated that, in theory, they could switch to other types of packaging in response to a SSNIP, only one customer submitted that it had previously considered this possibility, but not in reaction to a price increase of composite cans.

¹⁰ Submission of the Parties based on the Pira report *Future of Global Packaging to 2016*.

43. The customer who assessed switching from composite cans to plastics had considered that option as part of a marketing decision (not in reaction to a SSNIP) and stated that it was conscious of the high risks to its brand involved in changing packaging format.
44. As explained in paragraphs 42 to 43, third party responses indicate that the main reasons preventing customer switching from composite cans to alternative packaging formats are:
 - branding preference;
 - physical characteristics of composite cans which make them more suitable for packaging certain food products; and
 - switching costs.
45. Third parties have also submitted pricing and tender data which suggest that customers would not switch to other packaging formats in response to a SSNIP (see below in paragraphs 57 and 58).

Branding

46. A number of customers submitted to the CMA that composite cans are important for the image of their product.
47. Customers of the Parties stated that changes in packaging format would have an impact on the image and marketing of the product because in many cases end-consumers have a preference for composite cans. In particular, some customers told the CMA that composite cans have a 'premium feel' and, as a consequence, switching away from composite cans would be difficult due to product positioning.
48. Some customers of the Parties are firms that produce and package private label products, such as supermarket own brand gravy. In other cases, some customers of the Parties produce products on licence from a brand owner (such as [X]) and package these goods in packaging specified by the brand owner. Both types of customer informed the CMA that any change of packaging would be subject to the agreement of the brand owners/retailers. In this regard, customers stated that brand owners/retailers would not likely be willing to change the type of product packaging if such change was suggested by the packaging suppliers or licensees due to the reasons outlined above in paragraph 44.
49. Furthermore, the retailers that these customers serve require their private-label products to mimic the brand leaders, which includes the packaging, and

that, therefore, retailers would not be likely to switch from composite cans to other forms of packaging in reaction to a price increase unless the leading branded products were also to switch.

50. Third parties also submitted that, even if customers offered the same product in different formats, the preferences of some consumers for composite cans would prevent customers from discontinuing this packaging format.

Physical characteristics of composite cans

51. Some customers stated that composite cans were better at preserving opened food products than flexible packaging or other packaging that cannot be resealed. One of these customers specifically mentioned the design feature of the 'plug lid' that a composite can has which enables it to store opened food in a sealed container. Two customers stated that they would not switch away from composite cans because of their customers' specific requirements for composite cans.
52. Customers also described composite cans as superior to glass because they are safer to use in a factory environment (as they are not breakable) and noted the larger surface area that can be more easily covered with labels and branding.

Switching costs

53. Some customers highlighted switching costs as one of the reasons why they would not switch from composite cans to other types of food packaging in response to a SSNIP.
54. In order to use a new type of packaging, customers need to have the industrial capacity to fill the packaging with their products. The switching costs associated with a change of packaging include investment in:
- new machinery;
 - administration, auditing, and testing costs; and
 - redesigning label artwork.
55. Customers estimated these switching costs as ranging from £200,000 to more than £1 million. Although these costs might, in some cases, be (at least partially) met by the new packaging supplier, customers stated that they would have to pay switching costs, either directly, or indirectly, as these costs would be passed through to them.

56. Customers also submitted that the length of time taken to switch to other types of food packaging would be 12 to 18 months or longer, owing to the need to install or adapt machinery, conduct product testing and completing the process to qualify as a new supplier.

Pricing and tender data

57. One customer provided the CMA with pricing data which confirmed the Parties' submission that comparable flexible plastic and carton packaging is significantly cheaper than a composite can.
58. Comments from some customers suggest that pricing is not necessarily an important factor when selecting a packaging format due to product differentiation and branding, as discussed above. This suggests that a customer's chosen packaging format is primarily determined by marketing and branding preferences, and, in conjunction with the evidence on the price differential between different packaging formats, this indicates that other packaging formats may not be within the frame of reference.
59. The submissions received from third parties also indicate that the majority of customers tender for the supply of a specific packaging format. In many circumstances, tenders are specific to composite cans and this appears to be for the branding and product differentiation reasons discussed above.

- *Internal documents and marketing materials*

60. Sonoco highlighted in an internal document the key characteristics of composite cans as including: tamper proof protection, excellent sealing and barrier properties, a longer-shelf life, user friendly closure systems, and stacking rims.¹¹
61. A Weidenhammer internal document also states that composite cans are 'easy to open, durable and resealable', 'offer excellent product and aroma protection' and 'attract attention at the point of sale'.¹²
62. Sonoco's marketing materials also emphasise that composite cans 'keep food fresh and intact'; '[prevent] delicate foods, like chips or flakes, from being crushed'; have a 'resealable lid [that] keeps products fresher, longer'; and are 'vacuum-sealed against moisture and oxygen to preserve freshness'.¹³

¹¹ See Sonoco's presentation with the title *Presentation: Weidenhammer March 3, 2014*.

¹² See Weidenhammer's brochure with the title *Packed to Protect. Styled to sell*.

¹³ See [Sonoco's marketing information](#).

63. The CMA also notes that Sonoco's marketing brochures highlight as a distinctive feature of composite cans the fact that 'the can stands out as unique and appealing on a supermarket shelf full of bags and boxes'; 'the brand logo isn't limited to a flat surface – it can wrap around 360 degrees, and it won't disappear as consumers roll down a bag'; and 'a variety of sizes in height and diameter allow your brand to have a demanding presence on the retail shelf'. The same brochure also states that 'consumers prefer the resealable composite can over bags'.¹⁴

- *The CMA's view*

64. The CMA notes that previous decisions of the European Commission and the Office of Fair Trading have concluded that there is a limited degree of demand-side substitutability between different types of packaging for food products and that there is not a single market for consumer packaging.¹⁵

65. Based on the evidence received, the CMA considers that there would be limited switching between composite cans and other packaging formats in response to a SSNIP and that a price increase by a hypothetical monopolist might be profitable.

66. The growth of flexible packaging and the use of multiple packaging formats for the same product are not necessarily indicative of customers switching from composite cans to other packaging formats:

- The Parties' submission that flexible plastic is becoming increasingly popular for food products which have generally been packaged and sold in the UK in composite cans is not supported by the limited number of switching examples provided by the Parties. The CMA has not received compelling evidence to demonstrate that flexible packaging or other forms of packaging are sufficiently close constraints to composite cans.
- While some customers only or mostly use composite cans for all the products associated with their brand, other customers use different types of packaging (including composite cans) for the same product category. Customers that already use other packaging formats for their products may be able to switch more easily from composite cans to other packaging formats than customers that only use composite cans.

