Anticipated acquisition by Cabot Corporation of Nhumo, S.A. de C.V.

ME/6138/13

The OFT's decision on reference under section 33(1) given on 5 November 2013. Full text of decision published 13 November 2013.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Cabot Corporation** (**Cabot**) is a global specialty chemicals and performance materials company, headquartered in the United States. Its principal products are rubber and specialty grade carbon blacks, fumed metal oxides, activated carbon, inkjet colorants, aerogels and cesium formate drilling fluids. Cabot's UK turnover for the year ending 30 September 2012 was approximately £[ ] million.

2. **Nhumo, S.A. de C.V.** (**Nhumo**) is a joint venture in Mexico between Grupo Kuo and Cabot, whose sole activity is the production and sale of carbon black. Grupo Kuo currently has a 59.95 per cent share and Cabot a 40 per cent share in Nhumo. The remaining 0.05 per cent is held by several other minority shareholders. Nhumo's UK turnover for the year ending 31 December 2012 was £[ ] million.

TRANSACTION

3. The parties entered into a Stock Purchase Agreement on 13 June 2013, under which Cabot has agreed to acquire an additional 45.67% of shares in Nhumo for a consideration of approximately US$80 million (the **Transaction**). The Transaction is conditional upon clearance by the Office of Fair Trading (**OFT**).

4. The parties provided a satisfactory submission to the OFT on 14 August 2013. The administrative timetable was subsequently suspended and the OFT's extended administrative deadline expires on 5 November 2013.

JURISDICTION

5. Following the Transaction, Cabot's shareholding in Nhumo will increase from a 40 per cent share to a 85.67 per cent share. The OFT considers that Cabot will acquire **de jure** control of Nhumo, having previously held at least material influence in it. This change in the level of control to a controlling interest will trigger a relevant merger situation.[1] Accordingly, the OFT considers that, as a result of the Transaction, the parties will cease to be distinct under section 26(4)(a) of the Enterprise Act 2002 (the **Act**).

6. The OFT considers that the share of supply test in section 23(3) of the Act is met since the parties' combined share of supply of carbon black in the UK is [30 – 40] per cent by volume and [30 – 40] per cent by value.

7. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. The requirements of section 33(1)(a) of the Act are satisfied.

FRAME OF REFERENCE

8. The OFT considers that market definition is a useful tool, but not an end in itself. Market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger in a mechanistic way, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[2]

[1] *Mergers: jurisdictional and procedural guidance*, OFT527, June 2009, paragraph 3.33.
[2] *Merger Assessment Guidelines,* OFT1254, September 2010, paragraph 5.2.2.

9. The parties overlap in the production and sale of carbon black. Carbon black is pure elemental carbon in the form of colloidal particles that are produced by incomplete combustion or thermal decomposition of gaseous or liquid hydrocarbons in a reactor. Its physical appearance is that of a black, finely divided pellet or powder. It is used as input for the manufacture of a variety of products, including tyres, rubber and plastic products, printing inks and coatings. Nhumo's sales in the UK are made via a distributor, Lehmann & Voss.

Product scope

10. The European Commission has previously considered the market for carbon black. It did not find it necessary to conclude on the exact product scope, in particular whether there are separate markets for rubber blacks and specialty grades and whether the market for rubber blacks can be further sub-segmented into hard and soft grades.[3] The OFT has considered below whether it is appropriate to distinguish between rubber blacks and specialty carbon blacks, and between grades of rubber blacks.

Rubber and specialty carbon blacks

11. The vast majority of carbon black grades are standardised and are produced in accordance with the respective standards of the international standards organisation ASTM International (USA) (**ASTM**). Standard ASTM carbon black grades are used as a reinforcing filling agent in the production of rubber tyres[4] and technical rubber products. Such grades are usually referred to as 'rubber blacks'. The parties submitted that rubber blacks accounted for 95 per cent of global carbon black demand in 2012. The remaining five per cent was accounted for by 'specialty carbon blacks', used in the manufacture of plastics, coatings and printing inks.

