

2 Conclusions

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Introduction

The reference

2.1. On 4 January 2002, the Secretary of State for Trade and Industry referred to the CC for investigation and report (under the merger provisions of the Act) the acquisition of Paxton by Linpac. We were asked to report by 10 April 2002. Our terms of reference are at Appendix 1.1.

The companies involved

Linpac

2.2. Linpac is a UK group which operates in many parts of the world—predominantly in the packaging, materials handling and automotive sectors. Its main expertise is in the development and production of plastics- and paper-based products.

2.3. It was created in 1959 as a packaging company, serving local vegetable growers in Lincolnshire. It is now a global business with a turnover of more than £1 billion; operations in over 25 countries, located in five continents; almost 12,000 employees; and customers in a wide variety of markets. In the year to 31 December 2000, just under 30 per cent of its sales derived from paper-based products, with plastic-based products accounting for 70 per cent. Its turnover in RTP—which is the main focus of this inquiry—was £[§] million in 2001, about [§] of which (£[§] million) was achieved in the UK.

2.4. Linpac's activities are carried out by a number of subsidiary companies, most of which are grouped together within one of eight main divisions, each operating as an autonomous business centre focused on specific technologies, products or markets. They are:

- *Linpac Automotive*, which develops and produces components and trims for motor manufacturers and other customers from sites in the UK, Belgium and Spain.
- *Linpac Containers*, which produces corrugated paper packaging products such as cases, bags and sacks. It has seven plants in the UK and one in Portugal.
- *Linpac Inc*, based in South Carolina, which has a paper mill and three corrugated plants that supply the southern USA.
- *Linpac Mouldings*, which is a major processor of plastic polymers. It is part of this division, *Linpac Materials Handling*, that sells RTP.
- *Linpac Plastics*, which makes a range of expanded foam polystyrene packaging for meat, fish and fresh produce, and has 23 manufacturing sites around the world.
- *Ropak Packaging*, which is based in California, and makes non-returnable containers. It has eight manufacturing sites and was acquired by Linpac in 1995.
- *Linpac Materials Handling NAFTA*, which offers a comprehensive range of retail and industrial products, including nesting and stacking containers, attached lid boxes, folding and collapsible bulk and food containers, pallets and rigid pallet boxes.
- *Viscount Plastics*, which manufactures plastic components for the automotive industry and containers and other packaging products in 12 locations in Australia, New Zealand, China and south-east Asia. Linpac completed its purchase of Viscount in July 2001.

One Linpac business which is outside this divisional structure, and which was also of interest to our inquiry, is Logtek, an operation that provides a range of services to some users of RTPs. Its

activities are described in paragraphs 4.38 to 4.42. A fuller description of Linpac's activities can be found in paragraphs 4.32 to 4.37.

Paxton

2.5. Paxton designs, manufactures and supplies a wide range of plastic-based storage, handling and distribution containers, largely to the retail and food sectors. It has two manufacturing plants and an RTP design team based in the UK. It also has warehouse and sales offices in France and the USA, and sales offices in Spain and Sweden. In the year to 31 July 2000, [redacted] per cent of its sales were in the UK. In that same year, [redacted] per cent were to the retail sector—[redacted] per cent food and [redacted] per cent non-food—with bakeries and food processors its other main customers. Approximately a [redacted] of Paxton's products are now supplied through service providers, such as Hays Asset Control Solutions (Hays), Chep Global Automotive Services (Chep) and Ifco, who manage RTP pools on behalf of the major supermarkets and other customers. It has 380 employees, almost all of whom work in the UK with a small number in its overseas sales teams. Its turnover in the year to 31 December 2001 was £[redacted] million, of which £[redacted] million was achieved in the UK.

2.6. The original C G Paxton business was formed in 1955, at Nantwich in Cheshire, and acquired by McKechnie plc in 1977. In 1979 Paxton relocated its injection moulding operations to a new site in Walsall. In the 1970s, it had begun to produce plastic trays for bakeries, and by 1988 had converted over 70 per cent of the sector to its system. In the 1990s Paxton entered the food retailing market, and in 1995 won a major order from Tesco for its deep-nesting Maxi-Nest range of plastic crates and trays—which included a number of innovative design features—to transport meat, fruit and vegetables. Since then, other food retailers in the UK have adopted these products and the Paxton range has become something of an industry standard. Outside the food sector, Paxton has developed containers for Burtons, for Marks & Spencer's clothing and textile business and for Securicor/Omega. In 1998, Paxton opened an additional injection moulding facility at Llantrisant, in South Wales, to meet the growing demand for its products. In 1996, it entered into a contract with [redacted] under which it not only supplied RTPs, but also undertook their management within the store's distribution network. This involved tracking, cleaning and sterilization of the RTPs, and the monitoring and maintenance of the containers. A fuller description of Paxton's activities can be found in paragraphs 4.74 to 4.94.

The acquisition

2.7. In October 2000, McKechnie plc, a UK listed company with a wide range of commercial interests—including, within the plastics sector, aerospace, industrial fasteners, materials handling and automotive products—was the subject of a management buyout, supported by a private equity company, Cinven. The new owner, McKechnie Limited (McKechnie), engaged PricewaterhouseCoopers (PwC) to sell its materials handling business, Paxton, as part of a wider series of disposals aimed at reducing debt. In March 2001, PwC approached 40 potential buyers with a summary document, describing the business. Fifteen of those approached went on to receive a more detailed information memorandum, and of these, five submitted initial indicative bids.

2.8. In addition to Linpac, they were:

- (a) another UK-based company with interests in both paper- and plastics-based packaging and logistics;
- (b) a group based in the EC which manufactures plastics-based products for materials handling and goods distribution at its factories there and in the USA;

- (c) the US parent of another group which manufactures plastics-based materials handling products from factories within the EC; and
- (d) a private equity company.

