

Completed acquisition by European Metal Recycling Limited of five sites and certain assets of SITA Metal Recycling Limited

ME/6240/13

The OFT's decision on reference under section 22(1) given on 7 March 2014. Full text of decision published on 25 March 2014.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. European Metal Recycling Limited (**EMR**) is a UK based company with metal recycling operations in the UK, Europe and the USA, with trading links around the world. EMR operates 75 sites in the UK, and the principle activities of EMR relate to the recycling of ferrous and non-ferrous metals.
2. SITA Metal Recycling Limited (**SITA**) was the scrap metal processing division of SITA UK Limited's operations. SITA UK Limited is a UK subsidiary of French company, Suez Environment S.A., an international waste, water and resources company. SITA UK Limited's operations provide waste, recycling and resource management services in the UK. SITA Metal Recycling Limited's total turnover in 2012 was £115.4m.

## **TRANSACTION**

3. In September 2013 EMR acquired the existing leases, waste management licences, employees and plants and machinery of five SITA sites (based in Boreham, Coventry, Lenwade, Norwich and Sheffield (together the **Sites**))

(the **Transaction**). The Transaction completed on 13 September 2013, and was made public<sup>1</sup> on 18 September 2013.

## **JURISDICTION**

4. A relevant merger situation arises where as a result of arrangements or transactions, two or more enterprises cease to be distinct and either the UK turnover test or share of supply test set out in section 23 of the Enterprise Act 2002 (the **Act**) is met. The requisite test for the OFT is that it must reach a belief that it is or may be the case that a relevant merger situation has been created (section 22(1)(a) of the Act).

### **Enterprises ceasing to be distinct**

5. EMR has argued that no enterprises have ceased to be distinct as EMR has not acquired the activities of the business of SITA. Specifically it argued:
  - No customers or ongoing contracts with suppliers were acquired by EMR as part of the Transaction.
  - No central management, in terms of commercial policy, pricing, accounts and other management functions, transferred to EMR as part of the Transaction.
  - Prior to the Transaction, SITA had already put employees at the Sites on notice of potential redundancy and had started a consultation process with the affected employees. Following completion of the Transaction EMR terminated the employment contracts of the majority of the former SITA employees.
  - The Transaction was a simple assignment of the lease. EMR also purchased some plant and machinery on a fair value basis.
  - No payment was made for goodwill.
  - The Sites had been non-operational for three months immediately prior to EMR reopening them following the acquisition.
6. The OFT understands that SITA had started the redundancy process for some of the Sites' employees. However, EMR has also stated that 23 employees transferred to it from SITA under the Transfer of Undertakings (Protection of Employment) Regulations (**TUPE**). The OFT considers the

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<sup>1</sup> 'Made public' means that the material facts could readily be ascertained by the OFT acting reasonably and diligently in accordance with its statutory functions. See generally paragraphs 3.45 and 3.46 of the OFT's Jurisdictional and Procedural Guidance.

application of TUPE to be a strong factor in finding that the business transferred constitutes an enterprise.<sup>2</sup> The OFT considers the fact that a number of SITA employees were then made redundant by EMR does not negate the permanency of the transfer.

7. The lack of customer contracts is unlikely to be a significant impediment to EMR in securing business to the sites, as EMR and third parties who responded to the OFT's market investigation have submitted to the OFT that this is in any event an industry not characterised by customer contracts, with business being primarily conducted on a spot basis. Accordingly at least a proportion of the customers previously served by SITA at the premises are likely to continue doing business with the new owner of the site.
8. In addition, the sale and purchase agreement and EMR internal board minutes indicate that EMR viewed the Transaction as an acquisition of the business as a going concern.<sup>3</sup> The sale and purchase agreement also expressly provides for the payment and transfer of goodwill and Business Rights.<sup>4</sup> The OFT is therefore not persuaded by the arguments that no goodwill was transferred.
9. The fact that a business is no longer actively trading does not in itself prevent the business acquired from being an enterprise for the purposes of the Act.<sup>5</sup> The OFT considers (i) the period of time elapsed since the business was last trading; (ii) the extent and cost of the actions that would be required in order to reactivate the business as a trading entity; (iii) the extent to which customers would regard the acquiring business as, in substance, continuing from the acquired business; and (iv) whether, despite the fact that the business is not trading, goodwill or other benefits beyond the physical assets and/or site themselves could be said to be attached to the business and part of the sale. In this case:
  - (i) The business had ceased trading for three months prior to completion of the Transaction, although employees continued to be paid, and scrap continued to be collected from various merchants until they could make other arrangements.

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<sup>2</sup> OFT Mergers - Jurisdictional and Procedural Guidance, paragraph 3.10.

<sup>3</sup> For example, the sale and purchase agreement is titled 'Agreement for the sale and purchase of the UK scrap metal business carried on by SITA metal Recycling Limited' (emphasis added)

<sup>4</sup> 'Business Rights' is defined in the sale and purchase agreement as 'the benefits of all rights, entitlements and claims (whether actual, prospective or contingent) to which the Seller is entitled in relation to any Business Assets...'

<sup>5</sup> OFT Jurisdictional and Procedural Guidance, paragraph 3.11

(ii) Three of the Sites were reactivated within two weeks of completion of the Transaction, indicating that the actions required to reactivate the business were not onerous. EMR integrated the Sites with its own central management and transferred in its own employees.

