

Anticipated acquisition by Johnsons Apparelmaster Limited of the Cannon Textile Care Business

ME/5325/12

The OFT's decision on reference under section 33(1) given on 29 March 2012. Full text of decision published 11 April 2012.

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**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. **Johnsons Apparelmaster Limited ('JAM')** is a business division and wholly-owned subsidiary of Johnson Service Group plc ('**JSG**'). JSG is principally engaged in textile maintenance, dry-cleaning and facilities management. Its textile maintenance division, JAM, is comprised of a workwear maintenance division ('**Apparelmaster**') and a hospitality maintenance division ('**Stalbridge**'). JAM's UK turnover for the year ending 31 December 2010 was £115.1 million.
2. **Cannon Textile Care Business ('CTC')** is a division of OCS Group UK Limited ('**OCS UK**'), a wholly owned subsidiary of OCS Group Ltd ('**OCS**'), which is active internationally principally in the provision of facilities services.<sup>1</sup> CTC is active in textile maintenance, namely workwear maintenance, hospitality maintenance and washroom services.<sup>2</sup> CTC

<sup>1</sup> These services include property support services such as cleaning, catering, security, waste disposal and ground maintenance.

<sup>2</sup> OCS UK incorporates two businesses which undertake the provision of washroom services: CTC provides a very limited range of washroom services while Cannon Hygiene (UK) provides a comprehensive range of washroom services. Certain of CTC's washroom services will be transferred internally to Cannon Hygiene (UK), which is not part of the transaction. The CTC washroom services contracts being acquired only relate to mat and towel rental services.

generated a turnover in the UK for the year ending 31 March 2011 of approximately £[ ] million.

## **TRANSACTION**

3. JAM will acquire CTC's contracts, related stock and specified plant and equipment situated at OCS's premises in Glasgow, Manchester, Newmarket, Bristol, Balham, Gateshead and Birmingham.<sup>3</sup>
4. The parties notified the OFT of this transaction on 23 January 2012 and the administrative (extended) deadline is 29 March 2012.

## **JURISDICTION**

5. As a result of the proposed transaction, the parties will cease to be distinct.
6. As the UK turnover of CTC for the financial year ending 31 March 2011 was approximately £[ ] million, the turnover test contained in section 23(1) of the Enterprise Act 2002 (the '**Act**') is not met.
7. The parties are both active in the supply of workwear maintenance services in the UK and will have a combined share of supply of [40-50] per cent post-transaction. As a result, the share of supply test, as set out in section 23(3) of the Act, is met. Therefore, the OFT believes that it is or may be the case that arrangements are in progress or contemplation, which, if carried into effect, will result in the creation of a relevant merger situation.

## **COUNTERFACTUAL**

8. The parties submitted that there are four possible counterfactuals applicable in this case:
  - the status quo — that is, CTC continues in operation
  - CTC is sold to an alternative buyer, with the most credible purchaser being [ ]

<sup>3</sup> The premises in Glasgow, Manchester, Newmarket, Bristol and Balham are laundries. The premises in Gateshead (Newcastle) and Birmingham (Oldbury) are depots.

- OCS closes CTC, its (loss-making) textile maintenance division, and
  - JAM engages in a programme of factory consolidation by means of proposed factory closures.
9. On a cautious basis, the parties provided information based on the most conservative counterfactual, that being the status quo.
10. The OFT has not received compelling evidence in this case to demonstrate that it should depart from an assessment of the merger as against the prevailing conditions of competition pre-merger and therefore, in line with its guidance,<sup>4</sup> the OFT has assessed the merger against the status quo.

## **RELEVANT FRAME OF REFERENCE**

11. The parties overlap in the provision of textile maintenance services, primarily in workwear maintenance but also to a lesser extent in linen maintenance for the hospitality sector, and in washroom services (including dust control mats and cabinet roll towels). The parties overlap in seven local areas and also more broadly supply textile maintenance services on a national scale to customers with multiple sites in the UK.