2.9. Four of the five were then invited to presentations by Paxton's management and given access to further information about the business. Revised offers were then sought at the end of May 2001. Three were received, which ranged from £[§] million to £[§] million (on a debt-free and cash-free basis), and after an extended period of further negotiations, Linpac emerged as the successful bidder, agreeing terms in late July 2001. It eventually purchased the entire share capital of Paxton on 7 September 2001. The deal would have been completed earlier but for a fire at Paxton's Llantrisant plant, which delayed matters for a few weeks.

2.10. Linpac told us that one of the reasons for making the purchase was to improve its position in the provision of RTPs for distributing food to UK supermarkets. This was an area where it had been strong in the early 1990s, but had subsequently lost customers to Paxton and others. Linpac was impressed with the quality of Paxton's management and design team, and believed that they would be able to play a useful role within the enlarged Group. It also saw further potential for increasing the sales of Paxton's product range, especially in mainland Europe and North America, through the use of its existing marketing infrastructures there. Linpac told us that Paxton's product range and its own were largely complementary, as Linpac's focus had shifted to the manufacture of packaging for the industrial, automotive and bulk handling sectors, while Paxton's strength was in food and retail distribution. In the areas where the two companies did overlap—mainly general packaging products—Linpac saw scope for economies by reducing costs. In addition, Linpac foresaw that Paxton would need an increased amount of manufacturing capability in the future, which could be met in part from surplus capacity in its own plants. Overall, it expected the acquisition to give rise to increased revenues of £[§] million a year and annual cost savings of £[§] million.

2.11. Linpac told us that its intention was to integrate Paxton's operations in the UK and elsewhere in Europe within Linpac Mouldings. Paxton's US operations have already been incorporated into Linpac Materials Handling NAFTA. A fuller description of the acquisition appears in paragraphs 4.2 to 4.19.

Jurisdiction

2.12. Under our terms of reference (see Appendix 1.1) and the Act, we are required to investigate and report on:

- (a) whether a merger situation qualifying for investigation, as defined in the Act, has been created in that:
 - (i) enterprises carried on by or under the control of Linpac have ceased to be distinct (within the meaning of the Act) from enterprises carried on by or under the control of Paxton, within the four months preceding the date of this reference; and
 - (ii) either the value of the assets which have been taken over exceeds £70 million (the assets test); or the merger has created or enhanced a share of at least one-quarter in the supply of goods or services of any description in the UK, or a substantial part of the UK (the share of supply test); and
- (b) whether the creation of that situation operates, or may be expected to operate, against the public interest.

2.13. ‘Enterprise’ is defined in section 63(2) of the Act as the activities, or part of the, activities of a business. If we find that either the assets test or the share of supply test is satisfied, we are required to exclude the other from our consideration.

2.14. One of the circumstances in which enterprises are to be regarded as ceasing to be distinct (set out in section 65 of the Act) is where they come under common ownership or control.

2.15. It is evident from the sale and purchase agreement—and confirmed by what the parties have told us—that, on 7 September 2001, Linpac purchased the entire share capital of Paxton. So we are satisfied that, within the four months preceding the date of this reference, enterprises carried on under the control of Paxton have ceased to be distinct from enterprises carried on under the control of Linpac.

2.16. As for the share of supply test, section 68 of the Act makes provision for cases where goods or services of any description are subject to different forms of supply. In determining whether the test is satisfied, in such a case, we may take all those forms separately, together or in groups, as appears to us to be appropriate. For this purpose, we may treat services as being subject to different forms of supply if the transactions in question differ as to their nature, parties, terms or surrounding circumstances, and the difference is one which, in our opinion, ought to be treated as material.

2.17. There is no generally available published information about the size of the UK market for RTP. The figure that Linpac has given us—sales of around £[redacted] million in 2000—is the highest estimate that we have seen. Others point to a rather smaller market, with annual sales of somewhere between £80 million and £100 million. Part of the difference between these figures can be explained by the difficulty of defining the range of products that are subsumed within the generic title of RTP. At its widest, the term embraces large bulk containers and pallets, bottle crates and a wide variety of products for use in various forms of industry. Paxton’s own product range, however, is focused more narrowly, and the great majority of the items which it manufactures are sold to the retail and food sectors, and, to a large extent, are used for the transportation of fruit, vegetables, meat and bakery products. Because of this sharp focus, Paxton has a very large share of sales in particular products. Its own estimates suggest 67 per cent in bakery trays (a combined total of 71 per cent when Linpac’s sales are included) and 65 per cent in supermarket trays (66 per cent with Linpac’s). We have been told that Paxton’s UK sales in the year to 31 December 2000 were £[redacted] million. Linpac’s own UK sales of RTP at that time were £[redacted] million. This means that their combined UK sales in 2000 were worth £[redacted] million.

2.18. Linpac’s own estimate of the total size of the overall UK market for all types of RTP in 2000—which includes types of products that Paxton does not manufacture or sell—is around £[redacted] million. Even on this basis, Linpac acknowledged (see Table 5.4) that Linpac/Paxton’s combined share exceeded 30 per cent.

2.19. Although there is an inevitable degree of uncertainty about the accuracy of many of these figures, and considerable scope for debate on how widely or narrowly the product market should be defined, on any of the estimates that we have seen, the combined entity accounts for over 25 per cent of the UK market in RTP—and, on some, for a share which is well above that figure. It is also clear that the merger has led to a substantial increase in Linpac’s overall market share.