(iii) An EMR press release<sup>6</sup> states 'business as normal for all new and existing customers at the Boreham, Norwich and Lenwade locations'. EMR told the OFT that the purpose of this was to encourage customers of the SITA sites to return as customers of the now EMR-owned sites.

(iv) As explained above, the Transaction included the sale and purchase of goodwill and business rights.

10. On the basis of the above, the OFT believes that it is or may be the case that the enterprises have ceased to be distinct as result of the transaction.

#### **Share of supply in the UK**

11. The parties overlap in the collection, processing and sale of scrap metals. EMR estimates that its share of supply of ferrous and non-ferrous scrap metal in the UK, by value of sales, is [25-35] per cent and for the acquired Sites it is [0-10] per cent. The parties' combined share of supply in the UK is therefore greater than 25 per cent and the share of supply test in section 23 of the Enterprise Act 2002 is met.
12. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

#### **Timing**

13. The Transaction completed on 13 September 2013 and was made public on 18 September 2013. The OFT launched an own-initiative merger investigation by sending an enquiry letter on 17 October 2013. The statutory clock was stopped on 31 October 2013 and restarted on 20 December 2013, when a satisfactory submission was received. The statutory and administrative clocks were then stopped on 30 January 2014 and restarted on 13 February 2014. The statutory deadline for the OFT to make a decision on whether or not to refer the Transaction to the Competition Commission is 27 March 2014 and the administrative deadline is 7 March 2014.

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<sup>6</sup> <http://uk.emrgroup.com/corporate-news/78/emr-acquires-sita-metal-recycling-division.php>, 20 September 2013

## FRAME OF REFERENCE

### Background

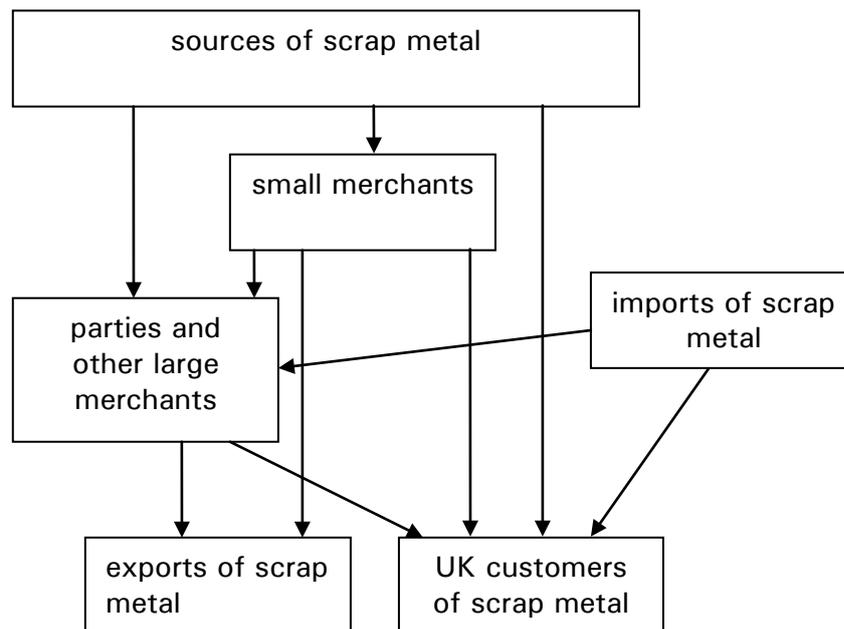
14. The parties overlap in the collection, processing and trade of ferrous and non-ferrous scrap metal 'arisings', which are sources of scrap metal. In its decision in *Sims/Dunn*,<sup>7</sup> the OFT found that the main sources of scrap metal arisings are vehicles, such as scrapped cars; surplus metals from industrial processes, such as off-cuts from car factories; the construction industry, including building demolition; industrial and agricultural equipment; electronics and electrical equipment; and packaging material, such as food and beverage cans.
15. Scrap metal can be sub-categorised as ferrous scrap metal and non-ferrous scrap metal. Ferrous scrap metal is iron-based and includes steel. Non-ferrous scrap metal includes aluminium, copper, lead and zinc. Non-ferrous scrap metal is collected in smaller volumes but is generally more valuable.
16. In *Sims/Dunn*,<sup>8</sup> the OFT found that the metals recycling industry consists of a chain of supply with a significant number of small to medium-sized businesses as well as some large, nationally active businesses, including the parties. The smaller businesses often sell their scrap metals on to larger businesses, but some also sell directly to users of scrap metals such as steel manufacturers. More than two thirds of scrap metal collected in the UK is exported, mostly by the largest businesses but also by some smaller businesses. The main structure of the industry is summarised in the diagram below:

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<sup>7</sup> OFT Decision - Completed acquisition by Sims Metal Management of Dunn Brothers ME/5037/11 (*Sims/Dunn*)

<sup>8</sup> *Sims/Dunn*, paragraph 10.