¹⁴ See [Sonoco's marketing information](#).

¹⁵ See, for example, the CMA's decision regarding the *Anticipated acquisition by Graphic Packaging International Limited of Benson Box Holdings Limited* of 20 May 2014 and the decisions of the European Commission in the cases *COMP/M.7104 - Crown Holdings/Mivisa* of 14 March 2014; *COMP/M.6025 - Ardagh/Impress* of 29 November 2010; *COMP/M.5599 - Amcor/Alcan* of 14 December 2009; *COMP/M.1109 - Owens-Illinois/BTR Packaging* of 21 April 1998; *COMP/M.3397 Owens-Illinois/BSN Glasspack* of 9 June 2004 and *COMP/M.603 Crown Cork & Seal/Carnaud Metalbox* of 14 November 1995.

However, there is little evidence of customers that use multiple packaging formats switching their composite cans business to other packaging formats (see paragraph 67 below), because of consumer preferences and brand image. Furthermore, as mentioned below in paragraph 170, for [REDACTED].

- Third party submissions indicate that customers may use different packaging formats for a product, but are limited in their ability to switch away from composite cans due to consumer preferences and the strong brand attachment to composite cans.
 - Third party submissions and the Parties' internal documents indicate that, at least for some products, the characteristics of composite cans for food products make them the only, or most suitable, packaging format.
67. The Parties have submitted limited evidence of switching. Based on the information provided, in the past five years Sonoco has only lost contracts for the supply of composite cans for food products to other packaging formats with a total value of £[REDACTED]million,¹⁶ whereas its overall sales of composite cans for food products in the last five years is estimated to be around £[REDACTED] million.¹⁷ This represents approximately [0–10]% of Sonoco's sales in this period.
68. Sonoco's estimated sales of composite cans for food products have [REDACTED].
69. Although some customers may seek proposals from suppliers of different packaging formats as part of product development, the data available to the CMA shows that most existing customers go out to tender for a specific packaging format.
70. The price differences between composite cans and other packaging formats mentioned above in paragraphs 57 and 58 also confirm that these products are differentiated, otherwise it would be expected that customers would have already switched to cheaper packaging formats.
71. Finally, the CMA considers that switching costs and the time required to switch (12 to 18 months) for customers changing packaging are significant so

¹⁶ Based on a loss of contracts worth £[REDACTED] million per annum, assuming those contracts lasted for five years. This assumption likely overstates the value of contracts, given that the CMA does not know the exact duration of these contracts, and it is unlikely that these contracts ran for the full five year timeframe.

¹⁷ This estimate is based on the actual and forecasted (2014) value of sales of composite cans by Sonoco in the last five years and on the assumption that [90–100]% of the composite cans sold by Sonoco are composite cans for food products.

that even if a customer considers switching to other packaging format, a SSNIP by a hypothetical monopolist would still be profitable over this period.

Supply-side substitution

72. The boundaries of the product frame of reference are generally determined by reference to demand-side substitution alone. However, to determine whether different packaging formats should be aggregated in the same frame of reference, the CMA has also assessed whether suppliers of other packaging formats would respond to an increase in the price of composite cans by switching to the production of composite cans. In addition, it is also necessary to show that the firms in question compete to supply the same products and the competitive conditions across these products are the same. Both conditions need to hold for the CMA to consider supply-side substitution as a possibility.¹⁸
73. All the suppliers of packaging products other than composite cans that responded to the CMA's questionnaire stated they would not start producing composite cans in response to a SSNIP and that it could cost approximately £3.5 million and take around one year to start supplying composite cans for food products.
74. The CMA has not received any evidence to suggest that producers of alternative forms of packaging could also produce composite cans or that competitive conditions are the same for the different packaging products.
75. Given the competitor responses mentioned above, the CMA does not consider that alternative packaging producers have the ability and incentive to switch production quickly and that they do not appear currently to compete with composite can manufacturers to supply the same products.

Conclusion

76. Based on the evidence set out above, the CMA does not consider that the product frame of reference should be widened to include other packaging formats. However, in its competitive assessment, the CMA has taken into account any competitive constraint on suppliers of composite cans for food products from other packaging formats.

¹⁸ [Merger Assessment Guidelines](#), paragraph 5.2.17.

Composite cans for food products v composite cans for non-food products

77. The CMA has considered whether the product frame of reference should be widened to include all composite cans and not just composite cans for food products.

Third parties submissions

- *Demand-side substitution*

78. In response to the CMA's market testing, third parties submitted that composite cans for food products have different characteristics from composite cans for non-food products, including seals, moisture barriers and a tamper evident membrane. Third parties have indicated that composite cans for non-food products are not suitable for packaging food products owing to strict food safety standards (as set out below). Several of the Parties' current customers stated that they would not consider using certain composite can manufacturers due to the fact that those manufacturers do not produce composite cans for food products. The CMA has also received comments from third parties that composite cans for non-food products are more expensive than composite cans for food products, and thus switching may not occur in the event of a SSNIP.

- *Supply-side substitution*

79. The Parties submitted that composite cans for food products have to be produced in an environment that complies with hygiene regulations and that composite cans used for food products are 'over-engineered' as compared to composite cans for non-food products. Weidenhammer also stated that it would have to invest approximately £[2–3] million in a production line to produce composite cans for non-food products.¹⁹
80. Sonoco submitted that in the production of composite cans for food products there are 'strict protocols for material specifications and sign off to ensure that Sonoco cannot alter the materials without effective trials and sign off from the customer'.²⁰
81. Some competitors stated that the production of composite cans for food products requires obtaining BRC/IOP certification (ie food standards accreditation). This certification demands high levels of compliance, and the certification programme is wide ranging, including gaining management

¹⁹ See Weidenhammer's submission of 6 November 2014.

²⁰ See Sonoco's submission of 24 October 2014.

commitment, risk management, and process control. This accreditation takes around six months to obtain and might require altering internal procedures and changing the plant infrastructure to have a separate area for food.

