

Completed acquisition by Egbert Taylor Group Limited of Sellers Containers Limited

ME/6170/13

The OFT's decision on reference under section 22(1) given on 7 November 2013. Full text of decision published 26 November 2013.

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. **Egbert Taylor Group Limited** is the parent company of Egbert Taylor Management Limited, the acquiring entity, and Egbert H Taylor & Co Limited, the main trading company, collectively **Taylors**. Taylors manufacture and sell waste containers for commercial and municipal waste collectors, ranging in size from 500 litres up to 1,280 litres. Taylors also offer smaller containers and larger specialist underground containers [].
2. **Sellers Containers Limited (SCL)** was incorporated on 1 February 2013 having purchased some of the assets of Sellers Engineering Limited (SEL), a manufacturer of waste containers that entered administration in January 2013. SCL manufactured a range of waste containers ranging in size from 500 litres to 30,000 litres. Its turnover in its five months of operation prior to the acquisition on 1 July 2013 amounted to [].
3. Taylors and Sellers together are referred to below as the 'Parties'.

TRANSACTION

4. The transaction completed on 1 July 2013. The merger Parties chose not to notify the merger to the OFT, and the OFT examined this merger on its own-initiative. Initial Undertakings pursuant to section 71 of the Enterprise

Act 2002 (the Act) were provided by Taylors. The statutory deadline, as extended by Section 25(2), is 9 November 2013.

JURISDICTION

5. As a result of this transaction Taylor and SCL have ceased to be distinct. The Parties overlap in the supply of new and refurbished waste containers of 500 to 1,280 litre capacities, with a combined share of supply of around [30-40] per cent and an increment of around [0-10] per cent. Therefore the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

BACKGROUND

6. SCL commenced trading on 1 February 2013, having purchased assets from SEL, a manufacturer of waste containers that had entered administration. SCL was incorporated by a director and a shareholder of SEL. []. Taylors submitted that at the time of the take-over of SCL, in relation to the manufacture of four wheel steel containers, it acquired a small number of assets, including a steel press, some light manufacturing equipment, limited stock and orders, limited customer relationships and a number of manufacturing employees.

FRAME OF REFERENCE

7. The Parties overlapped in the manufacture and sale of waste containers for commercial and municipal waste collectors, principally in relation to steel waste containers of 500 to 1,280 litres capacity.
8. Taylors told us that its customers were typically commercial and municipal waste collectors, ranging from large scale national contractors (some of whom are part of large international environmental conglomerates) to local authorities, councils and small private waste collectors. These waste collection organisations tend to purchase and own the required waste containers in order to provide the waste collection services to end users. Alternatively, end users may own the waste containers and sub-contract the waste collection activities to waste management companies.
9. Customers typically purchase waste containers in one of four ways:

- a) Through tenders, usually large contracts with local authorities, typically advertised in the Official Journal of the European Union, when they exceed a certain value.
- b) Through a framework agreement run by third parties (for example the Yorkshire Purchasing Organisation) for local authorities. These are intended to generate combined buyer power for local authorities, with the third party managing the framework, screening potential suppliers and agreeing prices prior to their being listed in the framework catalogues. Taylor submitted that 90 per cent of purchases by local authorities are now derived through these purchasing frameworks.
- c) Large customers may []. Taylors submitted that [], during which [].
- d) Customers may also purchase on an ad-hoc basis, requesting spot pricing dependent on their specifications.

10. The Parties provided a breakdown of the Parties' sales by agreement type at table 1 below. SCL is not listed on any framework purchasing agreement, meaning that the Parties do not overlap in sales to Local Authorities through framework agreements.

Table 1: Parties revenues by agreement type

	Taylor sales FY ending 30 June 2013 (%)	SCL sales (annualised) ¹ FY ending 30 June 2013 (%)
Tender purchases	[10-20]	[20-30]
Framework purchase	[40-50]	[0-10]
Exclusive supply arrangements ²	[0-10]	[0-10]
Spot purchases	[30-40]	[70-80]

Source: Parties data

11. The Parties submitted that the typical decision making process for their customers included considerations of:

¹ See paragraph 2 above, SCL's five months of trading until 30 June 2013 has been annualised.

² Taylors submitted that []. [].

