

## **COMPLETED ACQUISITION BY SONOCO PRODUCTS COMPANY OF WEIDENHAMMER PACKAGING GROUP GMBH**

### **Statement of issues**

**25 February 2015**

#### **The reference**

1. On 27 January 2015, the Competition and Markets Authority (CMA), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Sonoco Products Company (Sonoco) of Weidenhammer Packaging Group GmbH (Weidenhammer) for further investigation and report by a group of CMA panel members (the inquiry group).
2. The CMA must decide:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. In this statement, we set out the main issues we are likely to consider in reaching our decisions, having had regard to the evidence gathered to date including evidence set out in the phase 1 decision to refer the acquisition of Weidenhammer by Sonoco for further investigation (the reference decision<sup>1</sup>). This does not preclude the consideration of any other issues which may be identified during the course of our investigation.
4. Throughout this document, where appropriate, we refer to Sonoco and Weidenhammer collectively as ‘the parties’.

---

<sup>1</sup> Reference decision.

## Background

5. Sonoco purchased the entire share capital of Weidenhammer for €286 million (approximately £224 million) on 31 October 2014.
6. Sonoco is a US corporation and manufacturer of industrial and consumer packaging products and provider of packaging services, with operations in 33 countries. Its UK subsidiary operates two plants (in Chesterfield and Manchester) producing composite cans.
7. Weidenhammer is a German company and manufactures and supplies consumer packaging products in 12 countries. Its UK subsidiary operates a plant in Bradford which produces composite cans, drums and rigid plastic containers.
8. More information on the parties can be found in paragraphs 10 and 11 of the reference decision.
9. In this investigation, we understand a composite can to be a rigid tube with closures on each end in which 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.
10. Typical uses of a composite can include packaging for food and solids for drinks (eg coffee or hot chocolate), alcohol (eg cases for spirit bottles) and other products (eg insect repellent and carpet cleaner).

## Market definition

11. Market definition is a useful analytical tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of the merger in any mechanistic way. In assessing whether a merger may give rise to an SLC, the CMA may take into account factors such as constraints outside the relevant market, segmentation within the relevant market, and other ways in which some constraints are more important than others.<sup>2</sup>
12. The parties overlap in the production and supply of composite cans.

---

<sup>2</sup> [Merger Assessment Guidelines](#) (CC2/OFT 1254), September 2010, paragraph 5.2.2.

13. As set out in paragraphs 40 and 41 of the reference decision, the parties submitted 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 (but excluding glass packaging). They also submitted that the appropriate scope of the geographic frame of reference is wider than the UK, in particular for the supply of composite cans to 'large customers' (see paragraphs 99–101 of the reference decision).
14. The CMA will investigate the extent to which different forms of packaging and customer types can be aggregated on the basis of demand-side substitution, or supply-side substitution, or both. In particular we will consider:
  - (a) the extent to which composite cans and other types of packaging may be in separate markets;
  - (b) the extent to which composite cans for food products and for non-food products may be in separate markets;
  - (c) the extent to which there may be different markets for different types of customer (for example large and small); and
  - (d) the extent to which the market for composite cans could be considered wider than the UK.

## **Assessment of the competitive effects of the merger**

### ***Counterfactual***

15. We will assess the possible effects of the merger on competition compared with the competitive conditions in the counterfactual situation (ie the competitive situation in the absence of the merger). We will therefore consider what would have been likely to have happened if the merger had not taken place, and in particular whether Weidenhammer would have exited the relevant market(s) in the absence of the acquisition and, if so, whether there would have been an alternative purchaser to Sonoco of the company or its assets. We will also consider what would have happened to Weidenhammer's sales in the event of its exit if there was not an alternative purchaser for the company.
16. In making our assessment, we will consider possible alternative scenarios and decide upon the appropriate counterfactual situation based on the facts available to us and the extent of foreseeable future developments.

## ***Theories of harm***

17. Theories of harm describe the possible ways in which an SLC could arise as a result of the merger and provide the framework for our analysis of the competitive effects of the merger. We have set out below the theories of harm which we intend to investigate. However, we may revise our theories of harm as our inquiry progresses. Also, the identification of a theory of harm does not preclude an SLC being identified on another basis following further work by us, or the receipt of additional evidence. We welcome views on all the theories of harm set out below.