12. The parties submitted that, due to the ease of demand and supply-side substitution, the market should be defined as all carbon blacks, comprising both rubber blacks and specialty carbon blacks.

13. According to the parties, specialty carbon blacks are substantially purer or cleaner than standardised rubber blacks. They have lower levels of sulphur,

[3] Commission Decision of 15 June 2011 in Case No COMP/M6191 – *Birla/Columbian Chemicals*, paragraph 23.
[4] The addition of rubber blacks in tyres ensures high abrasion resistance and good road handling.

ash, metals, physical impurities and water wash residue. As a result, there is limited demand-side substitution between the two.[5]

14. From a supply-side perspective, the parties submitted that separate production lines are used for producing rubber blacks and specialty carbon blacks and switching production from specialty carbon blacks to rubber blacks (and vice versa) is unlikely in practice given the time and cost required to clean and restore the production line as well as the reconfiguration of the reactor using a different technology. This was confirmed by third parties. Further, the parties claim that the knowhow required to produce specialty carbon blacks is less widespread than that to produce rubber blacks.

15. Whilst Cabot is active in the manufacture of specialty carbon blacks, the parties submitted that Nhumo is not, [ ].

16. For the purpose of the current assessment, and on a cautious basis, the OFT considers that rubber blacks and specialty carbon blacks should be assessed separately due to the limited demand and supply-side substitutability between them. However, Nhumo does not produce specialty carbon black grades and its tweaked grades can only be used to a very limited extent as an alternative to specialty carbon black grades. As such, the OFT considers that it is not necessary to assess the competitive impact of the Transaction on the supply of specialty carbon black grades.[6]

Distinction by grade

As noted above, carbon black is produced in a variety of grades. The parties submitted that customers of carbon black are mainly international tyre manufacturers who purchase a combination of carbon black grades which they mix together according to their specific requirements. The parties noted that these customers are generally able to switch between carbon black grades within an ASTM family (for example between 100 and

[5] The OFT considers the boundaries of the relevant market are generally determined by reference to demand-side substitution alone. However, there are circumstances where the OFT may aggregate several narrow relevant markets into one broader one on the basis of considerations about the response of suppliers to changes in price. See *Merger Assessment Guidelines*, paragraph 5.2.17 for an outline of the OFT's approach to supply-side substitution.

[6] For the conditions of supply-side substitution to be met OFT guidance says that the same firms should supply the different products and the conditions of competition should be the same between those firms for the products ('*Merger Assessment Guidelines*', OFT1254, September 2010, paragraph 5.2.17). The OFT does not consider that the conditions are met in this case.

199 or between 200 and 299), although the extent of their ability to do this depends partly on the application.

17. A significant proportion of third parties, in particular customers who use rubber blacks for non-tyre applications, stated that grades are not generally considered to be interchangeable with other grades. This is particularly the case across 'hard' and 'soft' grades. [7] Some third parties stated that they would accept a five per cent price rise rather than switch to another rubber black grade. The OFT therefore considers there to be limited demand-side substitution between grades of rubber black.

18. In terms of supply-side substitutability, the parties submitted that rubber black manufacturers are able to use the same production assets to produce a range of rubber black grades which customers do not consider to be demand-side substitutes. In support of this, the parties submitted that, in three of Cabot's plants in Europe, a single unit line can be used to produce [over 5] grades. One third party competitor confirmed that its production lines can be used to produce different grades of rubber black for all applications, although some modifications will be required for specialised grades. This substitutability extends to hard and soft grades because some producers have swing reactors which have the ability to switch between hard and soft grades on the same production line.

19. The OFT has not found it necessary to conclude, on the basis of supply-side factors, whether all ASTM rubber black grades should be treated as a separate economic market. For the purposes of its assessment, given that the evidence indicates that no competition concerns would arise on a narrower basis, it has undertaken its competition assessment on the basis of all ASTM rubber black grades.