- a) The space available for the containers, the accessibility of this space and the required manoeuvrability. Containers (i) between 80 and 340 Litres tend to be on two wheels, (ii) those between 500 and 1,280 Litres tend to be on 4 wheels; and (iii) those above this size tend to be static and not manoeuvrable.
 - b) Volume and frequency of lifts are important; since some waste will lend itself to certain container types (for example four wheel recycling containers tend to be made of plastic). Larger containers allow less frequent collection, the latter being a significant part of overall waste collection costs.
 - c) Synergies in collection are important, meaning that aligning collection schedules across geographies can result in efficiencies. Customers using similar containers across geographies can use the same trucks to collect waste. Taylors submitted that containers between 100 and 1,280 litres in capacity tend to use the same vehicles for collection.
12. Customers may also choose to refurbish existing steel containers. Taylor submitted that [].
13. Taylors submitted that the relevant frame of reference was the supply of all containers for the collection of municipal and commercial waste and recycling to the European market. Waste containers in this frame of reference range from small 30 litre kerb-side boxes to 30,000 litre large static containers, since customers, in their purchasing decision, principally trade-off frequency of collection against manoeuvrability and available storage space.
14. Taylors submitted that the narrowest reasonable market, in relation to products in which the Parties' offerings mainly overlap, is in the supply of 500 to 1,280 litre waste containers in the UK. However, Taylors argued that this segmentation was too narrow to be a relevant market for the purposes of the OFT assessment since:
- a) Containers were substitutable both from higher and lower capacities. For example one 720 litre container could be replaced by two 360 litre containers. Furthermore a container of a certain size could be replaced by another slightly smaller or larger, subject to the implications for collection frequency and space requirements.

- b) Waste containers are transportable over long distances and Taylors and SCL faced competition from suppliers located outside the UK. Taylors cited as evidence the fact that a significant proportion of its own revenues were from sales to customers in other countries, including some in Africa and South-East Asia.
15. The purpose of market definition is to provide a framework, the relevant market, for the OFT's analysis of the competitive effects of the merger. The OFT uses the 'hypothetical monopolist test' as a tool to check that the relevant market is not defined too narrowly.³
16. The OFT may sometimes define relevant markets for separate customer groups, for example because competition for customers differs significantly between different customer groups.⁴ In this case, the OFT considered whether segmentation by purchase type (spot purchase, framework agreement, exclusive supply or tender purchase) would be appropriate. However, since customer requirements are not substantially differentiated and the suppliers can and do operate across all the various channels, we concluded that this would not be appropriate.

Product Scope

17. Taylors offers eight different container sizes (500, 660, 700, 770, 820, 1,100 and 1,280 litres) in the overlap product. Taylors also offers smaller containers (five to 10 litres) and larger specialist underground storage containers (3,000 litres) []. These were mainly sold to UK customers, but the company also has annual sales of circa £[] to overseas customers.
18. SCL manufactured and sold waste containment products from 500 to 30,000 litres. It offered four products in the overlap segment (660, 770, 1,000 and 1,100 litres), and also manufactured and sold large static containers over 1,280 litres capacity, typically starting at 3,000 litres. These were principally sold to customers in the UK.
19. The narrowest product market, in which the Parties overlap, is the supply of four wheel steel containers, each of 660, 770, 1,000 and 1,100 litres

³ Joint OFT/CC Merger Assessment Guidelines (MAGs), paragraph 5.2.8.

⁴ Joint OFT/CC Merger Assessment Guidelines (MAGs), paragraph 5.2.28.

capacity containers. In the sections which follow, we consider: (i) whether the relevant product market is wider and includes plastic containers, and (ii) whether containers of different sizes are substitutable, both within the 500 to 1,280 litre capacity range and between this range and containers that are larger and smaller in capacity.

Steel vs plastic containers

20. Taylors submitted that the relevant product market comprised both steel and plastic four wheel waste containers.
21. Third party responses on substitutability between steel and plastic containers were mixed. Several third parties indicated that it may be appropriate to differentiate between steel and plastic in relation to four wheel waste containers. One customer noted that a customers' primary considerations were frequency of collections and the type of waste being collected, which impacts on whether plastic or steel bins are required.⁵ Therefore, heavier waste tended to be collected in steel containers and therefore general waste was collected using steel containers, while recycling typically used plastic containers. Another customer noted that plastic containers were less durable and not susceptible to refurbishment.⁶ A competitor noted that there were substantial price differences between steel and plastic containers (steel container prices being between 50 per cent and 100 per cent higher than plastic containers).⁷
22. Two customers however suggested that following a SSNIP⁸ they would switch from steel to plastic containers and that they would be looking to increase the extent to which they used plastic rather than steel waste containers in the future.⁹
23. Without concluding on the precise product scope in relation to the distinction between steel and plastic containers, the OFT has, on a cautious basis, considered the effects of the merger in relation to the supply of four wheel steel containers. Where appropriate, we have considered in the competitive assessment section below, the extent to