The CMA's view

82. The CMA notes that previous decisions of the European Commission and of the CMA have distinguished different market segments within each packaging format based on its end-use, including between its use for food products and for non-food products.²¹
83. Based on the evidence set out above, the CMA considers that there is limited demand-side and/or supply-side substitutability between composite cans for food products and for non-food products.
84. On the demand side, composite cans for food and non-food products have different characteristics. Composite cans for non-food products are not suitable for packaging food products and cannot be easily be adapted.
85. The CMA notes that even if composite cans for food products could be used for non-food products, the constraint that composite cans for food products and for non-food products exercise on each other is, if any, asymmetric.
86. On the supply side, a supplier of composite cans for non-food products would likely need to incur significant investment costs to adapt its production line and obtain the necessary regulatory approvals to produce composite cans for food products.
87. Based on the Parties' submission that the margins in the production and supply of composite cans for non-food products are higher than the margins in the production and supply of composite cans for food products, the CMA considers that suppliers of composite cans for non-food products would be unlikely to switch to manufacturing composite cans for food products in response to a SSNIP. The CMA notes that there are producers of composite cans for non-food products that do not produce composite cans for food products (eg Smurfit, Multipackaging).
88. Therefore, the CMA considers that the response of customers of composite cans for food products and of the suppliers of composite cans for non-food

²¹ See, for example, the CMA's decision regarding the *Anticipated acquisition by Graphic Packaging International Limited of Benson Box Holdings Limited* of 20 May 2014 and the decisions of the European Commission in the cases *COMP/M.7104 - Crown Holdings/Mivisa* of 14 March 2014; *COMP/M.5599 - Amcor/Alcan* of 14 December 2009; and *COMP/M.6128 Blackstone/Mivisa* of 25 March 2011.

products would not prevent a price increase by a hypothetical monopolist of composite cans for food products from being profitable.

Conclusion

89. Based on the evidence set out above, the CMA considers that the product frame of reference in this case should not be widened to include composite cans for non-food products. Any competitive constraint on suppliers of composite cans for food products from suppliers of composite cans for non-food products has been taken into account in the CMA's competitive assessment.

Segmentation by customer type

90. The CMA has considered whether the supply of composite cans for food products should be further segmented by customer type.

The Parties' submission

91. The Parties submit that 'market dynamics' for large customers and small customers are significantly different and that there are customers generating revenue to the Parties above £[redacted] million (large customers) and customers generating revenue to the Parties of less than £[redacted] million (small customers), but no customers in the £[redacted] million range.
92. The Parties stated that large customers are often willing to make longer term commitments and can exercise their buyer power to obtain volume discounts or (semi) dedicated facilities at or near their production location. Meanwhile, small customers have less ability to extract concessions from composite can suppliers but have a larger number of suppliers who are able to meet their requirements.

The CMA's view

93. The CMA has considered whether the frame of reference should be segmented by customer size.
94. Competitors have informed the CMA that the Parties are the only firms that can supply large customers. Smaller competitors of composite cans for food ([redacted]) do not seem to be able to supply large customers for the reasons explained below in paragraphs 135 to 155, including capacity limitations.
95. In addition, a number of larger customers have informed the CMA that the Parties are the only suppliers with sufficient capacity to serve their needs.

96. The evidence gathered by the CMA indicates that the Parties supply all sizes of customer and both Parties have a long tail of customers that spent less than £[redacted] in 2013 ([redacted]). The CMA has also received evidence that the ability of customers to switch to suppliers other than the Parties is not necessarily determined by their size. A customer that spends less than £[redacted] million with the Parties has submitted that the Parties are the only suppliers of composite cans with the specification it requires for its products.

Conclusion

97. Based on the evidence set out above, the CMA considers that the production and supply of composite cans for food products should not be further segmented to distinguish between 'large' and 'small' customers. Nevertheless, the CMA has considered the difference in the level of the existing competitive constraints on the Parties for different customer sizes in the competitive assessment.

Conclusion on product scope

98. For the reasons set out above, the CMA has considered the impact of the Merger on the production and supply of composite cans for food products.

Geographic scope

The Parties' submission

99. The Parties submit that the appropriate geographic scope of the frame of reference is wider than the UK, in particular for the supply of composite cans to 'large customers' (see paragraphs 91 and 97 regarding the distinction between types of customers).²²
100. The Parties stated that large customers have considerable leverage over composite can suppliers, in particular in relation to the location of the supplier's production facilities, and suppliers of composite cans would follow large customers to different countries in Europe should these customers change their geographic location. The Parties gave some examples of both Parties opening manufacturing facilities or production lines dedicated to specific customers.

²² See Sonoco's submission of 10 October 2014, p4.

101. The Parties also noted that:

- around [40–50]% of Weidenhammer’s UK sales in 2013 were to customers based [outside the UK] (as set out in paragraph 102 below, [40–50]% of these were non-food cans sold to one customer);²³
- the weighted average shipping distances from Sonoco’s Chesterfield plant is [500–600]km, some of which is shipped [outside the UK];
- the average shipping distance from Weidenhammer’s Bradford plants is [600–700]km including sales of food and non-food products. Excluding non-food products, the average shipping distance is [100–200] km;²⁴ and
- average transport costs account for approximately [0–10]% of the sale price, including food and non-food products. Excluding non-food products, the average transport cost accounts for approximately [0–10]% of the sale price.

The CMA’s view

102. The CMA received the following evidence regarding the transport costs of composite cans, and the level of imports and exports of composite cans into/from the UK:

- In 2013, Sonoco only supplied [0–10]% of its UK production abroad and only [0–10]% of the composite cans supplied by Sonoco in the UK were produced outside the UK.
- All of the composite cans supplied by Weidenhammer in the UK were produced in the UK. Although [40–50]% of the composite cans produced by Weidenhammer in the UK were exported in 2013, [40–50]% of the cans produced were supplied for non-food products and exported to a single customer [✂]. [✂].
- According to Sonoco, less than 10% of all composite cans produced in the UK are exported and ‘most of the composite cans which are exported are ice cream cups, which are easily stackable for transport’.
- Based on the transport cost data provided by the Parties and comments from third parties, the cost of transporting composite cans increases with

²³ The CMA notes that this considers packaging for composite cans for non-food. However, it believes transportation costs for composite cans for non-food are likely to be a reliable proxy for transportation costs for food end-use, given the similar size and nature of the product.

²⁴ Again also considering non-food packaging.

distance and therefore exports over long distances can become expensive. Transportation costs can represent up to 10% of the sale price when exporting composite cans.