### **Product Scope**

12. The OFT's approach is generally to first consider if a narrow candidate product frame of reference can be widened through substitution on the demand-side, and then, if appropriate, to consider if substitution on the supply-side allows several products, which are not demand-side substitutes, to be aggregated into one wider frame.<sup>5</sup>

### **Segmentation by type of service**

13. The parties submitted that the OFT has previously accepted that there is substitutability across different types of textile maintenance services, with customers tendering for their textile maintenance services across a

<sup>4</sup> *Merger Assessment Guidelines*, Joint publication of the Competition Commission and the OFT, September 2010, paragraph 4.3.5.

<sup>5</sup> *Ibid*, paragraphs 5.2.6 to 5.2.19.

combination of rental,<sup>6</sup> contract,<sup>7</sup> and total linen management<sup>8</sup> services.<sup>9</sup> The OFT has not been presented with any evidence that suggests otherwise in this case.

14. The parties also stated that they are active predominantly in rental laundry services. JAM estimated that approximately [0-10] per cent of the textile maintenance services it provides are contract laundry services.
15. From a supply side, the OFT notes that many providers of textile maintenance services are active across the range (rental, contract and TLM), which suggests a high degree of supply-side substitutability.<sup>10</sup>

### **On-premise laundry**

16. The parties submitted that 'on-premise laundry' ('**OPL**'), where customers self-service their laundry requirements, should form part of the product market definition.
17. The vast majority of third party responses gathered by the OFT during its market investigation did not support the assertion that OPL is a credible alternative for customers. The reasons provided can be summarised as follows:

<sup>6</sup> Rental services are where textiles are provided (and replaced where necessary) by and serviced (collected, laundered and delivered) by the textile maintenance service provider.

<sup>7</sup> Contract services are where the textiles are owned by the customer but serviced by the textile maintenance service provider.

<sup>8</sup> Total linen management services ('**TLM**') are where the textile maintenance service provider not only supplies, launders and delivers the textiles but also runs the textile (linen) room and distribution of the textiles throughout the customer's organisation. This is common for customers such as hotels and care homes.

<sup>9</sup> Completed Acquisition by the Davis Service Group plc of Co-operative Cleaners Limited, a report under section 125(4) of the Fair Trading Act 1973 on the advice of the OFT, given on 6 June 2003 (*Davis/Co-operative*).

<sup>10</sup> The OFT also found a high degree of supply-side substitutability across the different types of textile maintenance services in its decision in *Davis/Co-operative, supra*.

- customer sites were unsuitable to host OPL facilities either because of required hygiene standards or because customers wanted to focus on their core business activities
- in some circumstances customers who had tried OPL transferred back to a provider of textile maintenance services, which suggests that OPL may be difficult in practice to carry out, and
- OPL is only feasible for some types of workwear (for example, retail or NHS nurses uniforms) but unsuitable when hygiene or safety requirements are high (such as in the food manufacturing industry, for high-visibility or flame retardant garments and in the pharmaceutical industry).

### **Home laundry**

18. The parties submitted that customers have the option of home-laundering, whereby their employees are required to launder their own workwear outside of the working environment.<sup>11</sup>
19. The vast majority of third party customers stated that home-laundering was not a credible alternative for them.<sup>12</sup>

### **Conclusion on segmentation by type of service**

20. The OFT considers that the appropriate scope for the frame of reference is the supply of all types of textile maintenance services, and for the avoidance of doubt, OPL and home laundry are not considered within the product scope. However, they are considered as part of assessment of buyer power in paragraphs 100 to 102 below.<sup>13</sup>

<sup>11</sup> The parties provided the example of NHS nurses uniforms in England being home-laundered.

<sup>12</sup> One third party stated that there is an exception for garments that are considered 'next to skin' such as blouses for retail employees, where home laundry is preferred by the employee.

<sup>13</sup> The parties have provided shares of supply that exclude OPL and home laundry.