Distinction by customer group

20. The OFT may sometimes define relevant markets for separate customer groups if the effects of the merger on competition to supply a targeted group of customers may differ from its effects on other groups of customers. This may happen when, for example, suppliers can target higher prices at customers willing to pay more, or when competition for customers differs significantly between different customer groups.

[7] Hard grades are a reinforcing grade of rubber black corresponding to the 100, 200 and 300 series of the ASTM classification and are mostly used in tyres. Soft grades refer to a semi-reinforcing grade of rubber black corresponding to the 500, 600 and 700 series of the ASTM classification.

21. In determining whether there are separate customer groups, the OFT considers the extent to which some customers could get better terms for the same requirements. In such instances, depending on the circumstances of the case, the OFT may decide to define two or more relevant markets, or may decide to define one relevant market and note the scope for price discrimination within it.[8] In particular, the OFT considers the extent to which products can be resold between customer groups, the ability to price discriminate between groups, and the extent to which customers have different preferences.

22. The OFT considered whether the effects of the Transaction would differ significantly for tyre and non-tyre customers, and therefore whether it is appropriate to assess the Transaction on the basis of these two customer types separately.

23. The parties submitted that competition between rubber black suppliers takes place across all applications. The parties supported their submission by arguing that:

    i. rubber black grades used to make tyre and non-tyre rubber goods are largely the same (although some grades of rubber black are primarily used in either tyre or non-tyre applications)

    ii. in most instances, a non-tyre customer may easily be able to switch from one grade to another, regardless of whether that grade was originally intended for tyre or non-tyre applications, and

    iii. there are no material barriers to a rubber black supplier wishing to start manufacturing and supplying grades that are predominantly used in non-tyre rubber applications.

24. The OFT considers that there is evidence to suggest that tyre customers can be distinguished from non-tyre customers. First, the OFT was told by several third parties that non-tyre rubber black customers purchase smaller volumes of rubber black compared to tyre customers. Given this, non-tyre customers have a preference for rubber black to be delivered in smaller packages, and as such distributors are often used for these customers. Some non-tyre customers have also indicated a preference for a supplier to have local stock in the UK, due to security of supply and lead times. The parties submitted that whilst non-tyre customers may purchase smaller

[8] *Merger Assessment Guidelines*, OFT1254, September 2010, paragraphs 5.2.28-29.

volumes overall, both types of customer take deliveries in truck loads of approximately 20 metric tonnes, and that non-tyre customers have no greater need for local stock. The parties, however, provided the OFT with only limited evidence of this.

25. Second, the OFT was informed that a subset of non-tyre customers[9] require a level of quality and purity of product that is higher than that of tyre customers such that the set of feasible suppliers (that can provide product of sufficiently high quality) may be more limited for non-tyre customers. The parties submitted that both tyre and non-tyre customers have a spectrum of quality requirements. For most of this spectrum customers can use standard ASTM grades, as evidenced by the fact that many grades are marketed to both tyre and non-tyre customers. There are only few applications, such as automotive weather stripping, where cleaner grades may be required. The parties argue that, where this is the case, any major carbon black supplier can change the formulation of a standard grade in existing production lines.

26. Third, tyre customers may have a stronger negotiating position as compared with non-tyre rubber black customers. This is partly a result of the fact that tyre customers generally purchase larger volumes than non-tyre customers of rubber black. Further, Cabot has indicated that [ ] Cabot's contracts with major tyre manufacturers are bilateral contracts, negotiated on a global level. Sales to non-tyre customers generally take place on the basis of monthly or quarterly ad hoc orders.

27. Finally, [ ]. The parties' promotional materials are also targeted to the different customer groups.

28. In view of the evidence set out above, the OFT considers that the conditions of competition between tyre and non-tyre customers are sufficiently distinct to assess them separately for the purposes of this Transaction.