- Some customers have stated that the cost of transporting composite cans for food products is too high to allow for transporting over long distances, due to an inability to stack composite cans for food products.
103. The Parties have not provided evidence of a competitor opening a composite can facility in the UK to specifically serve a large customer in the UK. The CMA cannot infer that the geographic frame of reference in this case should be wider than the UK merely because the Parties have in the past opened manufacturing facilities and production lines dedicated in the past to large international customers outside the UK. Furthermore, it is clear from the evidence described below in paragraph 106 that customers prefer suppliers that have a local presence and a potential overseas supplier is only an alternative for some customers.
104. Third party submissions suggest that a customer (including large customers) with production facilities in the UK faces significant obstacles to purchasing composite cans for food products from overseas suppliers (see paragraph 102 above about transport costs and paragraph 105 and 106 below).
105. A customer submitted that although some overseas suppliers of composite cans have bid to supply them in the UK, their offer was not competitive due to the high transport costs.
106. Furthermore, another customer emphasised the need for ‘just in time delivery’ to accommodate a lack of storage at its sites and the need to react to volatile customer needs, which would require suppliers to be based in the UK.
107. The CMA also notes that in previous decisions, the CMA and the OFT concluded that the markets for the production and supply of carton-board and corrugated boxes have a national dimension.²⁵

Conclusion on geographic scope

108. For the reasons set out above, the CMA has considered the impact of the Merger on the production and supply of composite cans for food products on a UK-wide basis.

²⁵ See, for example, the CMA’s decision regarding the *Anticipated acquisition by Graphic Packaging International Limited of Benson Box Holdings Limited* of 20 May 2014 and OFT’s decision regarding the *Anticipated acquisition by Smurfit Kappa Group plc of the UK corrugated packaging operations of Mondi Packaging AG*.

Conclusion on frame of reference

109. For the reasons set out above, the CMA has considered the impact of the Merger on the production and supply of composite cans for food products in the UK.

Competitive assessment

Horizontal unilateral effects

110. 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 degrade quality on its own and without needing to coordinate with its rivals.²⁶ Horizontal unilateral effects are more likely when the merger parties are close competitors. The CMA has assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC as a result of horizontal unilateral effects in relation to the production and supply of composite cans for food products in the UK.

Shares of supply

111. Sonoco estimates that the Parties' combined share of supply of composite cans for food products in the UK in 2013 is approximately [30–40]%, by reference to a total market of £[~~2~~] million.

112. Based on actual sales data from competitors and information provided by third parties, which differs significantly from the figures provided by the Parties, the CMA estimates that the Parties have a combined share of approximately 85–95% for the supply of composite cans for food products in the UK in 2013.

Table 1: Market share estimates in the composite can market, 2013

<i>Company name</i>	<i>Market share</i>
Sonoco	65–75
Weidenhammer	15–25
CBT	0–10
Visican	0–10
Total	100

Source: CMA estimates, Parties' estimates and actual sales figures.

²⁶ See [Merger Assessment Guidelines](#), from paragraph 5.4.1.

113. Information provided by third parties indicates that Sonoco's estimates included firms that do not currently supply composite cans for food products in the UK (Huhtamaki, Seda, SPC Containers/A&R²⁷).
114. Customers stated that Sonoco and Weidenhammer were 'the strongest and biggest in the market' and the 'two main suppliers'. Furthermore, when asking customers for alternative suppliers of composite cans for food products, five customers were unable to name any and the only other companies named by customers were CBT and Visican,²⁸ both of which have minor sales of composite cans for food products in the UK. The CMA estimates that the total value of CBT and Visican's sales of composite cans for food in 2013 [REDACTED].
115. As is evidenced by the market shares, the Merger brings together the two largest suppliers of composite cans for food products in the UK. The only other two suppliers of composite cans have [5–15]% of the market. This very high combined market share is likely to give the Parties significant market strength in the supply of composite cans for food in the UK. The CMA has nevertheless assessed how close the parties compete in the supply of composite cans in the UK and then goes on to assess the competitive constraints the parties face from other forms of packaging.

Closeness of competition

The Parties' submissions

116. The Parties acknowledge that they compete with each other for the supply of composite cans to some extent. However, Sonoco submits that it also competes with other suppliers of composite cans, and with suppliers of alternative packaging formats, such that the Merger will not reduce competitive rivalry because all composite cans produced by the Parties can be replaced by other packaging formats.

The CMA's view

117. To assess the closeness of competition between the Parties and the extent of remaining competition from third parties post-Merger, the CMA has examined a number of pieces of evidence, including:
- the Parties' internal documents;

²⁷ [REDACTED].

²⁸ One customer also mentioned Amcor and Smurfit as alternative suppliers of composite cans, but, based on the information available to the CMA, Amcor and Smurfit do not currently produce composite cans in the UK.

- tender data provided by the Parties and third parties; and
 - third party responses.
 - *Internal documents*
118. Internal documents provided by Sonoco indicate that it regarded Weidenhammer as a close competitor. [REDACTED].^{29,30}
119. In its *UK Competitor Report 2013*, Sonoco identifies Weidenhammer, CBT and Visican as competitors that it can target to win business.³¹ [REDACTED]. The CMA notes that pre-Merger, the prospective revenue ‘swing’ for Sonoco would be greatest if it was successful winning business from Weidenhammer.
120. An internal document submitted by Sonoco entitled the *Competitive nature of the European packaging market* describes two situations in which Sonoco offered better conditions to two of its biggest customers as a result of the competitive rivalry with Weidenhammer:
- Sonoco [REDACTED] in the negotiation process of a new contract with this client, in order to retain the business that was challenged for by Weidenhammer.³²
 - Sonoco [REDACTED] to retain its SKU range with [REDACTED], as the supply of Sonoco’s 99mm composite cans to [REDACTED] were being targeted by Weidenhammer.
 - *Tender data*
121. Competition in the market for the supply of composite cans for food products is characterised by suppliers competing to supply composite cans to existing or new customers by tender.
122. The information submitted by Sonoco indicates that:
- Sonoco and Weidenhammer have (or have previously had) many customers in common ([REDACTED]);
 - Sonoco was the former supplier of three of Weidenhammer’s top ten customers ([REDACTED]);³³ and

²⁹ See Sonoco’s presentation with the title *RPC Europe Strategic Plan 2012*, page 17.

³⁰ *Ibid idem*, page 19.

³¹ See Sonoco’s presentation with the title *UK Competitor Report 2013*.

³² Sales of composite cans to [REDACTED].

³³ These customers accounted for an estimated [50–60]% of Weidenhammer’s sales in composite cans for food products in 2013.

