

Terms of reference and conduct of the Inquiry

Terms of reference

1. On 20 May 2004 the OFT sent to the CC the following reference:

Whereas in exercise of its duty under section 22(1) of the Enterprise Act 2002 (“the Act”) to make a reference to the Competition Commission (“the Commission”) in relation to a completed merger the Office of Fair Trading (“the OFT”) believes that it is or may be the case that—

- (a) a relevant merger situation has been created in that:

- (i) enterprises carried on by or under the control of DS Smith PLC have ceased to be distinct from enterprises carried on by or under the control of LINPAC Containers Limited; and

- (ii) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million; and

- (b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the United Kingdom for goods or services, namely the market for the merchant supply of corrugated cardboard sheet.

2. Now, therefore, the OFT, in exercise of its duty under section 22 of the Act and its power under section 35(6) of the Act, hereby refers to the Commission, for investigation and report within a period ending on 3 November 2004, the following questions in accordance with section 35 of the Act—

- (a) whether a relevant merger situation has been created; and

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

3. In relation to the question whether a relevant merger situation has been created, the Commission 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.

Vincent Smith
Director, Competition Enforcement Division
Office of Fair Trading
20 May 2004

Conduct of inquiry

4. Notices inviting interested parties to submit evidence to the CC were placed in *The Grocer*, *Board Converting News International* and *Packaging Magazine*. We also

posted an invitation to express views to us on the CC web site¹ together with an administrative timetable for the inquiry.

5. We sought evidence from competitors, customers and trade unions and from the SPA. Evidence was received during oral hearings with a number of competitors and customers, in written submissions, and in three questionnaires (to sheet customers, large case customers and to competitors). Non-sensitive versions of submissions that we received from third parties can be found on the CC's web site, together with a summary of key third party arguments and views, and the results of the sheet customer questionnaire.
6. We received written evidence from DS Smith. A non-sensitive version of the company's main submission can be found on the CC's web site. In addition, we held two hearings with DS Smith. Members of the Group, accompanied by staff, visited Linpac's facilities at Louth in Lincolnshire which, as the result of the completed acquisition, had been owned by DS Smith since 22 March 2004. DS Smith responded formally to our provisional findings which were published on 8 September 2004.
7. In the course of our inquiry we sent to DS Smith at the relevant time: a statement of issues; a number of working papers; a notice of provisional findings; the provisional findings report; and the final report. We published one working paper (a business overview of the background to the industry), together with a number of other relevant documents, on the CC web site.
8. We should like to place on record our thanks to all those who assisted our inquiry, particularly DS Smith and its advisers.

¹www.competition-commission.org.uk.