Figure 1: Structure of the metals recycling industry



17. In this case EMR submitted that it is actively engaged in all stages of the metal recycling process, from the reclamation and processing to the haulage and freight necessary to support the purchase of scrap metal and delivery of processed metal to its UK and international customer base.
18. EMR submitted that it collects directly from the sources of scrap metal arisings, such as demolition sites, factories, vehicle dismantling treatment facilities and tradesmen. It also buys scrap metal arisings and processed scrap metal from smaller scrap metal merchants. Scrap metal arisings are often collected in small quantities and are often handled in the first instance by a multitude of small scrap metal merchants, including 'one man and a van' traders. Smaller scrap metal merchants can sell scrap metal to both end users of scrap metal (such as steel plants) and larger scrap metal merchants. However, third parties who replied to the OFT's market investigation submitted that many smaller scrap metal merchants do not have the capacity to process more complicated scrap metal and will trade this scrap metal to larger merchants.
19. In Sims/Dunn<sup>9</sup> the OFT found that the processing of scrap metals after collection includes sorting and weighing, and may also include shearing (reducing the size of large pieces of metal by cutting them to set

<sup>9</sup> Sims/Dunn, paragraph 12.

parameters<sup>10</sup>) and baling/compacting (to improve ease of handling and transportation). These first stages of processing are often carried out by the smaller merchants, who then sell the scrap metal to the larger merchants, such as the parties, for further processing (although these merchants also carry out the first stages of processing themselves) or, in some cases, directly to scrap metal users such as steel manufacturers. At the scrap metal processing plants owned by the larger merchants the scrap metals undergo multiple-step separation, cleaning and shredding (turning the remaining scrap metal into fist-size lumps). These larger merchants sell their processed scrap metal to UK users and/or export it.

20. In Sims/Dunn<sup>11</sup> the OFT further found that the UK users of ferrous scrap metals are mainly steel plants and smelting foundries. Steel plants also use scrap metal arisings from their own manufacturing processes. Most scrap metals are exported, with Turkey, India and Spain among the largest buyers of ferrous scrap metals and China, Germany and India being among the largest buyers of non-ferrous scrap metals. The UK also imports small quantities of scrap metals, mostly from the Republic of Ireland.
21. In Sims/Dunn<sup>12</sup> the OFT further found that scrap metal may be bought by processors on a spot basis or, rarely, on a contract basis. EMR and the third parties who responded to the OFT's market investigation confirmed this in this case. Contract prices for ferrous metals are often linked to the prices listed in trade publications, such as the Metals Bulletin or Let's Recycle, and for non-ferrous metals to the prices on the London Metal Exchange. Other factors relevant to contract and spot prices include supply and demand factors, metal grade, quantity, international prices, and transportation costs.

### **Product scope**

22. Scrap metal may be classified according to whether it is ferrous or non-ferrous, or more granularly by metal type (for example, aluminium or copper) and grade.<sup>13</sup> The scrap metal industry may further be segmented into collection and processing on the one hand and trade (that is sale of scrap metal to users after processing) on the other.

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<sup>10</sup> These parameters are set by the US-based Institute of Scrap Recycling Industries, and are used throughout the industry as a standardised measure.

<sup>11</sup> Sims/Dunn, paragraph13.

<sup>12</sup> Sims/Dunn, paragraph14.

<sup>13</sup> The 'grade' of a metal denotes its composition.

23. In *Sims/Dunn*,<sup>14</sup> the OFT did not reach a conclusion on the exact scope of the relevant product market, but stated that the evidence pointed to there being separate markets for the supply of ferrous scrap metal of all grades and the supply of different types of non-ferrous scrap metal of all grades. The OFT further distinguished between collection and processing on the one hand and trade on the other.
24. EMR submitted that it broadly agreed with the description of the relevant frames of reference as set out in the *Sims/Dunn* decision, and on the basis of the evidence found in this case, the OFT largely maintains the *Sims/Dunn* approach in its review of this Transaction, but with extensions based on the present facts. This is discussed below.

#### Initial collection and processing of ferrous and non-ferrous scrap metal arisings

25. In both *Sims/Dunn* and this case, third parties who responded to the OFT's market investigation did not distinguish between the collection of ferrous scrap metal and the collection non-ferrous scrap metal. Almost all of the scrap metal merchants who responded to the OFT in this case said that they would handle both ferrous and non-ferrous scrap metal. These merchants also stated that they have sales channels for all types of metal and are not capacity constrained from switching activity between sectors, which can be done almost immediately.
26. Therefore, the OFT considers the collection and processing of both ferrous and non-ferrous scrap metal within the same frame of reference.

#### Shredding of ferrous scrap metal

27. The OFT did not consider shredding in *Sims/Dunn*. Third parties who responded to the OFT's market investigation in this case have reported that roughly one-third of ferrous scrap metal arisings in the UK is shredder feed, which is scrap metal that needs to be shredded into fist sized lumps. This metal is usually domestic appliances or cars that have large amounts of non-metal combined with the metal. Third parties who responded to the OFT's market investigation have informed that OFT that shredder feed requires shredding in order to be processed and recycled, and that there are no substitutes to the shredding process.

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<sup>14</sup> *Sims/Dunn*, paragraph 25.

28. The OFT considers the evidence points to the shredding of scrap metal being a separate product market although it does not need to conclude on the precise product market since there are no competition concerns even on the narrowest basis.