- Weidenhammer was the only other bidder in the most recent tenders for the supply of composite cans to four of Sonoco's customers.
123. Information provided by the Parties' customers relating to tenders for composite cans for food products shows that the Parties competed against each other on nine out of ten occasions for which the CMA received bidding data.³⁴ As mentioned above in paragraph 59, existing customers usually go out to tender specifically for composite cans for food products. On eight of these nine occasions, Sonoco and Weidenhammer were the only bidders,³⁵ which indicates that the Parties are close competitors.
- *Customers' responses*
124. Customers have stated that the key factors when choosing a composite can supplier include price, quality and manufacturing capabilities. The majority of customers that responded to the CMA's questionnaire, including some of the Parties' largest customers, stated that Sonoco and Weidenhammer are the only suppliers of composite cans that can meet their requirements.
125. Some customers source only from Sonoco and Weidenhammer. These customers submitted that having both Sonoco and Weidenhammer as suppliers is important to manage supply chain risk and provides protection against failure by one of these suppliers.
126. All customers highlighted the competitive constraint that the Parties had exerted on one another when competing to win custom or in the price negotiations with existing customers.
127. Some customers gave examples of times when they were able to use the competition between the Parties to gain a better deal. They submitted that they played-off Sonoco and Weidenhammer against each other in the negotiations and that they were able to exercise a degree of negotiating strength over each of them through the threat of procuring a more substantial part of their requirements of composite cans from the other.
128. Furthermore, some customers stated that they have switched between Sonoco and Weidenhammer in the past to get better prices or better quality service.

³⁴ The CMA received bidding data customers accounting for an estimated [40–50]% of the Parties' revenue in composite cans for food products in 2013.

³⁵ In the tender for [REDACTED].

- *Conclusion on closeness of competition*

129. Based on the evidence set out above, the CMA considers that Sonoco and Weidenhammer are each other's closest competitors for the supply of composite cans for food products in the UK.
130. In many circumstances, the Parties were the only bidders competing for the supply of composite cans for food products and there is evidence that customers have benefited from the competition between the Parties through lower prices and higher quality service.

Competitive constraints from other suppliers of composite cans for food products

131. The CMA has considered the effectiveness of other composite can manufacturers as a competitive constraint on the Parties post-Merger.

The Parties' submission

132. The Parties identified a number of competitors that they considered supplied composite cans for food products in the UK but, as set out in paragraph 113, the CMA's market testing indicated that a number of those competitors did not currently supply composite cans for food products in the UK.
133. The Parties also submitted examples of some tenders in which Sonoco lost a contract to another supplier of composite cans for food products. However, as explained below in paragraph 140, none of these contracts were lost to suppliers of composite cans for food products other than those contracts lost to Weidenhammer.

Third parties

134. Third parties consistently expressed the view that the Parties are the only firms that can supply composite cans to large customers and meet the demand specifications of some small customers.
135. Some third parties submitted that competitors such as [redacted] focus on small and medium customers and do not have the capacity to compete with the Parties for their larger customers and do not normally bid for contracts with large customers.³⁶ In this regard, some customers noted that they would not split their requirements of composite cans between different suppliers, as they

³⁶ Note that when third parties use the term 'large customers' they are not using the term with the exact meaning defined by Sonoco (see paragraph 91).

benefit from volume discounts and from a relatively simple supply chain by buying from a single supplier.

136. Third parties also submitted that some competitors do not appear to be competitive on price or are unable to produce composite cans with their particular requirements. The CMA was also told that at least one customer has approached other competitor in the UK, post-Merger, but this competitor was unable to meet its requirements.
137. The competitors that responded to the CMA's market testing suggested that they were not large enough and had insufficient capacity to act as a competitive constraint on the Parties, in particular for larger customers.
138. One third party stated that a European composite cans manufacturer has bid to supply it, but this third party decided not to use this supplier. Apart from this one example, the CMA has not received evidence that composite can suppliers for food products from outside the UK are competing with the Parties.

The CMA's view

139. The CMA considers that the constraint exerted by other suppliers of composite cans for food products on the Parties is very limited.
140. As mentioned above, submissions from third parties indicate that there are only two other suppliers of composite cans for food products in the UK: CBT and Visican. The majority of customers that responded to the CMA's questionnaire do not have options other than Sonoco or Weidenhammer owing to their requirements. Therefore, post-Merger, they will have no alternative supplier of composite cans to exercise a sufficient degree of constraint.
141. The CMA notes that neither of the competitors listed in the paragraph below currently compete against the Parties for the supply of composite cans for food products.
142. Furthermore, the current suppliers of composite cans for food products do not seem to be an alternative for the majority of the Parties' customers.
 - Sonoco has not lost any of its existing contracts for composite cans for food products to other suppliers of composite cans other than Weidenhammer since 2010.
 - Since 2010, there are only two examples of Sonoco being unsuccessful in bidding against alternative composite can producers for food products,

and all these refer to competition for new products/contracts in composite cans for food products.

- In 2012, Sonoco bid against [X] for the [X]. [X] won the £10,000 contract.³⁷
- In 2011, Sonoco bid against [X] for the [X] contract, worth [X].³⁸

143. Assuming that the turnover of Sonoco in the past five years relating to composite cans for food products was £[X] million,³⁹ the potential contracts for composite cans for food products lost by Sonoco to suppliers of composite cans other than Weidenhammer account for only [0–10]% of its turnover for that period.⁴⁰
144. The CMA assessed whether other suppliers of composite cans for food products in the UK have spare capacity that could be used in the production of composite cans for food products in response to a price increase by the Parties.
145. In assessing whether the spare capacity of competitors represents a significant constraint on the merged entity, the CMA assesses:
- what capacity those firms could make available to supply the product in question (ability to compete); and
 - the commercial incentives to use that spare capacity to compete in the market for composite cans for food products in response to a SSNIP in a short period of time (incentives to compete).⁴¹
146. The CMA has considered the sufficiency of this spare capacity to constrain the Parties post-merger in paragraphs 150 to 154 below.
147. In relation to the first point above, the CMA has considered the ability of competitors of the Parties to increase production of composite cans for food end-use.

³⁷ [X]

³⁸ [X]

³⁹ This estimate is based on the actual and forecasted (2014) value of sales of composite cans by Sonoco in the last five years and on the assumption that [90–100]% of the composite cans sold by Sonoco are composite cans for food products.

⁴⁰ Assuming that the contracts ran for five years each at a total annual value of £[X].

⁴¹ See [Merger Assessment Guidelines](#), from paragraph 5.36.

Based on information submitted by the Parties and third parties, there appears to be significant spare capacity amongst producers of composite cans for food products as a percentage of their overall production.