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⁸ SSNIP – a small but significant and non-transitory increase in price. MAGS Section 5.2.11

⁹ [].

which the supply of four wheel plastic containers is a constraint on the supply of four wheel steel containers.

Steel containers of different sizes

24. The main overlap between the Parties is in the supply of steel waste containers between 500 and 1,280 litres capacity. We therefore consider below whether the relevant product market comprises all containers between 500 and 1,280 litres or whether each size constitutes a separate market.

25. Taylors submitted that the different container sizes, both in relation to the overlap products and containers which are smaller or larger, were substitutable from a customer's perspective. It said that containers in the size range of 500 to 1,280 litre capacity tended to be used in multiples on any one site and could be replaced with larger containers. Furthermore, it suggested, containers in this range could be replaced one-for-one by smaller or larger containers, subject to alterations to the frequency of collections and space availability. However, Taylors also told us that the customer decision-making process typically began with considerations of the appropriate size of containment option. Furthermore, this was also linked to considerations of waste collection system that is appropriate for their needs. Frequency of collection and standardising containment options across a wide geography, were important considerations, since significant efficiencies could be achieved by targeting these aspects.

26. Third parties were generally of the view that different sizes of containers were not substitutable from a customer's perspective. Whilst, customers do trade-off considerations of frequency of collections (since collections are a much larger part of the overall collection cost than the waste containers) against those of space and manoeuvrability of containers, only one¹⁰ suggested that substitution between different container sizes was possible. However this third party also noted that this would be subject to the vehicle and collection route specifications of their customers. Another third party¹¹ noted that minimising container footprint was a priority and switching to larger containers could be a contentious issue for residents, particularly where these are located on the street. Therefore on the basis of

¹⁰ []

¹¹ []

demand-side considerations, different container sizes may not be substitutable.

27. The boundaries of the relevant product market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the OFT may aggregate several narrow relevant markets into one broader one, on the basis of considerations about the response of suppliers to changes in price. This is in situations where firms have the ability and incentive to switch to producing the products which are not demand-side substitutes, and competitive conditions are the same across the products.¹²
28. An example of where the OFT may aggregate demand-side product markets is in markets where firms bid on the basis of the service they can offer to supply customers with bespoke products. Aggregating a range of contracts where the same set of firms would have been credible bidders can provide more useful information about the competitive constraints on each firm than is available from focusing on just one bespoke product.¹³
29. Competitors of the Parties all provide a range of containers of between 500 and 1,280 litres capacity. Customers confirmed that in relation to orders for containers in the 500 to 1,280 size range they would have considered Taylors, SCL, Straight, Storm, SSI Schaefer, Craemer and Conteneur. Therefore competitive conditions are broadly similar across the size range and the various suppliers can meet customer needs within the size range. We have therefore aggregated the supply of different container sizes in the 500 to 1,280 range into one product market.
30. On a cautious basis, the OFT has assessed the merger in relation to the supply of four wheel steel containers, between 500 and 1,280 litres in capacity. Hence we have excluded waste containers below and above this size range.

¹² Joint OFT/CC Merger Assessment Guidelines, paragraph 5.2.17.

¹³ Ibid, paragraph 5.2.18.