#### Trade

29. The OFT adopts a similar approach as it did in Sims/Dunn in this case and considers separate frames of reference for the trade of ferrous scrap metal of all grades and the trade of types of non-ferrous scrap metal of all grades. This approach was supported by EMR's submission.
30. Some smaller scrap metal merchants who handle and trade relatively low volumes of scrap metal, and who replied to the OFT's market investigation said that they often sell their scrap metal on to larger businesses within a local area, and the Transaction may have had a particular impact on those merchants who had limited options to export or sell to end-users of scrap metal. Therefore, on a cautious basis, the OFT considers the Transaction in relation to trade in ferrous and non-ferrous scrap metal between scrap metal merchants, as distinct from trade in ferrous and non-ferrous scrap metal between final end-users or customers of recycled scrap metal.

#### Conclusion on product scope

31. On the basis of the evidence it found, the OFT cannot rule out the possibility that different segments of the scrap metal collection and processing industry face different competitive conditions. The OFT has therefore, on a cautious basis, distinguished between (i) initial collection and processing of ferrous and non-ferrous scrap metal; (ii) shredding of ferrous scrap metal; (iii) trade in ferrous and non-ferrous scrap metal between merchants; (iv) trade in processed ferrous scrap metal to end-users;<sup>15</sup> and (v) trade in processed non-ferrous scrap metal to end-users, for the purposes of its competitive assessment of the Transaction. It is not necessary for the OFT to reach a conclusion on the exact scope of the relevant product market given that no competition concerns arise on any plausible product market, as set out below.

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<sup>15</sup> 'End-users' here refers to customers of recycled scrap metal and final end users, who may be located abroad.

## Geographic scope

32. Both EMR and third parties who replied to the OFT's market investigation submitted that the collection and processing of scrap metal on the one hand, and trade of scrap metal on the other, have different geographical scopes.

### Initial collection and processing of ferrous and non-ferrous scrap metal arisings

33. As the OFT noted above and in Sims/Dunn,<sup>16</sup> scrap metal arisings are, by their nature, often collected in small quantities and are often handled in the first instance by a multitude of small scrap metal merchants. In Sims/Dunn it was also noted that smaller scrap metal merchants are limited in the geographic range over which they can supply scrap metal to processors. This was likely to be because of the small volumes that they sell and their inability to transport scrap metal by rail. Typically they will supply scrap metal to processors in their local area.
34. In this case, EMR submitted that the geographic scope was regional, in broad agreement with the approach taken by the OFT in Sims/Dunn.
35. However, there were large differences in the geographical range and willingness to travel for delivery and/or collection of scrap metal reported by third parties who responded to the OFT's market investigation. Medium-sized competitors stated that they were willing to collect scrap metal from up to 80-130km, while one smaller scrap metal merchant reported that it would only travel up to 50km to collect or deliver scrap metal.
36. For larger volumes of scrap metal arisings, a number of third parties who replied to the OFT's market investigation said that large volumes of scrap metal arisings can move a long way. Furthermore some competitors and customers who replied, said they are willing to go significant distances to collect scrap metal arisings. This is particularly the case with medium- or large-sized merchants, who submitted they were willing to travel 200-300km for scrap metal arisings, because of their ability to achieve lower transport costs per unit as a result of their larger volumes.

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<sup>16</sup> Sims/Dunn, paragraph 11.

37. EMR submitted data for a small sample of six EMR sites in the East of England<sup>17</sup> showing the average catchment area for 80 per cent of purchased material is 43km,<sup>18</sup> weighted by the volume of material handled at each site. This reflects the distance that the material actually travelled to the EMR sample sites rather than the distance that suppliers of scrap metal arisings and merchants are willing to travel, which can be expected to be larger.
38. Therefore, on a cautious basis, the OFT has adopted a 50km geographic scope for the initial collection and processing of scrap metal arisings.

#### Shredding of ferrous scrap metal

39. EMR submitted evidence showing that there are a limited number of shredders in the UK, and therefore the relevant geographic markets are likely to be larger than the scope of initial collection and processing and may be regional. EMR's nearest shredder is located at East Tilbury, and the acquired SITA shredder is located at Lenwade, near Norwich. These shredders are 140km apart. Therefore, on a cautious basis, the OFT considers the geographic scope for metal shredding in this case to be a 140km radius around Lenwade.

#### Trade in ferrous and non-ferrous scrap metal between merchants

40. As set out above, there are significant differences in the distances that third parties reported that they were willing to travel to collect and deliver scrap metal. Smaller scrap metal merchants who replied to the OFT's market investigation submitted that they are limited in the geographic range over which they can supply scrap metal to processors. Typically they said they supply scrap metal to processors in their region.
41. Therefore, as with initial collection and processing of ferrous and non-ferrous scrap metal, on a cautious approach the OFT has adopted a 50km geographic scope for the trade of ferrous and non-ferrous scrap metal between merchants.

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<sup>17</sup> In this case, by 'East of England', the OFT refers to the local authority areas of Norfolk, Suffolk, Essex, Thurrock, Hertfordshire, Bedford, Luton, Milton Keynes, Cambridgeshire and Peterborough.

<sup>18</sup> This figure was strongly affected by a low reading for the largest site, which gathers a lot of material from nearby London.