148. The Parties appear to have significantly more spare capacity than the other suppliers of composite cans for food products. For instance, Sonoco has spare capacity to produce around [REDACTED] million composite cans [REDACTED].⁴²
149. [REDACTED] (see paragraph 135).
150. In this regard, it is important to note that [REDACTED] the Parties' customers have approached [REDACTED] them post-Merger seeking an alternative supplier but they were unable to meet their demand requirements, as mentioned above in paragraph 136.
151. The CMA also considered the possibility that those customers who prefer to multisource could source from a range of smaller composite can for food products manufacturers. Only three of the main customers of the Parties multisource from both the Parties.
152. The CMA notes that this may be possible to some extent, but given the relatively limited available capacity of the Parties' competitors compared to the spare capacity of the Parties (see paragraph 148), this is unlikely to provide a sufficient constraint on the Parties. The total volume of composite cans for food purchased by the Parties' customers that multisource varies between [1–15] million cans, which cumulatively exceeds the Parties' competitors spare capacity. Furthermore, customers who multisource from Sonoco and Weidenhammer have told the CMA that although they have a preference for multi-sourcing, this is limited to sourcing from a small number of suppliers, due to the complexity of managing large numbers of suppliers and different packaging product lines (Stock Keeping Units; SKUs).
153. The CMA has also considered the incentives of current competitors of the Parties to use capacity to produce composite cans for food end-use.
154. Both competitors currently produce composite cans for both food end use and non-food end use. Evidence from the Parties suggests margins are higher for composite cans with a non-food end use, and this may reduce these competitors' incentives to use spare capacity to produce composite cans for food end use.

⁴² To provide context, Sonoco's four largest customers in 2013 purchased the following quantities of composite cans: [REDACTED].

155. The CMA has not received any evidence to show that non-food composite can producers and former UK composite can producers exert a significant competitive constraint on the Parties. The CMA considers the likelihood of these suppliers entering the UK market for food composite cans for food in the assessment of barrier to entry below (see paragraphs 176 to 187 below).
156. In relation to the capacity of non-UK suppliers of composite cans for food products, the evidence showed only one example of a European based supplier bidding for a UK contract. This bid was unsuccessful ([REDACTED]). This overseas supplier currently is a relatively small producer of composite cans in terms of volume (its capacities for production of composite cans for food products is not known, but estimated to be small) and is therefore likely to lack the ability to use any spare capacity to compete against the Parties.
157. This evidence indicates that overseas suppliers will exert, if any, only a very limited constraint on the Parties post-Merger.

Conclusion on constraints from other suppliers of composite cans for food products

158. Based on the evidence set out above, the CMA considers that the remaining competitors in the supply of composite cans for food products, both in the UK and overseas, do not impose a sufficient constraint on the Parties.

Competitive constraints from alternative packaging formats

159. The CMA has considered whether competition from alternative packaging formats acts as a competitive constraint on the Parties. These alternative packaging formats include carton, flexible and rigid plastic and metal.

The Parties' submissions

160. The Parties submit that the Merger will not substantially reduce competitive rivalry in the market because suppliers of other packaging formats compete closely with the Parties.
161. As mentioned in paragraph 41, the Parties state that the threat of their customers switching to other packaging formats poses a significant constraint on their ability to increase prices.
162. The Parties have submitted a small number of examples of customers switching to other packaging formats (as set out in paragraph 41). The Parties, in particular, stressed the threat of [REDACTED] switching part of its business

from Sonoco to a plastics supplier and the forthcoming loss of part of its [X] business to a carton supplier.

163. They also stated that customers have in the past sought new packaging ideas from a wide panel of suppliers of different packaging formats:

- [X] contacted a variety of packaging suppliers to attend workshops and gave them the opportunity to offer a packaging idea for six of [X] brands.⁴³
- [X] also had a ‘Presentation Day’ where it sought ideas to alternatives to composite cans for [X] catering format.

The CMA’s view

164. Based on data submitted by Sonoco, the CMA estimates that Sonoco has only lost [X] of its existing contracts to other packaging formats over the past five years, with a total annual value of £[X]million. The CMA estimates the total value of these contracts over the past five years to be approximately £[X] million.⁴⁴ This represents [0–10]% of Sonoco’s total revenue for the sale of composite cans for food products in the same period.⁴⁵ This suggests limited switching from composite cans for food products to alternative packaging formats.

165. The CMA also notes that, [X].

166. The CMA is also aware that Sonoco has competed for new contracts/customers but has been unsuccessful when competing against suppliers of other packaging formats. Sonoco has bid for, but failed to win, [X] contracts for food products that were awarded to suppliers of other packaging formats during the period 2010 to 2014. These contracts ranged in annual value from [X]. The total annual value of the contracts Sonoco bid for in 2013 was £[X] million, while the sales generated by Sonoco’s composite can for food business in 2013 was £[X] million.

167. The CMA notes that the Parties bid for significant proportions of, in the main, new contracts in competition with other forms of packaging. However, the CMA does not have information on how much this contracts/customers

⁴³ [X].

⁴⁴ Based on a loss of contracts worth £[X]m per annum, assuming those contracts lasted for five years. This assumption likely overstates the value of contracts, given that the CMA does not know the exact duration of these contracts, and it is unlikely that these contracts ran for the full five year timeframe.

⁴⁵ The CMA estimates that Sonoco’s revenue generated from production and supply of composite cans for food products was £[X] million. This estimate is based on the actual and forecasted (2014) value of sales of composite cans by Sonoco in the last five years and on the assumption that [90–100]% of the composite cans sold by Sonoco are composite cans for food products.

represent relative to all the contracts that Sonoco bid for during this five year period and has not made an assessment on how competitive Sonoco's bids were. The Parties have not supplied compelling evidence as to how this constrains them in their interaction with existing customers (see paragraph 164) or in tenders or bids for new or renewal work with new or existing customers for composite cans alone.

168. Although some customers, as part of their product development process, may consider a variety of packaging formats, both in relation to new products⁴⁶ and existing products. However, owing to the marketing and branding preferences and other associated risks of switching discussed in paragraphs 44 to 56, while customers might look and test different packaging ideas for products, most do not take the risk of switching an existing product line to a different packaging format. [REDACTED].
169. As mentioned above in paragraph 59, submissions received from third parties indicate that when going out to tender for their packaging requirements, customers tend to only invite composite can suppliers to bid. This is evidenced by the small number of contracts that Sonoco has lost to other packaging formats in the last five years.
170. The CMA notes that some of the Parties' customers use multiple packaging formats for the same product. This could suggest that these customers may be more willing to switch from composite cans to other packaging formats given their experience of using alternative formats. However, this use of alternative packaging formats varies widely, [REDACTED]. Furthermore, this use of multiple packaging formats could suggest differences in branding and target markets, with specific segments of the customer base being served by composite cans which would indicate that customers may not switch volume to other packaging formats in its portfolio in response to a SSNIP.