Geographic scope

31. Taylors submitted that the appropriate geographic scope for the supply of four wheel containers was the European Union (EU):
- a) User requirements were broadly similar. This is particularly the case in the EU, where containers were typically manufactured to the EN840 standard, which meant the majority of containers were compatible with the majority of collection vehicles.
 - b) Containers could be efficiently packed into sea containers for transport, for example Taylors transport [] of its waste containers in a single sea container.
 - c) Transportation costs formed a small proportion of the overall sale price, primarily as a result of the efficiencies of transport systems.
32. Taylors also cited the supply to the UK market by manufacturers based across the EU, such as Plastic Omnium/SULO, SSI Schaefer, Contenur and Craemer among others. These suppliers are based in other EU countries and have distribution arms based in the UK. In addition, Taylors noted that a number of providers from other EU countries were listed on the purchasing frameworks that supplied Local Authorities. This was supported by Local Authorities who were aware of SSI Schaefer, Contenur UK and Craemer being on the framework agreements that they bought from.
33. Taylors also submitted that while some UK-based suppliers imported containers from European manufacturers, others such as Straight Plc and Storm Limited imported from unbranded manufacturers located in China. In addition, Taylors submitted that waste containers were easily transportable outside the EU and that a significant proportion of its income ([10-20] per cent for the financial year 2013) was derived from customers located in Africa, South-East Asia and the Middle East. Taylors suggested that it competed with local providers in these geographies and had been able to compete on pricing and quality. Given that its exports to other countries were viable, Taylors considered that imports to the UK should also be, given the relatively low transport costs.¹⁴

¹⁴ Taylors submitted that it can stack [] waste containers in a single sea container, which reduces the transport cost [].

34. Third party views on the feasibility of imports were mixed. Where third parties pointed to potential providers, these tended to be in relation to UK-based suppliers which imported products from other countries (such as SSI Schaefer, Conteneur UK, Craemer, Straight and Storm) and had at least a UK-based distributor arm and at times retained some UK manufacturing.¹⁵
35. Therefore, on a cautious basis, the OFT has assessed the merger in relation to the supply of containers by UK-based suppliers. We have considered the extent to which non UK suppliers provide an additional competitive constraint in the competitive assessment section.

COUNTERFACTUAL

36. The application of the SLC test involves the comparison of prospects for competition with the merger against the competitive situation without the merger, the counterfactual. In practice the OFT generally adopts the prevailing conditions of competition (or the pre-merger situation in completed mergers) as the counterfactual against which to assess the effects 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 the prevailing competitive conditions continuing is not realistic (for example because the OFT believes that one of the merger firms would inevitably have exited from the market).¹⁶
37. Taylors submitted that on the basis of SCL's financial performance, it was manifestly a failing firm. []. []. []. In Taylors view, [] SCL was on course to go into administration, had Taylors not acquired it.
38. In forming a view on the exiting firm scenario, the OFT considers:¹⁷
- a) whether the firm would have exited (first limb) and, if so,
 - b) whether there would have been an alternative purchaser for the firm or its assets, to the acquirer under consideration (second limb) and

¹⁵ []

¹⁶ MAGs, Section 4.3.

¹⁷ MAGs, paragraph 4.3.8

- c) what would have happened to the sales of the firm in the event of its exit (third limb).¹⁸
39. As outlined above Taylors considered that SCL was failing financially. Furthermore, it also submitted that [], SCL [] had []. [].
40. Taylors submitted that [] were either [] as a result of []. []¹⁹ []²⁰ []. [],²¹ [],²² [].
41. As a result of the above, Taylor submitted, SCL was close to bankruptcy when it acquired the business on 1 July 2013 and as such the first limb was met.
42. In relation to the second limb of the exiting firm scenario – whether there would have been a less anti-competitive purchaser to the acquirer under consideration, Taylors considered that the results of the administration process of SEL would be informative. In the case of SEL, Taylors submitted, []. Given that [], Taylors considered that there would be [].
43. In relation to third limb of the exiting firm scenario, Taylor submitted that it was impossible to know with certainty where any residual business from SCL would have gone for all its products and customers. However, the fact that the [], suggests that at least a significant proportion of the overlap business would have ended up with Taylors.
44. [] broadly confirmed Taylors’ submission regarding []. It told us that []. This caused issues for its own agreements with its customers, []. It was for this reason that it looked to Taylors as an alternative supplier, []. [] had also tried to sustain SCL production activities (to maintain economies of scale and the production line) by agreeing to minimum order volumes ([]), but this failed to help improve the situation of the business.
45. The OFT has not undertaken a detailed assessment of the inevitability of exit by SCL and whether there was a realistic prospect of a substantially

¹⁸ See paragraphs 4.3.8 to paragraph 4.3.10 of MAGs for further detail on how these limbs are each applied and the evidence required.

¹⁹ []

²⁰ [].

