

Notice of possible remedies under Rule 11 of the Competition Commission Rules of Procedure

Introduction

1. On 20 February 2007 the Office of Fair Trading (OFT), in exercise of its duty under section 22 of the Enterprise Act 2002 (the Act), referred to the Competition Commission (CC) for investigation and report the completed acquisition by various subsidiaries of Greif Inc (Greif) of the large steel drums and closures business of Blagden Packaging Group. For the purposes of this notice we refer to the UK new large steel drum business of the Blagden Packaging Group as 'Blagden'.
2. In its provisional findings on the reference notified to Greif (the main party) on 11 June 2007, the CC inquiry group (the Group) concluded provisionally that the acquisition had resulted in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) within the markets for the supply of new large steel drums in the UK.
3. This notice sets out the actions which the Group considers might be taken by the CC, including any recommendations it might make for action on the part of others, for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings and invites comments on possible remedies (see note).

Possible remedies on which views are sought

Divestiture

4. The Group invites views on whether divestiture would be effective in addressing the SLC identified as expected to result from the merger. In particular, the Group invites views on :
 - *The scope of the divestiture package.* The CC generally prefers the divestiture of an existing stand-alone business that can compete effectively in the market rather than divestiture of part of an operating unit or collection of assets. This is because divestiture of an existing business would normally reduce the risk of an unsuccessful divestiture. The Group's view currently is that the divestiture of the assets and business of Blagden should be sufficient to address the SLC. However, views are also invited on whether an appropriate divestiture package could be assembled from parts of the Blagden business and how the possible risks of such an approach could be successfully contained.
 - *Possible suitable purchasers.* In order to be an effective remedy, divestiture would need to result in the divestiture package of the assets and business of Blagden being purchased by someone who would operate it as an effective competitor in the market. In general, the CC takes the view that a suitable purchaser should:
 - (a) be independent of the parties to the merger;
 - (b) have the necessary financial resources, incentives, and access to appropriate expertise and assets in order to enable the divested business to develop as an effective competitor in the market; and

- (c) be free from competitive concerns resulting from acquisition of the divestiture package.
- *Interim behavioural measures ancillary to divestiture.* The Group will consider whether interim behavioural measures may be appropriate to increase the likelihood of successful divestiture. Such measures might include, for example:
 - (a) commitment from Greif to supply steel to the divested Blagden business on the same terms available to Blagden prior to its acquisition by Greif; and
 - (b) non-solicitation of Blagden's customers and key staff for specified periods.
- 5. Views are invited on the appropriate time period within which divestiture should be achieved as well as on any revisions to the interim undertakings (see Note 1) pending divestiture and criteria for a suitable purchaser. It is likely to be appropriate to appoint a divestiture trustee to divest the business if divestiture is not achieved during the initial period.
- 6. The Group is not, at this stage, proposing other remedies for discussion as it considers that behavioural remedies are unlikely to be effective in addressing the SLC and its resulting adverse effects and are likely to be difficult to monitor and enforce. In particular, a price control on Greif appears unlikely to be an effective remedy. Given the degree to which prices are individually negotiated and include delivery costs that vary according to distance, such a remedy may be difficult to monitor or enforce. Further, the Group considers that entry and expansion that would provide an effective competitive constraint on the merged firm is unlikely, therefore it is difficult to envisage developments that would limit the duration of the SLC and make this remedy redundant. Moreover, a price control or other behavioural remedy may become less effective or create increasing distortion with the elapse of time.
- 7. Notwithstanding the above, the Group remains willing to consider any practical alternative remedies to divestiture that the main party or other persons would like to propose which they consider would address the SLC effectively.
- 8. The Group does not currently envisage that remedies will take the form of recommendations for action on the part of others.

Criteria

- 9. In choosing appropriate remedial action, the Group has a duty to achieve as comprehensive a solution as is reasonable and practicable to the SLC and any adverse effects resulting from it.
- 10. When deciding what is an appropriate remedy, the Group will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the Group considers equally effective, it will choose that which imposes the least cost or restriction.

Relevant customer benefits

- 11. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the acquisition. Such benefits comprise lower prices, higher quality or greater choice of goods or services, or greater innovation in relation to such goods or services. The

Group welcomes views on the nature, scale and likelihood of any relevant customer benefits and the potential impact of any possible remedies on any such benefits.

Next steps

12. The main party and other interested parties are requested to provide any views in writing, including any practical alternative remedies it wishes the Group to consider, by 25 June 2007 (see note 2).
13. A copy of this notice will be posted on the CC's website. Other interested parties are requested to provide any views in writing, including any other practical remedies they wish to consider, by 25 June 2007.



Diana Guy
Group Chairman
11 June 2007

Note 1: A copy of the interim undertakings given by Greif on 30 April 2007 is available on the CC's website.

Note 2: This notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the provisional findings notified to the main party on 11 June 2007. The main party has until 2 July 2007 to respond to the provisional findings to be published in summary on 12 June 2007. In the light of any responses by the main party, or by other interested or affected third parties, the Group's findings may alter, in which case the Group might consider other possible remedies, if appropriate.