

Terms of reference and conduct of the inquiry

Terms of reference

1. On 31 August 2006 the OFT sent to the CC the following reference:
 1. Whereas 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) enterprises carried on by or under the control of SvitzerWijismuller A/S will cease to be distinct from enterprises carried on by or under the control of Adsteam Marine Limited; and
 - (ii) as a result, the condition specified in section 23(4) of the Act will prevail or will prevail to a greater extent, with respect to the supply in the United Kingdom of harbour towage services; 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 supply in the United Kingdom of harbour towage services.
 2. Now, therefore, the OFT, in exercise of its duty under section 33 of the Act, hereby refers to the CC, for investigation and report within a period ending on 14 February 2007, the following questions in accordance with section 36 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) **John Fingleton**
Chief Executive Officer
31 August 2006

Conduct of the inquiry

2. Notices inviting interested parties to submit evidence to the CC were placed in the *International Freightling Weekly* and *Lloyd's List*. We also posted an invitation to express views to us on the CC website.¹
3. We sought and received written evidence from competitors, potential competitors, customers, shipping agents, port authorities and user groups, and other parties.
4. Oral evidence was received during hearings with selected third parties including some conducted by telephone conference. Collations of key arguments and views of some third parties can be found on our website together with non-sensitive versions of written submissions that we received from third parties. We also conducted a customer questionnaire, the findings of which can also be found on our website.
5. We received written evidence from Svitzer and from Adsteam. Non-sensitive versions of their main submissions can be found on our website. In addition, we held two hearings each with Svitzer and with Adsteam. Members of the Group, accompanied by staff, visited the operations and offices of the main parties in Teesside and in Liverpool. Members of the Group, accompanied by staff, also visited the operations and offices of SMS on the Humber.
6. In the course of our inquiry we published a statement of issues on 2 October 2006, and sent to Svitzer and Adsteam a number of working papers and a Notice of provisional findings. A non-sensitive version of our provisional findings was placed on our website on 12 December 2006.
7. We should like to thank all those who assisted in our inquiry, particularly Svitzer and Adsteam.

¹www.competition-commission.org.uk.