²¹ []

²² This would be around the time that SCL acquired the assets of SEL which was in administration.

less anti-competitive alternative to the merger under consideration.²³

However it notes that:

- a) In relation to the first limb: The cash-flow position of SCL [] over the five months between February and June [].
- b) In relation to the second limb: two suppliers of waste containers²⁴ told the OFT that they would have been interested in acquiring the four wheel steel container manufacturing assets of SCL. One currently does not supply four wheel steel containers and the other supplies containers on a re-sale basis.

46. The OFT has not found it necessary to conclude on the exiting firm assessment, since even on the basis of the pre-merger competitive conditions, the merger does not raise a realistic prospect of a substantial lessening of competition. To the extent that the financial situation faced by SCL, affected its ability to compete in the supply of four wheel steel bins, this is reflected in the OFT's competitive assessment.

COMPETITIVE ASSESSMENT

Unilateral effects

Market shares

47. Taylors provided estimates for sales of all waste containers to UK customers, for both for new and refurbished containers, which gave the Parties a combined share of around [30-40] per cent, increment of [0-10] per cent, for containers between 500 and 1280 litres (see table 2 below).

²³ The merger does not raise a realistic prospect of an SLC when assessed against the pre-merger counterfactual meaning that the relevant counterfactual is not determinative to the OFT's conclusion.

²⁴ []

Table 2: Sales of steel and plastic waste containers to UK customers

	Sales 500-1280L Containers	Share (%)
Taylors	[]	[30-40]
SCL	[]	[0-10]
Combined	[]	[30-40]
UKCM	[]	[10-20]
MGB Plastics	[]	[10-20]
SSI Schaefer	[]	[0-10]
Straight	[]	[0-10]
Conteneur	[]	[0-10]
Plastic Omnium/SULO	[]	[0-10]
Craemer	[]	[0-10]
Otto UK/ESE	[]	[0-10]
Others	[]	[10-20]

Source: Parties' estimates

48. However, this estimate included sales of plastic containers and refurbished containers, and is, therefore, an under-estimate of the Parties' shares in the supply of four wheel steel containers.
49. Customers of the Parties mentioned a number of suppliers of four wheel steel containers aside from the Parties, including Straight, Storm, SSI Schaefer, Conteneur UK and Craemer. We have not been able to obtain accurate market shares in relation to the supply of four wheel steel containers only in relation to the above suppliers. However on the basis of the sales figures for the Parties, [], together with estimates for [],²⁵ the OFT has estimated the Parties have a combined share of supply of four wheel steel containers of between 60 and 75 per cent, with an increment of four to six per cent. Given the divergence in market share calculations, the OFT considers it appropriate to focus its assessment on the extent to which the Parties competed closely and the competitive constraints that the merged business faces.

²⁵ The OFT estimated market shares for these providers based on total sales revenue for each company and a range of potential splits between steel and plastic based on the mix of production for other suppliers.

Closeness of competition

50. Unilateral effects may arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices on its own and without needing to coordinate with its rivals. The OFT has therefore considered the extent to which Taylors and SCL were considered to be close competitors.

Views of the Parties

51. Taylors argued that in the area of overlap, competition between the Parties was predominantly due to [], as the largest customer of SCL, which accounted for over [] per cent of the SCL business in the overlap area. There had been competition for the [] contract between Taylors and SEL during the 2011- 2012 financial year, with Taylors []. However, Taylor stated, [] had decided to maintain its existing business with SEL.
52. In relation to other customers, Taylors submitted that SCL's four wheel container business was mostly directed at smaller private contractors around its production facility based in Oldham. Taylors suggested that because of its large steel container offering, competition from SCL would largely be in relation to the customer's initial decision on the appropriate waste container option. However, this was not competition as part of tenders for specific contracts, with detailed product specification.
53. Taylors also submitted that [], SCL's business was failing. Therefore, the impact of the merger on competitive conditions would not be material, given that SCL could not be expected to be a significant competitor in the supply of four wheel steel containers going forward.

Views of third parties

54. Several third party respondents submitted that the Parties had historically been close competitors for the supply of four wheel steel containers to UK customers. Taylors and SEL/SCL had been the main and possibly the only UK-based manufacturers of these products and had competed in a number of tenders to supply waste collection customers. A few customers also noted that Taylors and SEL/SCL competed closely in relation to the price and quality of the four wheel steel containers they

supplied, which were of higher quality (more durable) than the available alternatives, such as imported containers. Some competitors considered that Taylors had, through the acquisition of SCL, acquired its most significant competitor, with very little, if any, competition left facing Taylors.