Geographic Scope

29. The parties submitted that, in line with previous decisions by the European Commission, the geographic market for the supply of carbon blacks is at

[9] The OFT notes some non-tyre customers indicated that they require a higher level of quality of rubber black than tyre customers, depending on the application. The OFT considers it sufficient that a subset of non-tyre customers require a higher level of quality of rubber black in order to support a separate assessment of supply to non-tyre customers.

least EEA-wide, and possibly global.[10] The OFT notes that this is supported by evidence that no carbon black is produced in the UK following the closure of carbon black plants by Columbian Chemicals (now Birla) and Cabot in 2009. In 2012, Cabot supplied rubber black to its UK customers from its plants located both within the EEA and in China, Japan, USA and Canada, and Nhumo supplied the UK (albeit through its distributor, Lehman & Voss) with rubber black from its plant in Mexico.

30. Some customers informed the OFT that there are differences in the quality and price of rubber black produced in the EEA to carbon black produced outside the EEA. The parties have confirmed that there is a difference in price between carbon black manufactured in China and carbon black manufactured elsewhere.

31. Some customers indicated that, at least for non-tyre customers, they consider proximity of supplier (at least in the form of local stock) as an advantage. Although all rubber blacks sold in the UK are imported, some suppliers use warehouses and 'decanting stations' in the UK. The OFT notes that some suppliers also use distributors in the UK which have their own warehouses. The parties informed the OFT that there are several distributors available in the UK, such as Lehman & Voss, Azelis, Melrob, Safic Alcan and SM Distribution.

32. Relevant geographic markets may be based on the location of suppliers or customers. In cases where delivered prices are negotiated individually with customers, the geographic scope of the relevant market may be one aspect of the definition of any relevant customer market. This may mean that suppliers can price discriminate on the basis of customer location. Such a customer based geographic market may be appropriate when demand or supply conditions differ between different locations and arbitrage between those locations is difficult.[11]

33. In this case, the OFT received mixed evidence from third parties on the relevant geographic market. The OFT does not consider it necessary to conclude on the geographic scope of the market given that it would not materially change the competition assessment below. Given that a number of third parties pointed to supply conditions differing materially in the UK

[10] Commission Decision of 15 June 2011 in Case No COMP/M6191 – *Birla/Columbian Chemicals*.
[11] *Merger Assessment Guidelines*, OFT1254, September 2010, paragraphs 5.2.27.

from elsewhere in Europe, the OFT considers it appropriate to take a cautious approach and assess the transaction on the basis of the UK.

THE IMPACT OF THE TRANSACTION

34. The OFT has assessed the loss of competition between the parties following the change in the level of control, from at least material influence, to **de jure** control. The OFT recognises that Cabot has an existing interest in Nhumo but notes that the evidence supports pre-existing competition between the parties in the supply of carbon black products in the UK.

35. The OFT has therefore considered whether there is a realistic prospect of a significant lessening of competition (**SLC**) as a result of a loss of competition in the supply of rubber blacks to tyre and non-tyre customers in the UK. The OFT has focused its assessment on evidence relating to the shares of supply, closeness of competition and credible alternative suppliers to the parties.

HORIZONTAL UNILATERAL EFFECTS

36. The parties overlap in the supply of rubber black to end customers. The route to supplying these products involves two stages, where the parties must compete with other suppliers. The first stage is the approval process, where suppliers compete on quality. The second stage is the competition which takes place between approved suppliers to supply customers with their approved rubber black products.

37. A customer may take various factors into account in the approval process, including the quality of the rubber black. Each grade is approved separately for each supplier and each plant, and the approval process generally takes between two months and a year, depending on where the grade is imported from and on the final application.[12] The parties submitted, however, that the approval process generally takes no more than six months.

38. Once approved, customers seek quotations for supply from their approved suppliers and competition is mainly driven by price. Customers informed the OFT that they multi-source their requirements for rubber black. They

[12] The OFT notes that in limited circumstances the approval process may take longer than this.

often have more than one supplier approved for a grade, and may also purchase rubber black from more than one supplier in a given period.