2.20. We accordingly find that the share of supply test is satisfied.

Conclusion on merger situation

2.21. For the above reasons we find that there is a merger situation qualifying for investigation.

The products concerned

2.22. As will be clear from paragraphs 2.2 to 2.4, Linpac is engaged in the development and production of a wide range of products, mainly plastics- and paper-based, which it sells in a number of separate markets in a variety of countries. In many cases, Paxton does not make similar products, nor does it have sales in the same parts of the world. The main area where the two companies compete is in RTP, which is used to transport items from manufacturers or producers to retailers or other end-users within the UK; and, in the case of supermarkets, also for distribution from regional depots to shops, and for the in-store display of produce. Examples include containers which carry fruit and vegetables from farmers and other suppliers to grocery stores; and component containers, which are used to transfer parts from manufacturers to assembly plants.

2.23. These products take a number of forms (see Figure 3.2). Many of them are designed to stack on top of one another when full, so that transit space can be fully utilized when goods are being distributed, and the maximum use made of display space in stores. This is usually achieved by incorporating a lip at the top of each crate or tray, or by including an arm or bar in its design, which can be swung over to provide a base on which other crates or trays can rest. Other designs involve an attached lid, which gives increased protection and security to the contents, and also provides a base on which other crates can be stacked.

2.24. Once the RTPs have reached their destination and their contents have been unpacked, the focus then shifts to reducing the amount of space needed for storing the empty containers and for transporting them on their return journey. Stacking containers—for example, the bottle crates used by breweries, soft drinks manufacturers and dairies—take up the same amount of space empty as they do when full. By contrast, most attached lid containers, bakery trays and the containers used to transport meat and produce are designed to ‘nest’ inside each other, when empty. This is done by turning containers through 180° so that ‘cut-aways’ in the side panels allow them to fit inside each other, or by folding back the lid, or swinging back the bar or arm, on which crates used to rest. Depending on the nature of their design, RTPs are described as ‘deep nesting’—which means that two empty boxes take up not much more space than one full one—or ‘shallow nesting’, when two empty boxes take up, say, one and a half times, or more, the space of a full one. More recently, folding crates have come on to the scene with side panels that can be collapsed and folded over on to each other, reducing the crate to a flat rectangle that takes up even less space. These are more expensive to make than ‘nesting’ RTPs and require more effort from users, as they have to be erected at one end of their journey and collapsed at the other. But the small space that they take up when empty makes them particularly effective when long return journeys are involved. Most manufacturers produce a range of RTPs, capable of functioning together, so as to maximize the uses to which they can be put.

2.25. Because many users of RTPs often handle crates from a range of different suppliers, most of those manufactured in the UK are designed to common shapes and sizes so that they are able to operate with each other—although the extent of their ‘interoperability’ may not be as complete as when all products come from the same manufacturer. Early versions of RTPs made in the UK conformed to imperial measurements, but almost all of those currently sold are metric.

2.26. Finally, most manufacturers’ RTP ranges also include pallets on which crates and boxes can be stored, and dollies on which they can be wheeled about, in warehouses, shops, or elsewhere.

The market for these products

2.27. We have been told that Marks & Spencer was the first major food retailer to use RTPs in the 1960s, but the market remained relatively small until Paxton developed the design of the Maxi-Nest range, in cooperation with Tesco, in 1995. The total UK pool of RTPs in the food

sector was estimated at 8.5 million in 1992, but to have grown to over 27 million by 1998. RTPs are used principally to transport fruit, vegetables, meat, dairy products and other chilled goods to food stores. They are also used by other types of retailers and in a number of industrial applications: motor manufacturers use them to transport components from suppliers to their assembly lines.

2.28. The numbers of RTPs in use have continued to grow in recent years as their application has been extended to a widening range of foodstuffs and other items; and they have come to replace a growing amount of disposable—mainly cardboard- and paper-based—packaging. In most cases, RTPs are cheaper than cardboard boxes over their lifetime, offer better protection to contents, and provide environmental and hygiene benefits. The introduction of increasingly rigorous standards for the disposal and recycling of more traditional packaging materials has also assisted the growth in RTP. One recent estimate is that there are now some 52 million RTPs in circulation in the retail food supply chain in the UK (see Table 6.1).

2.29. Hays, one of the leading RTP service providers in the UK, estimated that demand for RTPs would continue to grow by about 10 per cent a year in the food retail sector, and that a further 10 per cent of the existing pool would need to be replaced each year as crates reached the end of their effective life. From this, Hays estimated that a further 7 million RTPs would be bought by the sector this year, and that by 2007, the number in use should exceed 50 million (see paragraph 7.55).

2.30. Paxton is particularly strong in supplying RTP to the food sector. Its top five customers in 2001, who accounted for almost £[redacted] million (or close to [redacted] per cent) of its total European sales, [

Details omitted. See note on page iv.

redacted]. While Linpac Materials Handling also includes [redacted] among its major customers (with sales of £[redacted] million in 2001), it estimated that about [redacted] of its RTP sales in that year were to the industrial sector, with leading customers being [redacted].

2.31. Producing RTP can require a considerable design component—especially in the early stages of a company or a whole sector transferring from disposable to returnable packaging—and the development of specialized moulds. This in turn requires a comparatively heavy initial investment, which then needs to be recovered by sustained sales over relatively long periods.

2.32. Although RTP is now well established in some sectors of the economy, there remains potential for further growth as these areas expand, and as other sectors, where more traditional types of packaging are still dominant, switch to returnable products. We have been told that the relative economics of returnable as opposed to disposable packaging vary widely between countries, products and logistics systems, and that there are also differing preferences, between countries, product sectors and even between companies in the same industry and the same country. One of the main differences that has been brought to our attention is the UK's preference for 'nesting' RTPs, as against the greater popularity of folding crates in parts of mainland Europe and the USA. We were told that this was because folding crates were more expensive to produce and required more staff effort in use, but—because they took up less space when packed flat—were more economical over long return journeys. This is a decisive consideration where distribution routes are lengthy, but is less important in the UK where population densities are greater and average delivery distances shorter.