Conclusion on the constraints from alternative packaging formats

171. Although Sonoco faces some competition from suppliers of alternative packaging formats when competing for new business, for the reasons set out above the CMA considers that other packaging formats are not a significant threat to Sonoco's existing customer contracts.
172. The CMA therefore concludes that suppliers of other packaging formats will not sufficiently constrain the Parties following the Merger.

⁴⁶ For instance, [REDACTED].

Conclusion on horizontal unilateral effects

173. As set out above, the CMA considers that the Parties are each other's closest competitors and that other suppliers of composite cans for food products will not impose a sufficient constraint on the Parties following the Merger to prevent an increase in price and/or prevent the Parties worsening other elements of their competitive offering, including in relation to quality and/or innovation.
174. The CMA also considered the competitive constraint posed on the Parties by alternative packaging formats and concluded that would not sufficiently constrain the Parties following the Merger.
175. Accordingly, the CMA believes that there is a realistic prospect of the Merger giving rise to a SLC in relation to the supply of composite cans for food products absent any countervailing factors.

Barriers to entry and expansion

176. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no substantial lessening of competition. In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁴⁷

The Parties' submissions

177. The Parties submitted that barriers to entry in the market for composite cans for food products are low and stated that the cost of a full production line varies from between £400,000 to up to £2.4 million.
178. The Parties stated that the most significant barriers to entry are:
- to meet the hygiene standards required to be certified to produce packaging for food products and the cost of complying with food hygiene standards; and
 - the overall decline and low profitability of the market, both generally and for composite cans for food end-use.

⁴⁷ See [Merger Assessment Guidelines](#), from paragraph 5.8.1.

179. Furthermore, the Parties stated that there have not been any new entrants in the composite can market in the last five years, both generally and for composite cans for food end-use.
180. However, the Parties submitted that producers of composite cans that have previously supplied composite cans for food products, such as Chesapeake and Smurfit, should not be discounted as potential entrants, as they have the know-how and financial strength to re-enter the market if a large customer were to incentivise them to do so.
181. The Parties also stated that, as some contracts can be cancelled mid-term or do not have a set duration, several contracts are open to competition 'every month'. The Parties therefore submit that long-term contracts are not a barrier to entry in the composite cans market, both generally and for food end use.

Third party submissions

182. Third parties submitted that the investment required to start operating a new plant or a production line dedicated to composite cans for food end-use is high. The recruitment of skilled technicians and training takes around six months. Moreover, the reputation of established suppliers of composite cans, such as Sonoco and Weidenhammer, was also mentioned as an important barrier to entry.
183. As mentioned above in paragraphs 73 and 74, suppliers of other packaging formats that responded to the CMA's investigation submitted that it would be very difficult, time-consuming and costly for them to start supplying composite cans for food products and that they have never considered doing so.

The CMA's view

184. The CMA notes the submissions of third parties that barriers to entry in the production and supply of composite cans for food products are high and, more specifically, notes that:
- there has been no entry in the last five years and the market for the supply of composite cans for food products is becoming more concentrated through a series of acquisitions by Sonoco and Weidenhammer;⁴⁸

⁴⁸ For example, Sonoco's acquisition of Robinsons in 2011; and its acquisition of ABPS assets associated with the production of composite cans in 2012. In 2009, Weidenhammer acquired the assets of Chesapeake associated with production of composite cans.

- a number of suppliers of composite cans for food products in the UK have exited the market in the recent years, such as Robinsons, ABPS, Smurfit and Chesapeake. Despite the Parties submission that some of these suppliers may easily re-enter the market, the CMA has not been provided with evidence supporting this submission;⁴⁹ and
- third parties submit that it would take 12 to 18 months for a new player to enter the market (see paragraph 71).

185. Furthermore, the CMA considers that entry and expansion by suppliers of composite cans for non-food products into the supply of composite cans for food products is unlikely owing to the higher margins associated with the former product, and in the light of the barriers to entry identified in paragraph 184.

186. Based on the evidence available, the CMA does not consider that entry or expansion is likely to occur on a timely basis, and also does not consider that any entry would be likely to be sufficient to constrain Sonoco post-Merger.

Conclusion on barriers to entry

187. For the reasons set out above, the CMA considers that entry into the market for the production and supply of composite cans for food products is unlikely to be timely and sufficient to mitigate the realistic prospect of a substantial lessening of competition caused by the Merger.

Countervailing buyer power

188. The CMA has assessed whether the Parties' customers may be able to use their negotiating strength to limit the ability of the merged firm to raise prices. If only some – not all – customers of the merged firm possess countervailing buyer power, the CMA considers the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.⁵⁰

The Parties' submissions

189. Sonoco mentioned [X] as an example of the exercise of buyer power by one of its main customers.

190. Sonoco has also stated that the 'open book pricing system' it uses with most of its customers – which allows customers to evaluate the cost of each

⁴⁹ The Parties acknowledge that [X] has announced that it does not intend to re-enter the supply of composite cans for food in the UK.

⁵⁰ See [Merger Assessment Guidelines](#), from paragraph 5.9.1.

component of the can – is an indication of buyer power. It said that the open book pricing system prevents Sonoco from unilaterally increasing prices during the life of a contract unless there is a corresponding increase in the price of raw materials.

191. Sonoco's reliance on some large customers, such as [REDACTED], for a large proportion of its sales and customers' ability to self-supply were also mentioned by the Parties as evidence of customers' buyer power. Sonoco has provided two examples of self-supply being an option for large customers: (i) [REDACTED]; and (ii) [REDACTED].

Third party submissions

192. Most third parties did not provide any examples of occasions when they were able to exercise buyer power, and some customers stated that there is not sufficient competition in the market to allow them to make credible threats to switch supplier.
193. One customer stated that it was able to use the threat of switching to an alternative packaging format (rigid plastics) [REDACTED].
194. The large majority of customers that responded to the CMA's questions submitted that they would not consider self-supply due to the fact that producing their own packaging would require significant investments and it is outside their core area of expertise.
195. Only one customer stated that it had threatened to switch to other packaging formats as a way of gaining an advantage in the negotiations with Sonoco.