55. Some customers said that while they had previously bought containers from both Parties, they only bought four wheel steel containers from Taylors, and used SCL as a supplier of large steel containers (over 1,280 litres capacity). Two local authorities [], said that they had only ever bought four wheel steel containers from Taylors, since SCL (or its predecessor SEL) was not on the purchasing framework agreement from which they procured waste containers.²⁶
56. [] noted that competition between the Parties was asymmetric, with the majority of the four wheel steel container business being with Taylors, with SCL (and its predecessor SEL) acting as an alternative for a small proportion of orders. [] suggested that as SCL was an important supplier of large steel containers (that is, those above 1,280 litres in capacity); very little competition had been lost, from its perspective, through this merger, because Taylors were active in smaller waste containers (that is; those with less than 1,280 litre capacity). [] also noted that SCL was more important as a supplier of large (over 1,280 litre capacity) steel containers.

Internal documents

57. The internal documents submitted by Taylors, suggest that it saw SCL as a close competitor for its four wheel steel containers business. []. [].
58. However, Taylors also noted in their internal documents that the focus of the SCL business was largely in relation to sales of large, over 1,280 litre capacity steel containers. []. []. [].
59. While the above indicates that Taylors saw SCL, and its predecessor SEL, as a close competitor, it also indicates that they faced constraint from other suppliers, []. Internal documents also suggest that Taylors considered that SCL's strength lay in the supply of large static steel containers (above 1,280 litres capacity).

²⁶ SCL had no sales through purchasing framework agreements for the financial year 2013.

Evidence from tenders

60. The Parties were asked for historical bidding data, in relation to tenders for the supply of four wheel steel containers where both Parties took part. Taylors said that neither party tracked details of tender efforts nor bids since both were small companies without the capacity to comprehensively capture this data. Furthermore, Taylors said that information on competing bidders was not routinely shared as part of the tender process, meaning that the information would be based on actual sales to its customers.
61. However, Taylors submitted a list of recent tenders for the supply of waste containers to the six largest waste collector companies ([]) in the UK. Whilst not a comprehensive overview of the tenders that the Parties would have participated in, it is a useful guide to the extent to which they competed for business from the large national waste collection contractors. These accounted for a [] revenue for the Parties.
62. The data provided by Taylors related to sales of various container types and not exclusively to the overlap product. However it is noteworthy that Straight, a supplier of four wheel steel containers only, had participated in all of the tenders submitted by Taylors (amongst other suppliers), which suggests that four wheel steel containers were part of all the submitted tenders.
63. There were three tenders ([]) which completed prior to the acquisition by Taylors and as such these are informative of the extent to which SCL (or its predecessor SEL) was a significant constraint on Taylors. Straight competed in all these tenders, Storm, a relatively new entrant, in one and SCL (and its predecessor SEL prior to February 2013) participated in one of them. Conteneur UK, Craemer and SSI Schaefer also participated in one or more of these tenders, although we have not been able to ascertain whether their bids covered the part of the tender relating to the supply of steel containers. [] for which it bid. It is also noteworthy that tender sales are relatively [], accounting for [], compared to circa [] per cent [].
64. Competitors were also asked for examples of tenders where they had competed against the Parties. A competitor, [], provided two examples from 2011 and 2012, neither of which SCL's predecessor SEL had won.

65. Overall, the OFT considers that the evidence on tenders, albeit limited, indicates that SEL and subsequently SCL were not a significant competitor in the supply of four wheel steel containers, and did not routinely compete with Taylors in tenders for the overlap products.

Other suppliers and supply models for four wheel steel containers

66. All of the Parties' customers that responded to our questions and some competitors identified Straight Plc and Storm Environmental Limited (**Storm**) as alternative providers of four wheel steel containers.²⁷ [] said that it would consider these providers as an alternative to Taylors []. [] and [] said that they could procure from these two providers and [] and [] said that both Straight and Storm were suppliers listed on their purchasing framework agreements and supplied alternatives to containers supplied by the Parties. Customers also identified Conteneur UK, Craemer and SSI Schaefer, which all have UK-based distribution arms, as potential suppliers, indicating that customers have several supply options available to them.

