

Terms of reference and conduct of the inquiry

Terms of reference

1. On 29 May 2008 the OFT sent the following reference to the CC:
 1. In exercise of its duty under section 33(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the CC”) in relation to an anticipated merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that –
 - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation in that:
 - (i) BOC Limited, being an enterprise carried on by or under the control of Linde AG, will cease to be distinct from the packaged chlorine business and assets operated by Ineos Chlor Limited, being an enterprise or enterprises carried on by or under the control of Ineos Group Limited; and
 - (ii) as a result, the condition specified in section 23(3) and/or section 23(4) of the Act will prevail or will prevail to a greater extent with respect to the distribution of packaged chlorine in the United Kingdom; and
 - (b) the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services including the distribution of packaged chlorine in the United Kingdom.
 2. Therefore, in exercise of its duty under section 33(1) of the Act, the OFT hereby refers to the CC, for investigation and report within a period ending on 12 November 2008, the following questions in accordance with section 36(1) of the Act-
 - (a) whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and

(b) if so, whether the creation of that situation may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services.

3. In relation to the question whether a relevant merger situation will be created, the CC shall exclude from consideration one of the subsections (1) and (2) of section 23 of the Act if they find that the other is satisfied.

(signed) **Simon Pritchard**
Senior Director, Mergers
Office of Fair Trading
29 May 2008

Conduct of the inquiry

2. We placed an invitation to provide us with views on the inquiry on the CC website on 30 May 2008. A notice inviting interested parties to submit written evidence to the CC was also placed in *Water Active* and *Water and Waste Treatment* on 27 June and *Chemical Week* and *Hazardous Cargo Bulletin* on 30 June.
3. In addition, we invited a wide range of interested third parties to comment on the proposed merger. We sent detailed questionnaires to competitors, potential competitors, customers, (including water companies and the parties' major industrial (ie non-water) customers), hauliers, industry associations, the relevant regulatory authorities and suppliers of substitute products for water disinfection. Oral evidence was obtained from competitors and customers at hearings. Evidence was also obtained through telephone contacts and through further written requests.
4. Non-sensitive versions of the evidence provided to us by third parties in response to our invitation to comment, and summaries of our oral hearings with selected third parties can be found on the CC website.

5. The administrative timetable for the inquiry was published on the CC website on 23 June. The website also contains biographies of the Members of the Group conducting the inquiry.
6. Members of the Group, accompanied by staff, visited the premises of Ineos Chlor (at Runcorn) and Albion (at Sandbach) both in Cheshire. Staff visited the premises of BOC at Letchworth.
7. We received written evidence from BOC and Ineos Chlor, and held a hearing on 14 August with each of them. Non-sensitive versions of their main submission can be found on our website.
8. We published a Statement of Issues on the CC website on 1 July 2008.
9. In the course of this inquiry, we showed the main parties a number of working papers.
10. We would like to thank all those who assisted in our inquiry.
11. The text of this provisional findings report has been placed on the CC website.