39. Cabot and Nhumo compete at both stages in the supply of rubber black to end customers in the UK.

Shares of Supply

40. The parties provided the OFT with estimates of their share of supply of rubber black to tyre and non-tyre customers in the UK in 2012.

Table 1: Parties' shares of supply of rubber black by customer group in the UK, 2012

UK	Tyre		Non-tyre	
	Volume	Value	Volume	Value
Cabot	[10 – 20]%	[10 – 20]%	[20 – 30]%	[30 – 40]%
Nhumo	0%	0%	[20 – 30]%	[20 – 30]%
Combined	**[10 – 20]%**	**[10 – 20]%**	**[50-60]%**	**[60-70]%**

41. The OFT notes that the shares of supply above indicate that the Transaction does not give rise to concerns in the supply of carbon black to tyre customers in the UK. Third parties broadly confirmed the very limited overlap in the supply of carbon black to tyre customers due to the negligible (if any) presence of Nhumo in this area. As a result, the OFT has not considered this market further.

42. The parties' combined shares of supply of rubber black in the UK to non-tyre customers by volume (and value in the UK) will be above 50 per cent for non-tyre customers.[13] Third party estimates support a combined share of supply to non-tyre customers above 40 per cent in the UK. On this basis, the OFT has assessed the closeness of competition between the parties.

[13] The parties have explained the differences in shares of supply by value and volume as being due to factors such as cost, price and currency exchange fluctuations. [ ]. The parties therefore argue that shares of supply by volume are more reliable than share of supply by value.

Closeness of competition

43. The parties submitted that they are not close competitors, stating that Cabot's principal competitors include Orion, Aditya Birla (**Birla**), Phillips, Omsk, Yaroslavl, Jiangxi Black Cat (**Black Cat**) and Longxing. The parties further pointed to the fact that their customers multi-source their carbon black requirements from different suppliers and are able to switch easily between them.

44. The parties submitted examples of UK customers won or lost by Cabot from 2011 to 2013. The OFT notes that, of the [ ] examples of switching away from Cabot by non-tyre customers provided by the parties, [ ] of these customers switched from Cabot to Lehmann & Voss, Nhumo's distributor. This indicates that Nhumo imposed a constraint on Cabot during that period, although the extent of the constraint is somewhat unclear given that Lehmann & Voss also distributed carbon black on behalf of other suppliers (including Phillips) in the UK during that period.

45. The parties also submitted information to the OFT regarding changes in sales in 2011 following the closure of Cabot and Birla's UK factories. Although Nhumo's sales increased following this event, it is not clear that it was the only supplier that benefited. Further, there were several events that took place around that time. Accordingly, as with the switching examples, the OFT does not consider that any meaningful conclusions regarding the closeness of competition of Cabot and Nhumo can be drawn from Nhumo's change in sales during that period.

46. Many non-tyre customers who responded to the OFT's information requests told the OFT that the parties compete for the same business and they have switched between grades produced by both parties. Third parties indicated to the OFT that the parties compete particularly closely on clean grades of carbon black, which are required for certain non-tyre automotive applications. Cabot supplies a special class of clean rubber grades in the UK, and Nhumo produces 'tweaked' versions of standard ASTM grades[14] which are also of a higher level of cleanliness and compete with Cabot's clean grades.

[14] In the UK, Nhumo sold the following 'tweaked' grades: NH8003 (tweaked version of N550) and NH2952 (tweaked version of N326). The corresponding Cabot grades are SPSOA and R300 respectively.

47. On the basis of the evidence available, the OFT considers that the parties are close competitors, particularly for clean grades of rubber black. It has therefore gone on to assess to what extent there are alternative suppliers in the market that also compete for the supply of rubber black to non-tyre customers in the UK.