## Trade in processed ferrous and non-ferrous scrap metal to end-users

42. In Sims/Dunn<sup>19</sup> the OFT found that the evidence suggested that the market for trade in scrap metal is international in scope, but did not need to conclude on the point as that transaction did not raise concerns, even when assessed on a UK-wide basis.
43. EMR submitted that prices that UK customers pay for scrap metal is highly dependent on the international price, stating that if international rates rise, UK suppliers are less likely to sell to UK customers and will raise their prices to match the international rate. Conversely, if the domestic price paid for scrap metal in the UK were to increase, relative to international prices, some of the scrap metal being exported from the UK may be sold to UK customers.
44. Third parties who responded to the OFT's market investigation submitted that importing metal for use (as opposed to using UK sourced metal) occurs only rarely. The OFT received evidence from third parties that although customers may be able to buy from international sources of scrap metal for only a 5 per cent increase in price compared to the prices of the largest UK firms (such as EMR), this is nevertheless a significant price rise in a low margin business. Third parties who responded to the OFT's market investigation stated that since the UK generates a significant surplus of most scrap metals far above UK domestic requirements, there is less need for imports to be used. Further, UK scrap metal is sold at international prices net of transport costs.
45. As with Sims/Dunn the evidence from third parties who replied to the OFT's market investigation in this case suggests that the market may be international in scope. However, on a cautious basis, the OFT has adopted a UK-wide geographic scope for the trade in processed ferrous and non-ferrous scrap metal, including within its exports from the UK.

## Conclusion on frames of reference

46. Based on the above considerations, the OFT examined the competitive effects of the Transaction under the following frames of reference: (i) collection and processing of ferrous and non-ferrous scrap metal within a 50km radius; (ii) shredding of ferrous scrap metal within a 140km radius; (iii) trade in ferrous and non-ferrous scrap metal between merchants within

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<sup>19</sup> Sims/Dunn, paragraph 35.

a 50km radius; (iv) trade in processed ferrous scrap metal to end-users, in the UK; and (v) trade in processed non-ferrous scrap metal to end-users, in the UK. However, it was not necessary for the OFT to conclude on the exact scope of the market in this case as the OFT found no competition concerns in the merger.

## COUNTERFACTUAL

47. The OFT generally adopts the prevailing conditions of competition (or the pre-merger situation in the case of completed mergers) as the counterfactual against which to assess the impact of the merger. However, the OFT will assess the merger against an alternative counterfactual where, based on the evidence available to it, it considers that the prospect of prevailing conditions continuing is not realistic, for example because the OFT believes that one of the firms would inevitably have exited from the market.<sup>20</sup>
48. The OFT considered whether, given the circumstances of the current Transaction, the target business satisfied the conditions of the exiting firm scenario. The OFT will accept such a scenario if there is compelling evidence that the target enterprise would have exited the market absent the merger, that there was no substantially less anti-competitive potential purchaser, and that the merger was less anti-competitive than the target's exit from the market would have been.

### Exiting firm scenario<sup>21</sup>

Limb 1 – Would the firm would have exited (through failure or otherwise)?

49. SITA UK Limited submitted that its metal recycling business had been loss-making for the five years that SITA UK Limited had owned it and attempts made to try to improve the position had been unsuccessful. By the time of the Transaction SITA had already reduced its metal waste recycling business from 15 sites to 7. These were the Sites forming the Transaction, and two ports at Brightlingsea and Kings Lynn.<sup>22</sup> On 1 July 2013 SITA UK Limited announced a review of the SITA business with an immediate

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<sup>20</sup> Merger Assessment Guidelines, paragraph 4.3.5.

<sup>21</sup> Merger Assessment Guidelines, paragraph 4.3.8 to 4.3.18.

<sup>22</sup> SITA UK Limited submitted that it did not dispose of the two port sites, as by 1 July 2013 it had diversified its activities there to cover SITA UK Limited's other waste activities.

shutdown of the gate trade<sup>23</sup> at the Sites, at which time the Sites' employees were put on paid leave and SITA launched a redundancy consultation process.

50. SITA UK Limited submitted internal documents showing its assessment of the options it had identified as available to it, which were to liquidate SITA, or dispose of SITA by asset sale or share sale.
51. On 20 August 2013 SITA UK Limited announced that it had completed its review of the business and, as a result, it would be closing its metal recycling business at the Sites, but that it was also discussing sale of the Sites with EMR. Sale of the Sites completed on 13 September, and three of the Sites were then reopened by EMR on 30 September, with the remaining two to be opened subsequently.
52. The OFT therefore considers that the evidence would appear to support the conclusion that limb 1 may be met and that absent the merger, SITA UK Limited would have exited the metal recycling business. However, as limb 2 is not met in this case the OFT does not consider it necessary to conclude on limb 1.

Limb 2 – Would there have been an alternative purchaser for the firm or its assets to the acquirer under consideration?

53. SITA UK Limited has submitted that it did not specifically invite bids for its business. Despite this, as news of the closure of the Sites spread through the industry, SITA UK Limited began to receive a number of bids for the Sites. Following initial expressions of interest from a number of parties, SITA UK Limited requested all bidders submit their final offers by 24 July 2013 with a view to completing by 1 August 2013. Apart from EMR, no party submitted a bid for all of the Sites; however a number of parties submitted bids for one or more of the SITA sites. As a result, the OFT cannot be confident that there was no substantially less anti-competitive potential purchaser<sup>24</sup> It therefore does not conclude that there is no realistic prospect of a substantially less anti-competitive alternative to the merger under consideration.
54. As the OFT has found that limb 2 is not met in the present case, there is no need for it to consider limb 3.

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<sup>23</sup> 'Gate trade' refers to ad hoc trade at the site.