Market definitions

2.33. Product markets are generally defined by examining whether there are close substitutes on either the demand or supply side for the articles that are being examined—though supply-side substitutability can also include the ease with which someone new can enter a market.

2.34. On the demand side, the ‘hypothetical monopolist test’ asks whether someone who controlled 100 per cent of the market in a particular product could raise prices materially from a competitive level, and for a reasonable time, without losing profits, through customers buying other products. If not, then those alternative products should be included in the market too.

2.35. The relevant geographic market is defined in a similar way.

2.36. Chapter 5 analyses the RTP business in relation to this test. It records Linpac’s views on market definition (see paragraphs 5.13 to 5.16), and also notes a recent European Commission case (*Industri Kapital (Nordkem)/Dyno*, Case No COMP/M.1813) which involved, inter alia, two manufacturers of RTP in Scandinavia. There is a fuller analysis of this case in Appendix 5.1. Chapter 5 then goes on to consider in some detail whether Linpac and Paxton, acting together, could sustain a price rise in the market for RTP or whether enough actual or potential competition exists to prevent it.

2.37. On the basis of this analysis we have come to a number of conclusions about both the relevant product and geographical markets for this inquiry.

2.38. We have concluded that the supply side of the product market is very wide. The techniques and machinery involved in injection moulding are common to an extensive range of products, and we have been told of a large number of firms, in the UK and throughout Europe, with the equipment and experience necessary to manufacture RTP. To produce particular types of RTP, manufacturers would require appropriate moulds, and these would cost around £130,000 or sometimes more to make, and take at least 23 weeks to acquire. So the number of firms able to contest the market for RTP at very short notice is limited. However, if prices were to rise, we are satisfied that there would be no shortage of firms that would be able to respond to requests from customers within a relatively short period of time (see paragraphs 5.91 to 5.111).

2.39. On the demand side, we have concluded that there are five distinct product markets (see paragraphs 5.69 to 5.71) that are relevant to our inquiry:

- plastic deep-nesting stack-nest containers;
- plastic bakery trays;
- plastic securable stack-nest containers;
- plastic stack-nest containers in general; and
- plastic stacking containers.

The last three of these products are manufactured widely throughout Europe and they are imported freely into this country. We conclude that the geographical market for them is Europe. The first two, however, are manufactured and sold very largely within the UK—although we have been told of one sizeable order for deep-nesting containers that Paxton has recently won from Sweden. We conclude that the geographical market for deep-nesting stack-nest containers and bakery trays is the UK (see paragraphs 5.72 to 5.80).

New entry

2.40. Chapter 5 then goes on to examine new entry to the identified markets. The RTP business is relatively young, with most of the major manufacturers having come into the sector in the closing decades of the last century. In all essentials, the operations involved in the manufacture of RTP are the same as those involved in other types of plastic injection moulding. This is illustrated by the fact that many of the firms engaged in the business also make other types of products—Linpac has a division engaged in automotive mouldings, and McKechnie (Paxton’s

former owner) makes plastic components and finishings for customers in the automotive and aerospace sectors. The way the manufacturing process works means that factories which produce, say, cases for televisions, filing trays or playroom furniture can shift their production to RTP, simply by changing their moulds.

2.41. RTP moulds can be obtained in a number of ways. They can be hired or borrowed from another manufacturer—as sometimes happens when work is subcontracted. A small number of customers retain ownership of the moulds used to make their RTP, and can also lend or hire them to new manufacturers. New moulds can be bought from specialist firms, both in this country and overseas, that make them to order. The cost of having a mould made is sometimes recovered directly from a customer as a specific item in a contract, or its cost can be recovered over time from the selling price of the RTP produced from it.

2.42. The first group of potential entrants into the RTP market is the general plastics companies that already have factories in the UK. Linpac, Paxton and others that we have spoken to have told us that there is currently no shortage of capacity among plastic injection moulders, and that it is not difficult to find firms with both the equipment and expertise to produce RTP. Linpac told us that the Polymer National Training Organisation estimated that there were over 1,500 production facilities with injection moulding equipment in the UK. Within this group, the British Plastics Federation estimated that there were at least 350 machines with the size and capacity to make RTP. Linpac and Paxton together had [redacted] of these dedicated to RTP production (of which [redacted] were generally used for exports).

2.43. Another way of entering the UK market for RTP is by importing products made elsewhere. As almost all UK customers buy crates and boxes in metric sizes, manufacturers based in mainland Europe can import products into the UK without any modifications. Most of the leading ones already do this, even if they have their own production facilities here (like Allibert Equipment Ltd (Allibert)/Buckhorn) or have products made here under subcontract (like Arca Systems Limited (Arca)). Because most RTPs are specifically designed to nest or to fold flat, so as to minimize the space they take up in transit, they are not expensive to transport, and a number of mainland European suppliers have factories in northern Germany, France or Holland, which are not far from UK ports. Imports from further afield are also possible. Paxton told us that it had recently won an order to supply RTP to Sweden, and had calculated that the cost of transporting products to Helsingborg from its factory in Walsall equated to [redacted] per cent of their selling price. Linpac suggested that plastic moulding is a business with high sunk costs. A manufacturer that has established a factory and set up a production line of one or more injection machines will aim to maximize their usage. Winning export orders, even if delivery is more expensive than in the domestic market, may still be more cost effective than paying for idle capacity.

2.44. Next, we looked at whether there were significant economies of scale in RTP manufacture. The production process consists of injection machines inserting molten plastic into a mould. We were told that these machines can vary in size and capacity, producing up to [redacted]. *Details omitted. See note on page iv.* Nonetheless, whatever the size or capacity of a machine, efficiency depends largely on utilizing it to the full. Increasing the number of machines does not lead to any cost reduction through scale economies. This means that smaller operators with a few machines, which they are able to employ throughout the working week, can be more efficient than those with larger plants, if some of their machines are less heavily loaded.