The CMA's view

196. In order to assess the extent of any countervailing buyer power, the CMA has first considered the Parties' reliance on their customers. This assessment allows the CMA to consider whether there are any customers that the Parties are reliant on to the extent that the loss of any such customer would be so detrimental to the Parties' business that those customers could exert buyer power over their suppliers.
197. Sonoco's top five customers account for approximately [80–90]% of its revenues, while Weidenhammer's top five customers account for approximately [70–80]% of its revenues. Both Parties also supply a large number of smaller customers. The CMA considers that the Parties' customer bases are sufficiently diverse that they are not reliant on any single customer.

198. The CMA notes that, as stated in its Guidelines, ‘even where the market is characterised by customers who are larger than the suppliers, it does not necessarily follow that there will be countervailing buyer power’.⁵¹ Furthermore, the CMA states that buyer power is unlikely to protect customers when they lack alternative suppliers.⁵²
199. In one occasion, [X] from Sonoco by threatening to switch to a new packaging format from Weidenhammer (see paragraph 120). The CMA does not consider that this example supports the Parties’ submission that [X] will be able to exercise its buyer power post-Merger, because the Merger will eliminate the threat of Weidenhammer as an alternative supplier.
200. Furthermore, as explained above, it seems that most large customers cannot credibly switch to other packaging suppliers (see paragraphs 131 to 172), and do not appear to have the incentive and the ability to sponsor new entry in the market for the production and supply of composite cans for food products in response to a SSNIP.
201. As mentioned above, the Parties’ customers do not seem to consider entry by themselves (self-supply) as an alternative to purchasing composite cans from the Parties. The self-supply examples provided by the Parties do not relate to customers in the UK and seemed to have been unsuccessful:
- Although [X] began producing cans in 2012 for its operations in Europe, it now wishes to dispose of its packaging line and offered Sonoco the opportunity to purchase it in February 2014.
 - While [X] considered self-supplying composite cans for one of its products, it estimated that it would need to [X]. [X] installed [X] composite cans lines into its London facility, but in 2005 it offered to sell the machines associated with these production lines to Sonoco due to an overproduction of packaging.
202. The CMA also considered to what extent Sonoco’s open-book system could be used as a credible form of countervailing buyer power by Sonoco’s customers.
203. The CMA does not consider that open-book pricing will prevent the Parties from being able to increase prices unilaterally once these contracts have ended. In previous decisions, the CMA has considered that the effectiveness of open-book pricing systems as a form of countervailing buyer power

⁵¹ See paragraph 5.9.4 of the [Merger Assessment Guidelines](#).

⁵² [Merger Assessment Guidelines](#), paragraph 5.9.3.

depends on ‘the existence of a credible [supply] alternative rather than being a source of buyer power in their own right’.⁵³

204. Therefore, the Parties’ ability to increase prices depends on the extent to which they are constrained by rivals, and the CMA considers that after the Merger, supplier options will be limited given the loss of competition between the parties, as noted by third parties.
205. Sonoco has also argued that open-book pricing allows customers to source components from elsewhere during the life of a contract if they can find a cheaper supplier. The CMA does not have sufficient evidence of customers threatening to purchase these separate components from other suppliers.
206. The majority of customers stated that they would not consider multi-sourcing the different components of composite cans due to the high risk that the components purchased from different suppliers would not fit together.
207. Even if some of Sonoco’s customers may have some level of countervailing power, the CMA has not been provided with evidence that the countervailing buyer power of these customers may be relied upon to protect all customers given that contracts are made following tenders or bilateral negotiations.
208. Therefore, although in another occasion [X] has been able to [X] from Sonoco threatening to switch part of its business from Sonoco to a plastic supplier (see paragraph 41), the CMA does not consider that the buyer power that this customer may have would protect the other customers of the Parties.

Conclusion on countervailing buyer power

209. Based on the evidence set out above, the CMA does not consider that the buyer power of the Parties’ customers would be sufficient to mitigate a realistic prospect of an SLC.

Third party views

210. The CMA has sought views on the Merger from customers and competitors of the Parties. Third-party comments have been given due consideration by the CMA, and have been referenced in this decision where relevant.
211. All except one of the customers that responded to the CMA’s questions expressed concerns with the Merger. Most of them stated that they require

⁵³ See paragraph 9.29 of the Competition Commission’s decision regarding the *Anticipated acquisition by Telefonaktiebolaget LM Ericsson of Creative Broadcast Services Holdings (2) Limited*, of 27 March 2014.

composite cans of the type produced by Sonoco and Weidenhammer, and that it would be difficult to find an alternative supplier. Large customers, in particular, submitted that they are reliant on the Parties as the two largest suppliers of composite cans with sufficient capacity to meet their demand for composite cans.

212. The only customer that did not raise concerns regarding the Merger explained that it does not expect it to impact on its business because of the long-term relationship it has with one of the Parties.
213. Overall, customers are concerned that the Merger would significantly reduce competition for the supply of composite cans for food, and these customers submit that switching to alternative packaging formats is not, in most cases, an option. Accordingly, they expect that the price for composite cans in the UK will increase as a result of the Merger.
214. All suppliers of composite cans that responded to the CMA's questions also expressed concerns with the Merger. They submit that competition will be reduced, in particular for large customers, and that it will be difficult for customers to find alternatives for composite cans for food products.
215. Suppliers of other packaging formats submitted that the Merger will not substantially impact on their businesses. They stated that they do not compete with the Parties and that it would be very difficult, timely and costly for them to start supplying composite cans for food products. Most of them stated that they have never considered doing so.

Decision

216. Consequently, the CMA believes that it is or may be the case that the Merger has resulted, or may be expected to result, in a SLC within a market or markets in the UK.
217. The CMA therefore considers that it is under a duty to refer under section 22(1) of the Act. However, the duty to refer is not exercised pursuant to section 22(3)(b) whilst the CMA is considering whether to accept undertakings under section 73 of the Act in lieu of a reference. Pursuant to section 73A(1) of the Act, Sonoco has until 20 January 2015 to offer an undertaking to the CMA that might be accepted by the CMA under section 73(2) of the Act. If Sonoco does not offer an undertaking by this date, if Sonoco indicates before this date that it does not wish to offer an undertaking, or if pursuant to section 73A(2) of the Act the CMA decides by 27 January 2015 that there are no reasonable grounds for believing that it might accept the undertaking offered

by Sonoco, or a modified version of it, then the CMA will refer the Merger for a phase 2 investigation pursuant to sections 22(1) and 34ZA(2) of the Act.

Sheldon Mills
Senior Director, Mergers Group
Competition and Markets Authority
13 January 2015