<sup>24</sup> Merger Assessment Guidelines, paragraph 4.3.10.

55. The OFT therefore considers the appropriate counterfactual to be the pre-merger situation, where the target business continued to operate in competition with EMR, albeit potentially under different ownership.

## **HORIZONTAL ISSUES**

### **Unilateral effects in the collection and processing of ferrous and non-ferrous scrap metal within a 50km radius**

56. The OFT considered whether the Transaction may lead to EMR being able to pay lower prices for scrap metal to suppliers of scrap metal arisings.
57. EMR submitted data provided by the Environment Agency in 2010, which showed that there are at least 20 licensed metal recycling sites<sup>25</sup> within 50km of each of the Sites. This was corroborated by replies from third parties to the OFT's market investigation.
58. As noted above, the 50km geographic scope used in assessing this merger is a relatively cautious approach, and mainly applies to collection of small quantities of scrap metal arisings. For larger volumes of scrap metal arisings, replies from third parties to the OFT's market investigation indicate that scrap metal arisings can travel long distances, and that some competitors and customers are willing to go significant distances, typically up to 200-300km, to collect scrap metal arisings.
59. This evidence does not raise prima facie competition concerns about the Transaction. Replies from third parties to the OFT's market investigation suggest that suppliers of scrap metal arisings have many options, including both smaller and larger scrap metal merchants, and even end-users of processed scrap metal in the case of large sources of scrap metal arisings.
60. On the basis of the evidence it found, the OFT therefore considers that the Transaction will not give rise to competition concerns in the collection and processing of ferrous and non-ferrous scrap metal within a 50km radius of any of the acquired SITA sites.

### **Unilateral effects in the shredding of ferrous scrap metal within a 140km radius**

61. The OFT considered whether the Transaction would enable EMR to pay lower prices for shredder feed to smaller scrap metal merchants, in response to concerns raised by several third-party competitors. EMR

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<sup>25</sup> EMR did not provide data on which of the licensed sites are currently active.

submitted that around a third of all ferrous scrap metal needs to go through this process.

62. Two competitors raised concerns with respect to the parties' metal shredders in the East of England, submitting that the Transaction will affect the prices for which smaller scrap metal merchants can sell shredder feed.
63. The parties' shredders are at Lenwade and East Tilbury. These are 140km apart. On a cautious basis the OFT therefore considered the competitive conditions for metal shredding looking at all operators within a 140km radius around Lenwade.
64. EMR submitted evidence from the British Metals Recycling Association<sup>26</sup> on the number of shredders within 140km of SITA's shredder at Lenwade and their respective volumes. The evidence showed there are eight shredders in the 140km radius and that the parties combined share of shredder capacity in this area is [35-45] per cent post-transaction, of which the Sites provide an increment of [5-15] per cent. The OFT received submissions from two other third party competitors stating that although they did not have shredders in the area, they were active (or willing to be active) in collecting material for shredding and transporting it to shredders elsewhere in the country. On this basis the OFT considers that the parties' shares may be lower than [35-45] per cent in this area.
65. The OFT also notes that the parties' shredders are unlikely to be each others' closest competitors, based on geographical distance. For example, Sackers Recycling has a shredder in Ipswich, which is 70km from Lenwade and is positioned in between Lenwade and East Tilbury.
66. Finally, the OFT further notes that there is excess shredder capacity across the UK. EMR submitted data from BMRA to show that whilst there is around 3.4mT ferrous scrap metal shredder feed in the UK, there is shredder capacity for 7.4mT in the UK.
67. On the basis of the evidence above, the OFT considers that the Transaction will not give rise to a realistic prospect of a substantial lessening of competition in the shredding of ferrous scrap metal within a 140km radius.

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<sup>26</sup> The British Metals Recycling Association (**BMRA**) is the UK's trade association for metal recycling. It has 340 members, including EMR and several of the third party competitors that the OFT contacted.

## **Unilateral effects in the trade in ferrous and non-ferrous scrap metal between merchants within a 50km radius**

68. The OFT considered whether the Transaction would enable EMR to pay lower prices for scrap metal to smaller scrap metal merchants in relation to which several third-party competitors who replied to the OFT's market investigation raised concerns.
69. The evidence provided by third parties who replied to the OFT's market investigation suggested that smaller scrap metal merchants often sell on their scrap metal to larger merchants, either for additional processing, or for bulking up so that it can be cost-effectively transported to end-customers. The OFT therefore examined whether the Transaction may have a materially different impact on the competitive conditions facing smaller scrap metal merchants needing to sell large volumes of metal at higher prices compared with those competitive conditions facing suppliers of scrap metal arisings more generally.
70. One small merchant raised concerns that the parties' collection yards in the East of England competed closely in offering merchant rates and that the merger would therefore result in lower prices paid to smaller merchants. However, the majority of small merchants who replied to the OFT's market investigation stated that they were willing to travel significantly further than 50km to deliver scrap metal, meaning they have a number of options of who to sell scrap metal to.
71. In addition, EMR identified a number of effective competitors in the 50km radius around each of the parties' sites, that is larger merchants active in buying scrap metal from smaller merchants. The OFT confirmed their presence.
72. For SITA's Lenwade site, which is the most isolated site, the OFT was able to identify at least three other competitors within a 50km radius.<sup>27</sup>
73. In addition, a number of competitors outside the narrow 50km radius around Lenwade submitted that they were willing to travel longer distances to collect scrap metal. The OFT has been able to corroborate with third parties the presence of at least five other merchants (in addition to the three within the 50km radius) who are active in the area around the

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<sup>27</sup> These are Mellor Metals in Great Ellingham (23km from Lenwade), Nationwide Metal Recycling in Eye (45km from Lenwade), and Glazewing in West Dereham (47km from Lenwade).