2.45. Another issue brought to our attention was the need for new RTPs to be interoperable with others already in use, if they are to be acceptable to customers. In practice, this concern manifested itself in two ways: intellectual property rights (IPRs) and physical compatibility.

2.46. Most RTP manufacturers, including Linpac and Paxton, patent new designs or innovative features in their product range. In theory, this should act as a barrier to other manufacturers producing similar products, but it does not appear to do so in practice, or at least not to

any significant extent. Hays, for example, whose pool of supermarket trays is based on Paxton's Maxi-Nest range, nonetheless buys similar products from both Linpac and Mailbox Mouldings International Limited (Mailbox). We were told that this is possible for a number of reasons. Sometimes, a manufacturer will license his design to other producers in return for a fee or royalty. On other occasions, a major customer, who may have been involved in creating a new design, will insist that it be made available to other manufacturers, so that he can obtain competitive prices or extra production. Next, we were told that patents could be circumvented by relatively small changes in a design which, nevertheless, meant that the resultant products could still operate with others. So while patenting certainly exists in the RTP business we did not find evidence that it constituted a significant barrier to competition, or to the entry of new players (see paragraphs 5.100 and 5.101).

2.47. As for physical compatibility, we were told about cases where crates did not stack together perfectly when full or where they were difficult to separate when nested. But from what we were told, it appeared that this could happen with crates from the same manufacturer as well as with ones from different producers. This was because the production tolerances on nesting RTPs are very tight, so products made on different machines in the same factory, or even on the same machine, but, say, cooled at different rates, could have tiny variations in size, which might cause operating difficulties in some circumstances. So it appeared to us that physical compatibility was an issue for all manufacturers, and not one that applied only to those entering a market for the first time or seeking to compete within it (see paragraph 3.12).

2.48. There are many generalist plastics firms in the UK with the ability to move their production capacity to making RTP, and a number regularly do so, from time to time, in response to direct orders from customers, or as subcontractors to domestic and foreign manufacturers. There are also a number of substantial suppliers of RTP with factories on the European mainland who can, and do, import products into this country, whether or not they currently have production facilities here. We have even been told that some former employees of Linpac and other packaging specialists have set themselves up as RTP suppliers. And while we have examined potential barriers relating to economies of scale, IPR, and physical compatibility, we have found none of these to be significant.

2.49. So we concluded that there were no significant barriers to entering this market.

Pricing

2.50. RTP comes in a wide range of shapes and sizes, so it is not surprising that prices vary considerably. A small nesting tray sells for only a few pounds, while a large, folding, lidded container could be priced at over £30. Some pallets and dollies can cost as much, if not more (see Table 6.4).

2.51. We have been told that the price that an individual customer would pay for a particular type of RTP depended to a very large extent on the number that the customer bought. Buyers who wanted only a few containers would probably purchase from a catalogue with published prices. These are provided by individual manufacturers to advertise their own products, or by consolidators who cover a range of manufacturers in one volume. Customers can buy directly from the supplier or from the consolidators, who offer a mail order service.

2.52. Medium-sized buyers that order several thousand containers a year will normally contact a number of suppliers to find the best price. Salesmen will generally be guided by an internal price list, but will be able to offer discounts for volume.

2.53. The lowest prices are obtained by the very big buyers—such as the larger supermarket chains and the service providers. They will be seeking to order hundreds of thousands of containers—and sometimes over a million—at a time. These customers often have specialist buying staff who will negotiate with a number of suppliers to get the best possible price. Some

follow a traditional tendering process, while others have developed specific procurement practices of their own. In some cases they will be looking for largely standard products or follow-on orders for RTP already in use. In others they will want to have new products designed to meet particular requirements.

2.54. In sum, the great bulk of RTP is sold on the basis of competitive price negotiations between the larger customers and the suppliers. We were told that only a small amount was sold on the basis of published prices (see paragraphs 5.31 to 5.37).

Demand for these products

2.55. From what we have been told, both by suppliers and customers, demand for RTP tends to be irregular. There are two main sources of orders. The largest have traditionally come from new customers that have decided to move some or all of their packaging requirements from a more traditional form—often corrugated cardboard or wood—to returnable plastic. They may decide to do this for a number of reasons: so as to be able to automate their handling system, to improve the level of protection afforded to contents during transit, to meet current or forthcoming environmental standards or legislation about waste disposal, or to be able to use RTP directly at the point of sale and so reduce costs within their stores. These initial orders can be very substantial if, say, a large retail chain is converting to RTP for the first time, and can lead to millions of items being produced. They may also involve a considerable design element if the containers have to be tailored to meet particular requirements. But they are one-offs, and once customers have completed their initial conversion, their subsequent demand will be lower.

2.56. The other main source of orders is topping up customers' stock of RTP after the initial order has been met. These orders are generally smaller with annual contracts perhaps equivalent to 10 or 20 per cent of initial orders, which are needed to replace crates that are lost or damaged, and to allow for expansion in the number of outlets that customers wish to service, or to enable additional lines of products to be transported.

2.57. We have been told that all the major UK supermarkets and bakeries had now adopted RTP to varying degrees, so the steep increase in demand that characterized the 1990s has begun to level off in these sectors. But it is very difficult to be certain about the strength of these trends; traditional forms of packaging are still widely used, even in supermarkets, so there continues to be room for further growth. The use of RTP is also becoming increasingly common in other retail areas and in a range of industrial applications where significant further expansion may be possible.