## Segmentation by type of textile

21. Textile maintenance services are provided with respect to different types of textiles, which can be divided into the following categories:
- workwear garments (including industrial and services workwear)
  - healthcare (including staff and patients' garments, linen and surgical textiles (drapes, coverings and gowns))
  - hospitality — hotels and restaurants (linen, kitchen and staff garments), and
  - washroom services (including dust control mats and mops, wipers and ancillary textiles, towels and other washroom products such as soap dispensers and toilet paper but excluding paper towels and hot air drying).
22. The parties stated that capacity can be swiftly and economically switched from one category to the other, and referred to JAM's experience in converting its Hinckley plant from hospitality to workwear at a cost of £[ ] million in approximately [ ] months.
23. The parties also stated that only the large players like Sunlight and JAM have dedicated plants, while the majority of independent laundries operate multi-product plants which can switch between categories within the working day.
24. On the basis of information gathered by the OFT during the course of its market investigation, there appears to be limited demand-side substitution amongst the different categories. Third party responses indicated that many customers only demand textile maintenance services for a single category, and that the most commonly demanded combination of services includes workwear, hospitality or healthcare on the one side, and washroom services on the other side.<sup>14</sup> Even in those cases, the vast majority of responding third party customers indicated that they procure such services separately and in many cases contracts were awarded to different suppliers.

<sup>14</sup> For example, a firm contracting out to launder staff uniforms and washroom towels and mats.

25. The OFT received mixed feedback about the degree of supply-side substitutability. On the one hand, there are suggestions it may be high but on the other, third parties stated that the supply of textile maintenance services to each category is largely independent as they require different processing equipments and procedures. It was also suggested that the guidelines for laundering are specific to different categories, for example healthcare guidelines differ from industrial guidelines.
26. However, the OFT notes that several competitor suppliers are active in the provision of textile maintenance services in multiple categories, albeit usually with a focus on one or two of them, with a minor presence in the remaining categories. This suggests some degree of supply-side substitutability.

#### **Sub-segments of workwear**

27. The OFT considers that workwear maintenance services may be segmented further into four categories according to the required standards of hygiene and cleanliness: industrial (low or no hygiene protection requirements), food (some level of microbiological control to avoid contamination), intermediate clean-room and full clean-room (very high levels of microbiological and particulate control).<sup>15</sup>
28. The evidence in relation to demand-side substitutability was mixed. Some third party customers, active in food manufacturing, indicated that they do not consider suppliers that do not operate according to Hazard Analysis Critical Control Point ('**HACCP**') procedures. However, the information received by the OFT also indicated that food and industrial customers usually considered the same suppliers. Third party information suggests that there is supply-side substitutability across all sub-segments with the exception of full clean-room services. The OFT notes that the parties do not supply full clean-room services.

<sup>15</sup> For example, at the less tightly controlled end it includes industries such as paint spraying for car manufacturing, medical device manufacturing, tableting, precision engineering and circuit board assembly. The high end it is predominated by semiconductor manufacturing and particularly by the pharmaceutical industry in aseptic manufacturing.

29. As there are no competition concerns arising from the proposed transaction, the OFT does not need to reach a conclusion in relation to the sub-segmentation of workwear maintenance services. However, for the purposes of this assessment, the OFT considers that workwear maintenance services include industrial, food and intermediate clean-room services. On a cautious basis, the OFT has excluded full clean-room services.<sup>16</sup>

### **Conclusion on segmentation by type of textile**

30. The OFT considers that there is mixed evidence in relation to supply-side substitutability, especially in the short-run. On a cautious basis and for the purposes of this assessment, the OFT has examined the merger with reference to each type of textile (workwear, hospitality and washroom services)<sup>17</sup> as well as all textile maintenance services.

### **Segmentation by type of customer**

31. Some third party responses suggested that there may be a separate categorisation of textile maintenance services by type of customer. Information gathered by the OFT suggests that larger multi-site customers have specific requirements that, from a demand and supply-side analysis, set them apart from other customers.
32. The parties submitted that more than half of their respective turnovers are generated from smaller customers, that is, customers accounting for less than £1,000 per week,<sup>18</sup> and that they have a limited number of national contracts for larger multi-site customers. JAM stated that national contracts represent around [20-30] per cent of its turnover.