Lenwade site.<sup>28</sup> EMR submitted that there are a dozen other merchants although the OFT has not been able to confirm this.

74. With regards to SITA's site in Ibstock Road, Coventry, maps provided by EMR show a number of the parties' competitors<sup>29</sup> have sites in this region, particularly in Birmingham (around 30km away).
75. Similarly, for SITA's site in Halfway, Sheffield, maps provided by EMR show a number of the parties' competitors<sup>30</sup> have sites in this region.
76. The OFT also considered the parties' regional share of purchases of scrap metal arisings in the East of England. The OFT has not considered the parties' shares in the West Midlands and South Yorkshire, on the basis that there are a significant number of competitors in those regions near the acquired SITA sites in Coventry and Sheffield.
77. EMR was unable to provide specific statistics for local or regional shares of scrap metal arisings. However, EMR did submit to the OFT an estimate of scrap metal arisings in the East of England, based on average scrap metal arisings per person in the UK multiplied by the population of this region. EMR further provided the total volumes of material handled at its sites in the East of England<sup>31</sup> and estimates of the proportion of the volume which originates from within that region, based on a postcode search of the addresses of the suppliers of scrap metal arisings. The estimates take the combined purchases of scrap metal by SITA's sites located in the East of England<sup>32</sup> and EMR's estimates of its own regional purchases as a percentage of these estimated scrap metal arisings in East of England. The parties had a combined share of around [25-35] per cent for ferrous scrap metal arisings (of which the Sites provide an increment of [5-15] per cent) in the East of England, and a combined share of [20-30] per cent for

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<sup>28</sup> These are [names of five merchants and their distances from Lenwade].

<sup>29</sup> At least two of whom are national competitors: Sims in Nechells, Birmingham, which is 26km away from Coventry; and Metal & Waste in Hockley, Birmingham, which is 31km away from Coventry.

<sup>30</sup> At least two of whom are national competitors: Sims in Aston, Sheffield, which is 6km away from Halfway; and Van Dalen on Grange Mill Lane, Sheffield, which is 13km away from Halfway.

<sup>31</sup> EMR's sites in the East of England are: Costessy, Great Yarmouth, Newmarket, Bedford, Biggleswade, Tilbury Dock and East Tilbury.

<sup>32</sup> SITA's sites in the East of England are: Boreham, Lenwade and Norwich City.

non-ferrous scrap metal arisings (of which the Sites provide an increment of [10-20] per cent) in the East of England.<sup>33</sup>

78. However, given the uncertainty over these estimates from EMR, the OFT has put more weight on the views of merchant supplying the parties in the local areas and the presence of a number of alternatives.
79. On the basis of the evidence above, the OFT considers that the Transaction does not lead to a realistic prospect of a substantial lessening of competition in the trade of ferrous and non-ferrous scrap metal between merchants in any local market.

#### **Unilateral effects in the trade of processed scrap metal to end-users, in the UK**

80. The OFT considered whether the Transaction could enable EMR to raise prices to end-customers or users of ferrous and non-ferrous scrap metal.

#### **Trade in processed ferrous scrap metal to end-users, in the UK**

81. Based on the available information provided by EMR and collected by the OFT, the OFT estimates that the parties' combined share of sales of ferrous scrap metal (including overseas exports) by volume is [30-40] per cent post transaction (of which the Sites provide an increment of [0-10] per cent).
82. The parties' combined share of trade in processed ferrous scrap metal to end-users is at a level that would not, in and of itself, indicate cause for concern over unilateral effects, on the basis that the OFT has defined the geographical scope of the frame of reference narrowly.
83. The OFT notes that EMR exports a greater share of its processed ferrous scrap metal than the industry average.<sup>34</sup> Third parties who replied to the OFT's market investigation have also informed the OFT that EMR tends to charge higher prices for its metal, relative to other domestic scrap metal merchants who do not have many export options,<sup>35</sup> and a number of UK customers stated that they prefer to buy from other suppliers.

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<sup>33</sup> These figures were not adjusted to account for any relative difference in the level of commercial or construction arisings in the East of England compared to other regions as no data was available.

<sup>34</sup> According to data provided by EMR, it exported [ ] per cent of its ferrous scrap metal in the period from August 2012 to July 2013. According to data from UK Steel and ISSB, the UK exported around 76 per cent of ferrous metal arisings in 2012.

<sup>35</sup> Third party evidence showed that smaller merchants may not have the appetite or capability to export directly to overseas customers.

84. A number of third parties who replied to the OFT's market investigation stated that large scrap metal merchants (which includes EMR) are able to charge higher prices because they have more export options, have more flexibility in providing larger volumes of material at short notice, and generally provide a higher quality and reliable service. Further, a number of other ferrous scrap metal customers who replied to the OFT's market investigation stated that in any event nothing prevents them from fulfilling their requirements for scrap metal without buying from EMR.
85. Based on the above, the OFT does not believe that the Transaction gives rise to competition concerns on the basis of unilateral effects in the trade in processed ferrous scrap metal to end-users, in the UK.