Alternative suppliers

48. The OFT has assessed below the extent to which alternative suppliers exert a competitive constraint on the parties in the supply of rubber black to non-tyre customers. The OFT has specifically looked at alternative suppliers for which it received evidence that they may provide a constraint on the parties, and assessed them based on their presence in the UK and the quality of their products.

Birla

49. Birla is an Indian-based supplier and is one of the largest global manufacturers and suppliers of carbon black. Birla does not have any carbon black production facilities in the EEA, and supplies customers located in the EEA with carbon black produced and delivered by its subsidiary in Egypt. Third party estimates indicate that Birla is the leading supplier of rubber black to UK non-tyre customers.

50. The OFT has received evidence that Birla exerts a significant constraint on the parties for non-tyre customers, including for the cleaner grades. In particular, the parties supplied the OFT with some email correspondence between Cabot and its customers. This correspondence confirms that customers consider Birla to be a credible alternative supplier, as they are often cited in negotiations of prices.

51. The evidence shows that Birla is approved by the vast majority of non-tyre customers in the UK, and there are examples of major non-tyre customers switching from the parties to Birla. Of those customers that responded to the OFT's questionnaires, almost all indicated that they consider Birla to be a credible alternative supplier in the UK. Some already source supplies from Birla as well as the parties.

Orion

52. Orion is a German-based supplier and is the market leader for all carbon blacks in the EEA. [ ].

53. While third party estimates indicate that Orion's share of supply in the UK is below 5 per cent, the OFT was informed that several UK non-tyre customers have approved Orion as a supplier. Several emails between Cabot and its customers also indicate that customers consider Orion to be a credible alternative supplier. The OFT has received evidence that a major non-tyre customer has recently switched some of its supplies from Lehman & Voss to Orion. However, it is not clear whether this switch related to Nhumo products supplied by Lehman & Voss.

54. The evidence indicates that Orion also supplies cleaner grades of rubber black (under the Purex brand), and therefore also exerts a constraint on the parties for these grades.

55. Orion's sales in the UK are currently [ ] below its sales in the rest of Europe, and [ ]. [ ] and that customers often refer to Orion in negotiating prices with Cabot, the OFT considers that Orion may provide a constraint on the parties, particularly for the cleaner grades.

Phillips

56. Phillips is the largest carbon black manufacturer in India and the eighth largest worldwide. The OFT was informed that Lehman & Voss previously distributed Phillips products in the UK, but Phillips has recently entered into an agreement with Azelis for distribution in Western Europe.[15] Third party estimates of shares of supply indicate that its share of supply to non-tyre customers in the UK is above 10 per cent.

57. The correspondence between Cabot and its customers again indicates that Phillips is a credible alternative supplier, at least for some grades. The OFT was informed by some third parties that they had concerns relating to the quality of Phillips products. These concerns related to both the quality of Phillips standard grades as well as its ability to produce the cleaner grades.

58. With regard to the cleaner grades, the OFT was provided with email correspondence [ ] which indicates that Lehman & Voss offered a customer a Philips alternative to one of Nhumo's tweaked cleaner grades. Further, in its press release announcing to the distribution agreement, Azelis refers to Phillips' carbon blacks being 'manufactured to the highest standards and backed by comprehensive application testing and strict quality controls'.

[15] www.azelis.com/en/news-events/corporate-news/article/azelis-partners-phillips-carbon-black-to-distribute-carbon-black-251/

59. The OFT was also informed by several UK non-tyre customers that they have approved Philips as a supplier. The OFT therefore considers that Phillips exerts a considerable constraint on the parties for the supply of standard grades to non-tyre customers. For the cleaner grades, the OFT considers that Phillips exerts a lesser constraint, although this constraint may increase in the near future.