### *Theory of harm: horizontal unilateral effects*

18. The concern under this theory of harm is that the removal of one party as a competitor could allow the merging parties to increase prices, lower quality, reduce the range of their services and/or reduce innovation. After the merger, it is less costly for the merging company to raise prices (or lower quality) because it will recoup the profit on recaptured sales from those customers who would have switched to the offer of the other merging company. A particular concern, which has not yet been fully investigated at this stage, is that some customers, for a variety of reasons including competitors' lack of capacity, appear to lack credible alternative suppliers to the merging parties.
19. We will investigate whether the parties are close competitors and whether the competitive constraints from existing competitors or other relevant countervailing factors (discussed in paragraphs 27 to 31) are likely to prevent or mitigate any SLC that we may find.
20. In particular, we will need to investigate the extent to which customers are able to switch away from the merging parties to outside options, including other suppliers of:
- (a) composite cans for food products;
  - (b) composite cans for non-food products; and
  - (c) alternative food packaging products (including glass, tin, plastic or other containers).
21. On the basis of the evidence currently available to us, issues which we are likely to consider include:
- (a) supply-side issues, including competitors' ability to supply different types of customers, the extent to which suppliers produce composite cans for

both food use and non-food use and flexibility to switch between these, distribution costs and the likelihood of entry, expansion and exit; and

- (b) demand-side issues, including customers' ability and willingness to use different packaging formats, consumer preferences, the use of co-packers, switching costs, imports and the role of tenders and contract negotiations.

*Possible theory of harm: vertical effects*

- 22. The concern under this theory of harm would be that as Sonoco produces certain inputs, namely paper board, for the manufacture of composite cans, it may be possible for Sonoco to foreclose other manufacturers of composite cans by refusing to supply these inputs.
- 23. However, we understand that these inputs are not sold to competitors who manufacture composite cans and that no such competitor raised any concerns regarding vertical effects in the phase 1 investigation.
- 24. We are not currently minded to investigate the possibility of the merger increasing the likelihood of vertical effects. However, should any party have reason for believing that we should investigate this possible harm, it should tell us and provide a reasoned submission.

*Possible theory of harm: coordinated effects*

- 25. Coordination can occur where potential competitors choose not to compete actively with each other, in the expectation that rivals are likely to respond in a similar way. This reduction in competitive intensity can arise where rivals have similar incentives and can observe what rivals are doing. In consequence, there may be an implicit understanding of pricing, market share, not seeking to poach each other's customers and so on, without any form of explicit contact or agreement (ie this theory of harm does not consider explicit collusive conduct).
- 26. The concern under this theory of harm would be that the merger may make coordination more likely if it does not already take place, or more effective/stable if it does take place. However, it appears to us unlikely at this stage that the conditions for coordination applied pre-merger or, to the extent that they did apply, that they would be significantly affected by the merger. We are not currently minded to investigate the possibility of the merger increasing the likelihood of coordinated effects. However, should any party have reason to believe that we should investigate this possible harm, it should tell us and provide a reasoned submission.

## Countervailing factors

27. We will consider whether there are countervailing factors which are likely to prevent or mitigate any SLC that we may find. In particular, we intend to consider the following:
28. **Entry and expansion.** We will consider how easy it is to enter and expand the production and supply of composite cans, and whether entry and/or expansion could be expected to be timely, likely and sufficient to prevent any SLC. In particular, we will investigate the extent to which firms currently producing other packaging products would be likely to enter the production of composite cans and whether large customers may sponsor new entry (or expansion) by guaranteeing volumes. To do this we will:
  - (a) assess overall trends in volumes and value of different packaging types;
  - (b) look at the history of entry, expansion and exit by the parties and by their competitors and review any future plans;
  - (c) examine the barriers to entry and expansion, including the assets required to produce composite cans products, the investments involved, the minimum efficient scale and the likely time required to add new capacity; and
  - (d) consider the likelihood of future entry/expansion, including the potential for sponsorship by large customers.
29. **Buyer power.** We will assess whether any customers of Sonoco and Weidenhammer have countervailing buyer power, and whether the buyer power of these customers would be sufficient to protect customers from any effects of an SLC. In this regard, we note that prices tend to be individually negotiated. We would also consider the likely impact of the merger on any pre-existing countervailing buyer power. In particular, we will examine the outside options that customers have including, as discussed above, the scope for large customers to sponsor entry/expansion.
30. **Efficiencies.** We will examine any arguments made in relation to efficiencies arising from the merger. In particular, we will examine whether any potential efficiencies are rivalry-enhancing and could be expected to offset any loss of competition.
31. We are not currently aware of any other countervailing factors.

## **Possible remedies and relevant customer benefits**

32. If we conclude that the merger has resulted, or may be expected to result, in an SLC in any market(s), we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
33. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits in relation to the merger and, if so, what these benefits are likely to be and which customers would benefit.

## **Responses to the issues statement**

34. Any party wishing to respond to this issues statement should do so in writing, by no later than 5pm on 11 March 2015. Please email [sonoco.weidenhammer@cma.gsi.gov.uk](mailto:sonoco.weidenhammer@cma.gsi.gov.uk) or write to:

Project Manager  
Sonoco/Weidenhammer merger inquiry  
Competition and Markets Authority  
Victoria House  
Southampton Row  
LONDON  
WC1B 4AD