2.58. Manufacturers, too, continue to improve their offerings and come up with new features and designs aimed at increasing their products' appeal. For example, Allibert/Buckhorn told us that it had been working on a scheme to implant a microchip into RTP so that contents could be logged electronically and a container's progress tracked.

2.59. Finally, we have been told that the expected life of RTP is generally around five to ten years—though it can be longer. So as there was a major upsurge in demand from about 1995—when Tesco adopted the Maxi-Nest range, and many other companies then followed suit—there may well be a major re-equipment cycle in the next few years as existing containers are replaced—in some areas with newer designs or products.

The manufacturers and suppliers of these products

2.60. In addition to the two companies involved in the merger, there are a large number of other manufacturers who are able to supply RTP. They fall into three groups:

- existing RTP producers with manufacturing facilities in the UK;

- existing RTP producers with manufacturing facilities in mainland Europe; and
- other producers with injection moulding capacity in the UK or in mainland Europe.

2.61. Of the other RTP manufacturers operating in the UK, the largest producer is Allibert/Buckhorn, the European subsidiary of the US group, Myers Industries, which supplies supermarket, bakery and industrial customers with RTP from its factory in Gloucester (as well as importing from mainland Europe). It told us that its UK sales of RTP were worth about £15 million a year which, it estimated, equated to a market share of between 15 and 18 per cent. Just over half of this was supplied from Gloucester, and the rest from plants in France and Spain (see paragraphs 7.2 and 7.3). The next largest producer in the UK is Mailbox, which has supplied Hays with 15 per cent of its recent orders (see paragraph 7.60). It told us that its annual UK sales of plastic materials handling containers including RTP now exceeded £[redacted] million (see paragraph 7.30). Another overseas manufacturer with a production capability in the UK is the Norwegian company, Polimoon Group, which has a factory on Deeside. Polimoon told us that it was currently concentrating its production capacity on bulk packaging and containers for hazardous materials, but that it did produce some RTP in this country and could do so in greater quantity if a suitable opportunity presented itself (see paragraph 7.66). We were told by others that Utz Group (Utz), which already sells RTP made in Germany and Switzerland to UK customers, was adding a manufacturing capability to its UK subsidiary, George Utz Ltd, which, since 1990, has operated a distribution centre in Alfreton, Derbyshire (see paragraph 7.68). Another of the UK-owned manufacturers is D S Smith Plc which has a large number of packaging interests around the world, including a group of plastics and logistics businesses which operate from 15 main sites in the UK, elsewhere in Europe, and the USA. It manufactures a range of returnable plastic containers, particularly for soft drinks manufacturers and brewers (see paragraph 7.67).

2.62. The next group comprises the major mainland European manufacturers that do not own dedicated production facilities in this country, but which import RTPs into the UK from plants on the Continent. We were told that these included Schoeller-Wavin, which through the service provider Ifco (which has a distribution centre here) supplies RTP made in Holland and Germany to, inter alia, the Waitrose chain. Arca, which sells RTP made in Sweden, Germany, France and Spain to UK customers, told us that its annual UK sales were around £10 million—of which around £[redacted] million is produced in this country under contract (see paragraph 7.14).

2.63. Both of these groups are made up of firms with a specific expertise in the production of RTP. The third consists of generalist plastics companies that produce RTPs from time to time as part of a much wider range of products. They can do this in response to direct orders from customers, or as subcontractors to specialist manufacturers. Linpac told us that it subcontracted some of Paxton's RTP production to generalist plastic manufacturers immediately after the acquisition to make up for the capacity that had been lost in the Llantrisant fire (see paragraph 6.29). Allibert/Buckhorn told us that it, too, contracted out production to generalist manufacturers from time to time (see paragraph 7.3). And Arca told us that it did so when there were particular reasons for manufacturing in the UK—where it had no production capacity of its own—or as an alternative to the transport costs involved in conventional importing (see paragraph 7.14). Another reason why specialist manufacturers sometimes place production work with other firms is when unusual facilities are needed for a particular job and contracting out is more cost effective than investing in its own plant.

How the products are supplied

2.64. The supply of RTP is predominantly a business-to-business market. There are two main routes by which it is bought and sold.

2.65. The first is outright purchase. This is the traditional route. Customers purchase their requirements direct from the manufacturers in most cases—with some smaller buyers preferring to use a consolidator that markets a number of brands from a single catalogue.

2.66. The other route, which, we were told, was becoming increasingly common among the larger users of RTP, is to employ a service provider—such as Hays or Chep—to buy containers, as well as manage them once they are in service. We have been told that some customers delegate this procurement function entirely to a service provider, while others may share it: negotiating with a manufacturer together with their service provider, so as to get the best possible price and specification.

The customers for these products

2.67. The customers for RTPs come from a wide range of sectors, but a significant majority of those who use the products that Paxton makes come from the food sector. Supermarkets and other food retailers accounted for [] per cent of Paxton's sales in the year to 31 July 2000; food processors for [] per cent; and bakeries for another [] per cent: [] per cent in all. The rest of its sales went to non-food retailers ([] per cent), agriculture ([] per cent) and other customers ([] per cent) (see Figure 4.10).

2.68. Industrial users are also important, especially for the larger sizes of containers that Paxton does not manufacture. But they also use smaller RTPs for transporting components from suppliers to assembly lines, and spare parts to garages and repair shops. RTPs are also used in automated warehousing operations and in sectors such as home delivery.

2.69. We have been told that the extent to which RTP is used in each of these areas varies considerably, as does the scope for further potential growth.

The nature of competition

2.70. Competition in the supply of RTP rests on a number of factors.

2.71. One is price. The large customers to whom the bulk of sales go are very price sensitive and—because of the enormous volumes that they buy and the skilled procurement staff that they employ—are well able to impose considerable price pressure on the suppliers.