Black Cat

60. Black Cat is a Chinese carbon black producer that has recently entered into a distribution agreement with Lehman & Voss.[16] Third party estimates of shares of supply indicate that they do not yet supply any significant volumes of rubber black to non-tyre customers in the UK, but there is evidence that some non-tyre customers have sampled (and to a limited extent approved) Black Cat as a supplier. Some customers indicated that Black Cat's products are not of sufficiently high quality to represent a credible alternative, particularly for the cleaner grades.

61. The parties submitted that Lehman & Voss's decision to supply products from Black Cat rather than Nhumo indicates that it considers that Black Cat's products are of sufficient quality to replace Nhumo's products. [ ]. [ ] email correspondence [ ] confirms that Lehman & Voss offered a customer a Black Cat alternative to one of Nhumo's tweaked cleaner grades. [ ].

62. The OFT therefore considers that Black Cat exerts some constraint on the parties. The recent distribution agreement entered into with Lehman & Voss and evidence from third parties indicates that the constraint may increase in the near future.

Omsk

63. Omsk is the largest producer of carbon black in Russia and among the ten leading carbon black producers in the world. The OFT understands that some UK non-tyre customers have approved Omsk as a supplier, although some also indicated that the quality of their products is lower than that of the parties'. Third party estimates of shares of supply indicate that it does not yet supply any significant volumes of rubber black to non-tyre customers in the UK. Despite this, Cabot's customers often refer to it in negotiating prices with Cabot.

[16] www.lehvoss.de/eng/1458.htm

64. The parties submitted that Omsk manufactures substitutes for Nhumo's tweaked grades in the form of N326 and Omcarb S500A. [ ].

65. In light of this, the OFT considers that Omsk imposes some constraint on the parties in the supply of rubber black to non-tyre customers, and that this constraint is weaker for the cleaner grades.

Conclusion on horizontal unilateral effects

66. The parties combined shares of supply of rubber black to non-tyre customers in the UK will be high post-Transaction. The evidence provided to the OFT indicates that they compete closely. However, there are other suppliers of rubber black to non-tyre customers in the UK, both from within and outside Europe.

67. More specifically, the evidence shows that Cabot, Nhumo and Birla are the strongest players in the UK for non-tyre customers, but there are also other suppliers including Phillips and Orion. In addition, there are emerging constraints from Black Cat and Omsk. Evidence from major UK distributors and customers indicates that the quality of rubber black is improving across most grades. As such, the OFT considers that the merged entity will face credible constraints post-Transaction to prevent a SLC from occurring.

68. Accordingly, the OFT does not consider that there is a realistic prospect that the Transaction may be expected to result in a SLC for non-tyre customers in the UK.

Entry and expansion

69. The OFT considered whether there are suppliers that may enter or expand into the supply of rubber black to non-tyre customers in the UK. In this context the OFT has considered whether such entry or expansion would be timely, likely and sufficient.[17] The OFT has already considered the potential for expansion by specific suppliers above. It has therefore considered more general issues on entry and expansion below.

70. The parties submitted that there are no material barriers to imports of rubber black into the UK, as shown by the fact that all of the rubber black sold in the UK is imported from outside the UK. Further, they submit that there are no material barriers to developing new grades, regardless of their

[17] OFT1254 Merger Assessment Guidelines, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 5.8.3.

application. Indeed, many of the rubber black grades sold to non-tyre customers in the UK are also sold to tyre customers. In addition, there are several distributors competing to secure suppliers of high quality product to serve non-tyre customers. The OFT considers that this will be likely to further expand the range of choices available to UK non-tyre customers.

71. According to the parties, both ASTM and cleaner grades (for example, Nhumo's tweaked grades) can be produced on the same production line, using the same widely available technology and feedstock. They informed the OFT that reconfiguration of a production line to switch between Nhumo's standard and tweaked grades takes [ ], with a [ ]. Rubber black suppliers can therefore easily switch between existing grades (whether for use in tyre or non-tyre applications) and routinely do so.

72. Given the competition assessment above, the OFT has not found it necessary to conclude on whether entry or expansion into the market for carbon black to non-tyre customers will be timely, likely and sufficient.