67. [].

68. In addition to constraint from existing suppliers based in the UK, two customers provided examples of direct supply from manufacturers based overseas. [], a customer of SCL and a supplier of waste containers, said that for a number of years it had imported four wheel waste containers from a manufacturer based in Germany, which were competitive in terms of quality and cheaper than those offered by Taylors and SCL's predecessor, SEL. While [] said that it had considered a supply agreement with [], in relation to importing four wheel steel containers direct from China. This may suggest some additional constraint from alternative supply models involving non-waste container specialist companies.

69. Other third parties commented that there were more suppliers in four wheel plastic waste containers and that they were increasingly considering procuring plastic rather than steel four wheel waste containers in order to reduce the reliance on steel containers and benefit from the significant price difference between the two.

²⁷ The OFT understands that both these competitors import the containers from China and undertake some limited manufacturing in the UK.

Barriers to entry/expansion

70. In assessing whether entry or expansion might prevent a substantial lessening of competition, the OFT considers whether such entry or expansion would be timely, likely and sufficient.
71. Taylors submitted that barriers to entry into the supply of steel waste containers vary depending on container size. Taylors submitted that in relation to the manufacture of the overlap products, barriers to entry are low, mainly consisting of pressing or moulding tools and a limited number of assembly staff. The Parties estimated that the costs of manufacturing equipment for four wheel steel waste containers to be circa £[]. For containers below 1,280 litres capacity, the main consideration would be to achieve sufficient volumes quickly in order to become a viable business.
72. Competitors were generally of the opinion that entry as a UK manufacturer of four wheel steel containers entailed significant entry costs, estimating these to range between £0.5m and £2m. They also said that recovering the investment could take between 2.5 and five years, since prices and resulting profits were currently low. Therefore the incentives to invest in manufacturing capacity are also low.
73. The Parties noted that the cost of entering as a UK based manufacturer could be circumvented by entering as a reseller of a foreign manufacturer and that this was the most likely route of entry, since such entry entailed significantly lower costs. Citing, as an example, Storm, which entered the market in 2012 by importing the main waste container components and investing in assembly line equipment, Taylors submitted that within a year, Storm had started supplying local authorities with four wheel steel containers. Taylors also submitted that Straight, another competitor, had started its business as a pure re-seller for waste containers manufactured in China and that this demonstrated low barriers to entry. From starting its activities in 2008 as a pure re-seller, Taylors considered that Straight had achieved significant sales, including sales to other countries.
74. The Parties' views regarding ease of entry as a re-seller were supported by [].
75. Another competitor [] said that technical barriers to entry are low, with capital requirements around £0.5m, The competitor considered that entry

could be relatively quick, taking nine to 12 months from the decision to enter the market.

76. When considering whether entry or expansion would be timely, likely or sufficient the OFT notes that [] a competitor [] has achieved a similar size to SCL, is seen by customers as a credible alternative to Taylors, []. The OFT considers that this indicates that entry as a reseller would be both timely and sufficient to mitigate any potential loss of competition resulting from the merger.
77. [] current position and expected growth also suggests that capacity constraints are not binding for imports. This indicates that entry as a reseller of (partially or wholly) manufactured waste containers may be a feasible and profitable means of entry for suppliers of four wheel steel containers. No third parties identified any technical, financial or product sourcing barriers to a new re-seller entering the market. The OFT considers that the recent success of a number of re-sellers and the low cost of such entry means that the entry may be sufficiently likely to constrain Taylors. In addition, the OFT has seen some evidence that alternative supply models may act as a further constraint on Taylors in the future. For example, the OFT is aware of a large customer engaging with a non specialists to import directly from overseas.
78. Based on the evidence it has found, the OFT considers that the prospect of entry by resellers of overseas production in the UK, is likely to act as a significant constraint to Taylors post merger.

BUYER POWER

79. Taylors submitted that its customers enjoyed a significant degree of buyer power, mainly because of the multiplicity of suppliers of waste containers, and the fact that [].
80. Taylors said that its customers had strengthened this buyer power in a number of ways, but most notably through:
- e) Tender purchasing, which is commonplace with large customers, where a tender is issued for purchases over a period of time, requiring favourable terms from suppliers in exchange for the placing large orders. Taylors has competed to supply these large customers against

a number of other suppliers, including Straight, Storm and SSI. These large customers also tend to multi-source their requirements.