#### Trade in processed non-ferrous scrap metal to end-users, in the UK

86. Based on evidence submitted by EMR, the OFT estimates that the parties' combined share of sales of processed non-ferrous scrap metal (including exports), by volume, is [20-30] per cent, with EMR having [20-30] per cent and the Sites having [0-10] per cent. This is a level that would not, in and of itself, indicate cause for concern over unilateral effects.
87. EMR submitted that it exported [ ] per cent of its processed non-ferrous scrap metal in the period from August 2012 to July 2013, which EMR submits, analogous to its trade in processed ferrous scrap metal, is also likely to be a greater proportion than the industry average. Third parties who replied to the OFT's market investigation have also said that EMR tends to charge relatively high prices for its metal. However, no concerns were raised by third parties on the impact of the Transaction on trade in processed non-ferrous scrap metal to end-users.
88. Some third parties who responded to the OFT's market investigation stated that due to non-ferrous scrap metals being more valuable than ferrous scrap metals it was cheaper to transport them longer distances or to export them without the specialised bulk export facilities of, for example, EMR, Sims, and S Norton. They suggested it was easier to sell on these metals without relying on EMR. However, other merchants said that the risks involved in buying non-ferrous scrap metals was higher as the margin could be lost on movements in international prices. Thus they were more willing to store and bulk up ferrous scrap metals for export or on-sale than non-ferrous scrap metals.

89. Based on the evidence presented above, the OFT does not believe that the Transaction gives rise to competition concerns on the basis of unilateral effects in the trade in processed non-ferrous scrap metal to end-users, in the UK.

## **BARRIERS TO ENTRY AND EXPANSION**

90. EMR submitted that barriers to entry are relatively low, particularly at the simplest level of collection and delivery of scrap metal arisings. For small scrap metal merchants, who typically collect from door to door with no premises of their own, a simple collecting licence and suitable vehicle is all that is required. Smaller yards operate at relatively low tonnages, with an exemption to environmental permit requirements. Many yards handle greater tonnages with a simple standardised environmental permit, and finally, larger and more complex sites require a bespoke environmental permit.
91. Although entry barriers at the collection or simple processing aspect of the market may be low, the OFT found that there appears to be higher barriers of entry for buying from other merchants or for the shredding of metal (in terms of market knowledge and capital).
92. EMR further submitted that there have been new entrants in recent years, and also expansion from existing operators either by increasing the number of sites they operate at, or through investment in plants to broaden the range of activities they can undertake.
93. Third parties who responded to the OFT's market investigation had mixed views on barriers to entry. Two competitors submitted that there are low barriers to entry, stating that essentially anyone can collect scrap metal and, provided storage is done on a sealed and drained surface, obtaining a permit to operate is relatively simple. Consequently, it was submitted, market entry and exit tracks the movement in commodity metal prices. One third party competitor stated that there are higher barriers to operating at a larger scale, with capital costs for processing and access to export facilities. One small competitor stated that the main barrier to entry is regulatory requirements, and that there have been very few entrants as a result of recent regulatory changes.

94. However, as the OFT has not found competition concerns, it does not need to conclude on barriers to entry and expansion in this case.

### **THIRD PARTY VIEWS**

95. Third party views have been discussed above where relevant. Several of the parties' customers and competitors raised concerns about the merger, but there were also many customers and competitors that did not believe the merger would have a significant impact on competition.

### **ASSESSMENT**

96. The merged parties overlap in the collection, processing and trade of ferrous and non-ferrous scrap metal. The OFT reviewed the Transaction under the following frames of reference: (i) collection of ferrous and non-ferrous scrap metal within a 50km radius; (ii) shredding of ferrous scrap metal within a 140km radius; (iii) trade in ferrous and non-ferrous scrap metal between merchants within a 50km radius; (iv) trade in processed ferrous scrap metal to end-users, in the UK; and (v) trade in processed non-ferrous scrap metal to end-users, in the UK.
97. Based on the evidence available to the OFT, the merged firm continues to face competition from several competitors in each local area in the collection and processing of ferrous and non-ferrous scrap metal within a 50km radius.
98. The OFT's analysis of regional shredding in the East of England showed there to be eight shredders within 140km of the Lenwade site. This, coupled with the existing excess capacity in the UK, has led the OFT to conclude there is insufficient evidence for competition concerns to arise in the supply of shredding of ferrous scrap metal within a 140km radius.
99. In the trade of ferrous scrap metal between merchants within a 50km radius and in the trade of non-ferrous scrap metal between merchants within a 50km radius, the evidence indicates that there are a number of competitors with whom merchants can trade. Further, the majority of merchants who commented on the Transaction stated that they would be willing to travel further, sometimes significantly, than the 50km radius adopted by the OFT on a cautious basis. The OFT therefore considers that, on balance, the Transaction does not give rise to competition concerns in this area.

100. The OFT also notes that the merged firm's shares in the trade of processed ferrous scrap metal to end-users and in the trade of processed non-ferrous scrap metals to end-users are relatively low, and that the increment resulting from the merger is small. Based on the evidence available to the OFT, the merged firm continues to face competition from several competitors.

101. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

102. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.