Countervailing buyer power

73. Customers may be able to use their negotiating strength to limit the ability of a merged firm to raise prices. Such countervailing buyer power may protect customers such as to prevent a SLC from arising.[18] The parties submitted that customers have buyer power because the primary demand for carbon black derives from a small number of large, globally active tyre companies.

74. However, the OFT notes that customers of carbon black for non-tyre rubber purchase smaller volumes than tyre customers. The OFT also considers that the Transaction reduces the number of alternative suppliers for non-tyre customers more so than it does for tyre customers. Set against this, the OFT was informed by a non-tyre customer that it has buyer power, and would retain this buyer power post-Transaction.

75. Given the competition assessment above, the OFT has not found it necessary to conclude on whether buyer power is present on the market.

THIRD PARTY VIEWS

76. The OFT received 17 responses to its market enquiries. Of the 14 customer responses received by the OFT, approximately half raised concerns with

[18] See *Merger Assessment Guidelines*, section 5.9.

regard to the effects of the Transaction. These concerns were all raised by non-tyre customers.

77. Several non-tyre customers were concerned that prices may rise post-Transaction, particularly for high quality grades. However, the evidence available to the OFT demonstrates that existing high quality products are available from suppliers that have been approved by several customers. These suppliers include Birla and Orion. The OFT was also told by a major UK distributor that it was confident of sourcing high quality products across the majority of Nhumo's existing grades from a range of suppliers to distribute in the UK.

78. All relevant third party comments have been incorporated where relevant above.

ASSESSMENT

79. As a consequence of the Transaction, Cabot will acquire **de jure** control of Nhumo. The parties overlap in the production and sale of carbon black in the UK, and their combined share in the supply of carbon black in the UK is [30 – 40] per cent by volume and [30 – 40] per cent by value. Accordingly, the OFT considers that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation under section 33 of the Act.

80. On the basis of limited demand and supply side substitutability, the OFT has considered the Transaction on the basis of the supply of rubber blacks separately from the supply of specialty blacks. The OFT has not found it necessary to conclude on whether all ASTM rubber black grades should be treated as a separate economic market, given that the evidence indicates that no competition concerns would arise on a narrower basis. It has therefore undertaken its competition assessment on the basis of all ASTM rubber black grades. However, its analysis is focused on non-tyre customers given that it has received evidence that the effects of the Transaction on such customers may differ from its effects on tyre customers.

81. In terms of geographic scope, the OFT notes that all carbon black is imported into the UK. There is no evidence that prices to UK customers differs significantly from the rest of the EEA. However, some customers

have indicated a preference for local stock. While the OFT has not concluded on the scope of the geographic market, it has assessed the current Transaction on the basis of the supply of rubber black to non-tyre customers in the UK.

82. The OFT considers that the parties' UK combined shares of supply of rubber black to non-tyre customers are high, and that they compete closely in these products. However, the OFT considers that the constraint imposed by Birla in particular, Orion and Phillips (and to a certain extent Black Cat and Omsk) is sufficient to prevent the Transaction from resulting in a SLC for non-tyre customers in the UK.

83. The OFT was informed that the parties compete particularly closely for some cleaner grades of rubber black sold to non-tyre customers in the UK. Even for these cleaner grades, the OFT considers that the existing constraints of Birla and Orion and the likelihood that the quality of other suppliers' products will improve in the near future are sufficient to assuage any competition concerns. Accordingly, even for these cleaner grades, the OFT does not consider that there is a realistic prospect that the Transaction will result in a SLC.

84. Some third parties raised concerns regarding the effects of the Transaction, all of which were non-tyre customers. However, some of customers indicated that they had a number of other credible suppliers and one customer indicated that it would continue to have buyer power following the Transaction.

85. Consequently, the OFT does not believe that it is or may be the case that the Transaction may be expected to result in a substantial lessening of competition within any market or markets in the United Kingdom.

DECISION

86. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.