2.72. Another factor is innovation. Linpac told us that the strong position that it held among food retailers in the early 1990s was significantly eroded by the Paxton Maxi-Nest range, which came on to the market in the middle of the decade. We have been told that the new range was deeper nesting than its predecessors, and enabled crates and trays of different sizes to be stacked together. Allibert/Buckhorn told us that it hoped to be able to increase the size of its market share by introducing microchip technology into its next range of RTP (see paragraph 7.8).

2.73. We have also been told that there is an element of follow-my-leader among customers, so that once a large player—say a major supermarket—adopts a particular range, others will do so too. This is partly because the other customers will assume that what is suitable for a major organization will meet their needs, but also because once the big suppliers of the major organization have adapted their business to use a particular type of RTP, it is easier for them—and for their other customers—if they use that type for other deliveries. This means that there is intense competition for the orders of the biggest RTP users, not just because they are valuable in their own right, but because they can open the way for similar orders from other customers.

2.74. Another area of competition is reliability and quality. Because the decision to shift from one-trip packaging to RTP is a major one for the firms that take it, they are very keen that

the changeover goes well and is not disrupted by late deliveries of containers or poor performance in use. This means that initial orders are likely to go to the more substantial suppliers—though follow-on orders are more likely to be shared among other manufacturers.

2.75. A final element in competition is that the major customers are keen to ensure that they will continue to have a choice. Hays, for example, told us that it had responded to the news of the Linpac/Paxton merger by increasing its level of ordering from Mailbox, its third supplier. It also told us that it was aware of two overseas RTP manufacturers that were interested in setting up production facilities in the UK, and that it would be willing to award initial orders to a new entrant to encourage it to come here (see paragraph 7.60). Other customers routinely dual source large orders to keep a number of suppliers in play, and the consultants that we engaged (see paragraph 3.2) told us that the larger supermarkets would be prepared to change suppliers and buy from abroad if they could not get the prices they demanded from domestic producers.

[*Details omitted. See note on page iv.*]

Conclusions on the public interest

2.76. In order to form a view on whether or not the situation created by the acquisition operates, or may be expected to operate, against the public interest, we looked at the implications for the UK market in RTP. We also considered the likelihood of current competitive conditions continuing into the future. In the course of this inquiry we gathered information from those that might have had an interest in the questions raised in our terms of reference. We visited three production sites where plastic-based storage, handling and distribution containers are manufactured, and engaged a firm of consultants to advise us on the sector and to help us assess the information that we have received. We held a series of hearings, and either contacted directly or otherwise encouraged anyone with information or views on these issues to share them with us (see Appendix 1.1). In practice, the level of response—from the industry and the public—has been low. With one or two exceptions, little interest has been shown by other manufacturers, or by distributors, and next to none by the end-users of RTP.

2.77. The first area that we examined was the likely impact of the acquisition on the UK market for RTP. Although merging with Paxton will more than double Linpac's overall materials handling sales in the UK (in the year to 31 December 2001, Paxton's turnover in this country was £[redacted] million compared with Linpac's £[redacted] million) the implications for different types of plastic RTPs vary widely (see paragraphs 5.81 to 5.90). For example, the acquisition will have little consequence for Linpac's position in bulk and customized packaging, which in the year to 31 December 2001 accounted for the largest single element in its UK RTP sales ([redacted] per cent). Paxton sells very few products in this sector. On the other hand, the largest element in Paxton's product range, supermarket trays, which in that same year accounted for [redacted] per cent of its UK sales (£[redacted] million) accounted for only [redacted] per cent of Linpac's (£[redacted] million). There is a similar story in bakery trays—UK sales of £[redacted] million by Paxton against £[redacted] by Linpac—and dollies—£[redacted] million by Linpac, £[redacted] by Paxton. The only product category in which both companies have UK sales of over £[redacted] million is stacking, stack-nesting and other containers sold to non-supermarket customers (£[redacted] million for Linpac, £[redacted] million for Paxton) (paragraph 4.101). So while the overall impact of the acquisition is large for Linpac's share of the UK RTP market, its effect in many individual segments of that market is much less significant.

2.78. Next, we looked at the customers to whom Linpac Materials Handling and Paxton sell their products. Again, because of their focus on different segments of the market, not many of their customers were common, and where they were the same they often bought in very different proportions from the two suppliers. Hays, for example, which expressed concerns to us about the merger, said that it had recently placed orders for RTP for its supermarket clients from three sources, but 80 per cent of its requirements had been met by Paxton, and only 5 per

cent by Linpac (paragraph 7.60). The only purchaser to feature among the top five customers of both Linpac Materials Handling and Paxton in 2001 was [redacted], which was Linpac Materials Handling's largest customer (buying RTP worth £[redacted] million) and Paxton's fifth largest (£[redacted] million). It was, however, clear that the product mix which Chep bought from the two suppliers was very different, as the average price of the items it bought from Linpac Materials Handling was £[redacted] and from Paxton, £[redacted]. Chep said that it was unconcerned about the acquisition, because it bought containers in large quantities from a number of different suppliers so was well placed to deal with them (see paragraph 7.51).

2.79. We then looked more carefully at the issue of buyer power in this area. From what both Linpac and Paxton have told us, this is a market with a small number of very large buyers. Among supermarkets, for example, we have been told by Linpac and by our consultants that there are around 30 million RTPs in circulation. Hays' estimate was even higher (35 million) with two companies, Tesco and Sainbury's accounting for over 20 million between them. In the bakery sector, we have been told that two companies, ABF and British Bakeries, account for more than half of all manufactured bakery trays by value. [

Details omitted. See note on page iv.

