

Summary

1. On 31 August 2006, the Office of Fair Trading (OFT), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the anticipated acquisition by SvitzerWijsmuller A/S (SvitzerWijsmuller) of Adsteam Marine Ltd (Adsteam Marine). We are required to report within a period ending on 14 February 2007. Our terms of reference are in Appendix A.
2. SvitzerWijsmuller is active in the UK through three wholly-owned subsidiaries, Svitzer Marine Limited, Svitzer PT Ltd and Tyne Towage Marine Limited (collectively, Svitzer). Svitzer operates 41 tugs in the UK, and provides services in seven ports and at six terminals. Adsteam Marine operates its UK business through Adsteam UK Ltd (Adsteam) and various subsidiary companies. It provides harbour and terminal towage services in six of the UK's major deep water ports and their adjacent waterways.
3. On 3 July 2006 SvitzerWijsmuller made an offer for all the shares of Adsteam Marine. The offer was conditional, among other things, on the proposed merger being cleared by the OFT. SvitzerWijsmuller has announced that if the CC clears the merger, or permits the merger to proceed on terms satisfactory to SvitzerWijsmuller, it will declare the offer free from the need for UK competition authority approval. The proposed acquisition will result in a relevant merger situation and therefore we have jurisdiction.
4. We concluded that the relevant product market included the provision of harbour towage services and customer terminal towage services. We concluded that most owner terminal towage services were outside the relevant market. However, we

found that the owner terminal at Tranmere, which is serviced by Svitzer tugs which also provide harbour towage services in the Liverpool port area, is in the relevant product market. We concluded that the relevant geographic market was local, restricted to individual ports serviced by fleets of tugs.

5. With two exceptions, each local market is serviced by only one towage operator. The exceptions are Liverpool, where Adsteam and Svitzer both offer towage services, and the Humber, where Adsteam, Humber Tugs Ltd (Humber Tugs, a subsidiary of Adsteam) and SMS Towage Ltd (SMS) offer towage services.
6. Towage operators set a tariff for their services in each port, which is usually increased annually. Customers either seek harbour towage services on a 'spot' basis, contracting for services for each individual ship call, or agree terms with a towage operator (usually through entering into a contract). Some customers are able to negotiate a discount off the published tariff for the services provided.
7. We considered the ease of entry into a local market, and concluded that entry to UK harbour towage markets is possible but not easy. The most significant challenge facing a new entrant appears to be the need to obtain and sustain a substantial market share, in the face of a vigorous response from the incumbent operator, in order to achieve a sustainable entry. Entry conditions vary on a port-by-port basis. Successful entry is most likely in the large or medium-sized UK ports and/or off the back of a contract(s) with a sufficient number of customers. We consider that Svitzer is a potential entrant into Adsteam's ports (though Adsteam is not a potential entrant into Svitzer's ports), and that SMS and certain international operators are also potential entrants into some or all of the medium-size and large UK ports.

8. In considering the effects of the merger, we considered whether there are any adverse effects of the merger at a national level, whether there is a loss of potential competition at single-operator ports, and whether it might raise barriers to entry. We then considered the effects of the merger at individual ports, focusing on Liverpool and the Humber. We then considered whether any adverse effects would arise in the downstream shipping market through the vertical integration of the shipping interests (collectively, Maersk) of A P Møller-Maersk A/S (APMM, of which SvitzerWijismuller is a subsidiary) with the provision of towage services in Adsteam ports. We considered whether any adverse effects on competition would be prevented or mitigated by market entry (or the threat of it) or customers being able to exert countervailing buyer power.
9. At a national level the merger would bring together the two major providers of harbour and customer terminal towage in the UK. However, our analysis led us to conclude that prices in one port do not constrain prices in another port. We found that the most likely constraint on prices in ports where there is only one operator is the threat of new entry. As we had identified several potential entrants into some or all of the medium-size and large UK ports, we concluded that there remained sufficient potential entrants into large and medium-sized ports in the UK to prevent the merged entity from raising prices significantly.
10. We also considered whether the merger raised barriers to entry. We considered first whether the merged entity could punish customers for sponsoring a new entrant in a particular port by raising prices in other UK ports. We found that there would be an increase in the ability of the merged entity to seek to deter entry by linking the prices it charges customers in different ports. However, the size of this additional effect was small, and there would be risks associated with such a strategy.

11. We then considered whether a potential new entrant would be deterred from entering UK ports by the threat of retaliation by Maersk in the non-UK ports in which the potential entrant already operated. The retaliation would take the form of Maersk switching towage provider away from the potential entrant, causing it to lose potentially significant revenue in its non-UK operations. The evidence led us to conclude that Maersk had the ability but not the incentive to act in this way, and that this threat of retaliation by Maersk was unlikely to inhibit new entry.
12. We also looked at whether a new entrant to an Adsteam port may not be able to rely on Maersk in order to serve as a platform for entry because Svitzer and Maersk are vertically integrated, an issue which might particularly affect potential entrants into Felixstowe. On balance, we considered that, after the merger, Maersk would not have an incentive to sponsor entry against Svitzer. However, we concluded that the merger does not significantly increase barriers to entry into Felixstowe, as the increment in the number of customers needed to achieve profitable entry without Maersk is relatively small.
13. We therefore concluded that we did not expect the merger to cause an increase in the barriers to entry into UK harbour towage markets such as to result in a substantial lessening of competition (SLC).
14. We looked at the effects of the merger in Liverpool, where Svitzer and Adsteam both offer harbour towage services. We found that the parties did compete with each other for customers. We considered whether this actual competition constrained towage prices in Liverpool more than the threat of sponsored entry into the port (the most likely constraint on prices in ports with a single operator). Our analysis of the parties' discounts, tariff increases in ports and experiences on the Medway and Humber

(where there has recently been, or is, competition) led us to conclude that actual competition was a stronger constraint on pricing than the threat of entry.

15. As the merger would result in the loss of all actual competition in Liverpool, and we do not expect a new source of competition to replace the lost competition within a short time frame, we conclude that the merger gives rise to an SLC in Liverpool.
16. We considered whether the customers had countervailing buyer power, or market entry was sufficiently easy, such that the threat of new entry would be enough to prevent any adverse effects arising in Liverpool. As we found that actual competition was a stronger constraint on pricing than the threat of entry, we concluded that the threat of entry will not prevent prices from rising higher than they would if there was actual competition in Liverpool. We did not therefore expect these factors to prevent adverse effects arising from the merger.
17. We concluded that the adverse effects would be prices for harbour towage in Liverpool higher than they would be if the present level of competition continued — although prices would be constrained by the same constraint operating in ports which already only have one towage operator. We believe this would lead to fewer and reduced discounts off tariff, and tariff increases at higher rates, than if there were two operators in Liverpool.
18. We considered whether the merger gave rise to any adverse effects on the Humber. We concluded that it would not: we did not think that the merger would increase the ability of the merged entity to retain its customers in the Humber, or that there would be a significant change in the intensity of rivalry.

19. For the reasons set out above, we conclude that the merger may be expected to result in an SLC in the market for harbour towage and terminal towage in Liverpool. This may be expected to result in prices for harbour towage in Liverpool which are higher than they would be if the present level of competition continued. We do not conclude that the merger may be expected to result in an SLC in any other market.