- f) Framework purchasing by local authorities, which allows local authorities to derive benefits from economies of scale, where suppliers compete to be included on the framework. A number of providers are listed on these frameworks, meaning that local authorities have choice of supplier.

81. []. []. []. [].

82. From the information provided by the Parties it is clear that [] customers accounted for [] businesses [] Taylors and SCL []. Furthermore, customers have said that they are price sensitive, with even small price rises triggering diversion to competitors. Customers also said that they have explored the use of alternative supply models, further expanding their supplier set. However, while it is likely that large customers will have some buyer power, because this merger does not give rise to a realistic prospect of a substantial lessening of competition, it has not been necessary to conclude on this.

VERTICAL EFFECTS

83. Two competitors raised vertical concerns with the transaction, suggesting that Taylors would be able to place its competitors at a disadvantage by limiting the supply of waste container spares. However these concerns were not merger specific and have therefore not been considered further.

THIRD PARTY COMMENTS

84. Third party comments have been set out above as appropriate. Customers of the merged entity were generally unconcerned about the transaction. Several noted that the merger allowed SCL's manufacture of large steel containers to survive and that this was a more important business line for their purposes. Although [] said that the merger removed an important alternative supplier, in case the supply with Taylors was disrupted, this customer also indicated that it was considering other supply options, including [] as alternatives to Taylors. Other third parties commented that they were increasingly considering procuring plastic rather than steel four

wheel waste containers in order to reduce the reliance on steel containers and benefit from the significant price difference between the two.

85. Competitors, the majority of whom are suppliers of large steel containers (above 1,280 litres capacity), were concerned about the merger. They said that the Parties had been close competitors prior to the merger and that the merger could drive manufacturers of large steel containers out of business. One competitor commented that it had not had the opportunity to consider purchasing the SCL assets. This competitor could see the benefits of the merger for customers, since they could procure all their waste container requirements from one provider, benefiting from one-stop shopping.

ASSESSMENT

86. The Parties overlapped in the manufacture and supply of wheeled steel waste containers ranging in size from 500 litres up to 1280 litres (four wheel steel containers) to commercial and municipal waste collectors. SCL (and its predecessor SEL) also supplied large steel containers (over 1,280 litres capacity), while Taylors' supplies a range of smaller waste containers (below 500 litres capacity) [].
87. The OFT has adopted a cautious approach to market definition and assessed the transaction in relation to the UK suppliers of four wheel steel containers (from 500 litres up to 1280 litres). However, for the purposes of its competitive assessment, the OFT has taken into account the competitive constraint exercised by plastic materials, other sizes and non-UK suppliers.
88. The Parties submitted that the merged entity had a combined share of some [30-40] per cent for the supply of new and refurbished waste containers of 500 to 1,280 litre capacities, increment [0-10] per cent. However this included sales of plastic containers. As a check, the OFT calculated market shares using estimated sales figures for the Parties' competitors. On the basis of these, the Parties' combined shares for the supply of four wheel steel containers are estimated at between 60 and 75 per cent. Given the wide divergence in market share calculations, the OFT considers it is appropriate to focus its assessment on the extent to which the Parties competed closely and the competitive constraints that the merged business faces.

89. Several third parties and Taylors internal documents suggest that the Parties, including SCL's predecessor SEL, had historically been close competitors. However, both third parties' and Taylors' internal documents also indicated that SCL had faced significant financial difficulties and this may in turn have affected the extent to which it was an effective competitor to Taylors. There is evidence that customers, including [] which accounted for around [] per cent of the overlap business for SCL, were switching away from SCL [].
90. Third parties also recognised that alternative suppliers were available and could offer effective alternatives to Taylors, particularly in relation to [] products. [] has achieved a share similar to SCL [], acting as a re-seller of four wheel steel containers manufactured in China. The examples of [] and [] suggests that entry as a re-seller of imports is a feasible strategy for new entrants. In addition, the OFT has also seen some evidence that alternative supply models, such as direct imports, may act as a further constraint on Taylors in the future.
91. While competitors were generally concerned, seeing the Parties as the main or only UK manufacturers, customers of the Parties were generally unconcerned by the merger, and identified alternative providers, and alternative supply models. Competitors also recognised that Straight and Storm could provide some constraint on the merged entity.
92. 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

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