] The service providers, such as Hays, Chep and Ifco, also buy in very large quantities, either on their own account, or on behalf of their clients. The industrial customers of RTP, such as [redacted], who together accounted for £[redacted] million of Linpac Materials Handling's sales last year, are similarly very large (see paragraph 6.85).

2.80. Of all of these companies, only Hays has expressed any concerns to us about the merger, though it also told us that it was aware of two overseas manufacturers of RTP interested in setting up production facilities in the UK, and was willing to award initial orders to a new entrant to encourage this to happen and so provide another source of supply, should the merger go ahead.

2.81. All of this indicates to us that this is a market characterized by strong buyer power. Almost [redacted] per cent of Paxton's European sales went to five customers in 2001 (see paragraph 6.85). And given the irregular nature of ordering, the position of individual customers can become even stronger in some years. For example, in 1997, when Tesco's initial orders for Maxi-Nest were being met, sales to the supermarket, of £[redacted] million, accounted for around [redacted] of Paxton's total UK turnover.

2.82. We next looked at how likely it was that the large firms with buyer power would choose to exercise it. We concluded that they would. This is because they are all, in their different ways, operating in parts of the economy—such as food retailing, distribution and the automotive sector—where companies are not accustomed to accept price increases from their suppliers, and many have a reputation for doing all that they can to reduce the cost of their operations. Cost reduction was one of the early motivations for the shift from one-off packaging to RTP in earlier decades, and since then there has been continual downward pressure on prices. A number of the larger buyers of RTP have already demonstrated their ability to switch suppliers in this area, evidenced by the rise of Paxton and the decline of Linpac as a supplier to supermarkets in the 1990s. They have also shown a willingness to build up other UK suppliers, to be prepared to source from overseas when they cannot get the best prices at home, or to encourage new manufacturers to come into the UK. The supermarkets and the car manufacturers, for example, have also developed very sophisticated procurement operations, which are staffed with skilled and experienced buyers and negotiators. We were told that they used these resources in agreeing orders with the RTP producers.

2.83. We considered the availability of alternative sources of supply, if the merged entity were to seek to raise its prices, or otherwise try to act in an anti-competitive manner. First, there are a number of UK firms already active in this market: Mailbox and D S Smith plc are two examples. Both could expand and extend their output over the short term and increase their

presence in this market significantly over time. They already have the skills and equipment needed to produce RTP, and could easily acquire more capacity if new orders justified the investment.

2.84. There are a number of overseas-owned suppliers that either have a manufacturing presence in the UK or an existing business importing into this country. We have been told, for example, that Polimoon's plant on Deeside now focuses on other types of plastic containers, but could expand its production of RTP. Allibert/Buckhorn already makes RTP in its Gloucester factory as part of a broad range of plastic products but, again, could increase its focus in this area should Linpac's and Paxton's customers be looking for new suppliers. We were told that Arca and Utz already imported various types of RTP into the UK, and could, no doubt, also increase the numbers they bought in or adapt their range to meet specific UK requirements, if the major orders currently met by Linpac and Paxton were to be offered to them.

2.85. There are a large number of plastic producers in the UK that would be able to shift their capacity to RTP from other products, in response to customer demand. So we are persuaded that if Linpac's and Paxton's current customers became dissatisfied with either the price or quality of their products, following the merger, there would be little difficulty in them shifting their orders to other suppliers. Some would be able to respond quickly to new contracts, and others would be able to shift the focus of their production over a relatively short period of time.

2.86. We looked at whether there was any expectation that the merger would lead to a reduction in the quality of service currently received by Linpac's and Paxton's customers, or to a fall in technical standards. No one raised such concerns with us, and we were given assurances by Linpac's management that they were fully aware of the importance of continuing to develop new products and to improve the efficiency of their production processes. We had no reason to doubt what we were told.

2.87. We also considered whether this merger had any implications for the suppliers to Linpac and Paxton. But our enquiries provoked no response from either equipment manufacturers that provide injection moulding machines or moulds, or from the petrochemical companies that produce the raw material from which plastic RTP is made. Nor did we receive any other evidence to suggest concerns on the part of suppliers. So we concluded that the merger did not raise concerns in this area.

2.88. Finally, we considered the impact of the merger on production capacity in the UK. Linpac was clear that it hoped the merger would lead to increased output overall. While it expected that its share of the UK market might fall—because customers would choose to dual source from other, mostly UK suppliers and seek to build up other UK producers, as a means of maintaining choice—it believed that this could be more than offset by increasing exports. Paxton had an impressive range of products, which had established a very strong position in the UK food and retail sectors over the last decade. Linpac believed that by harnessing the existing production capacity in its plastics moulding operations, and by making full use of the extensive sales network it operated throughout Europe, it would be able to bring Paxton's products to a much wider range of customers. The Act also invites us to consider whether a merger has implications for the balance of employment across the country. We did not find evidence of any concerns on this score during our inquiry.

2.89. So, for these six reasons:

- the significant share of the UK market for these products that is controlled by large national and international companies with considerable buyer power;
- the extreme price sensitivity of these large customers who operate in sectors—such as supermarkets or automotive manufacturing—where procurement and cost control techniques are very highly developed;

- the constraints on prices caused by the presence of existing competitors, both domestic and foreign, in all of these product ranges, and the relative ease with which others can enter these markets: either European manufacturers of RTP setting up here or importing into the UK, or other domestic plastic producers shifting their capacity to RTP from other products;
- the expectation of competition being maintained, as large buyers act to ensure that they will continue to have a choice by developing other producers, through dual sourcing, and by inviting companies from outside the UK or not currently manufacturing RTP, to tender for orders;
- the lack of any expectation of a reduction in either the quality of service to customers or the technical quality of these products; and
- that no overall loss of UK capacity is expected to result from the merger;
- we conclude that this acquisition does not operate against the public interest, nor can it be expected to do so.