<sup>16</sup> The OFT would not expect the inclusion of full clean-room services to alter the assessment to any meaningful extent as it is a small niche activity that, according to one third party, represents less than 10 per cent of the workwear segment.

<sup>17</sup> Healthcare is not assessed as there is no overlap in this category.

<sup>18</sup> For completeness, we note that JAM's hospitality maintenance business (Stalbridge) is much more reliant on large customers than its workwear business (Apparelmaster): the former derives [40-50] per cent of turnover from large customers (compared to only [10-20] per cent of turnover for the latter) and only [30-40] per cent of turnover from small customers (compared to only [60-70] per cent of turnover for the latter).

33. The OFT considers that a definition of 'national contract' or 'national customer' is not easily made but uses the parties' definition for the purposes of this assessment. The parties submitted that the term 'national contract' or 'national customer' can be defined in several ways, namely:
- Category A – customers with a large number of staff concentrated at large sites in many geographic locations in the UK.
  - Category B – customers with a large number of staff concentrated at large sites that are more regionally based.
  - Category C – customers with a large number of staff but distributed over a larger number of sites in the UK.
34. The OFT may define separate frames of reference by type of customer if suppliers can identify, target and discriminate (on price, or other dimensions of competition) against one or more type of customer.<sup>19</sup>
35. In this case, the OFT considers that providers of textile maintenance services may be able to identify national customers by requirements in the tender documents, and consequently may be able to offer targeted terms to them on a case-by-case basis.
36. Third party information suggests that there is a limited set of suppliers that can offer services on a truly national basis, that is, to those customers with multiple sites across the UK. The OFT considers that the main concerns apply to categories A and C as described above.
37. In light of the above, the OFT adopted a cautious approach and considered the effects of the merger on national multi-site customers.

### **Conclusion on Product Scope**

38. In line with previous decisions,<sup>20</sup> the OFT considers that the appropriate scope of the frame of reference is the supply of all types of textile maintenance services excluding OPL and home laundry.

<sup>19</sup> *Merger Assessment Guidelines, supra*, paragraphs 5.2.28 – 5.2.31.

<sup>20</sup> *Davis/Co-operative, supra*, and Completed acquisition by Fishers Services Ltd of assets of the Sunlight Services Group Ltd, ME/3633/08, decision 13 June 2008 (*Fishers/Sunlight*).

39. Given the mixed evidence gathered by the OFT, it believes that a cautious approach is necessary and therefore, for the purposes of its assessment in this case, the OFT has considered the supply of textile maintenance services by type of textile (workwear, hospitality and washroom services) and by type of customer (national multi-site customers and all customers).
40. The OFT has not considered it necessary to further segment workwear maintenance services but, on a cautious basis, has excluded full clean-room services from its competitive assessment.
41. As there are no competition concerns arising from the proposed transaction following an analysis of the narrowest frame of reference, the OFT does not need to reach a definitive conclusion on whether the supply of textile maintenance services should be segmented by type of textile and customer. The OFT has therefore left the precise market definition open.

### **Geographic Scope**

42. Textile maintenance services, and in particular rental services where the parties are primarily active, involve regular collections of dirty textiles and deliveries of laundered textiles in milk rounds<sup>21</sup> by a fleet of commercial vehicles.
43. In some cases, a laundry also serves one or more depots further away via the practice of 'trunking'. This means that textiles, collected by the vans in the depot catchment area, are transported in bulk over night to a laundry facility, laundered there, and then trunked back via HGV trucks to the depot for them to be distributed back to local customers.
44. In light of the evidence gathered during the course of its market investigation, the OFT considers that there is both a national and local dimension to the supply of textile maintenance services, and each are discussed in turn below.

<sup>21</sup> The term 'milk round' refers to the manner in which customers are served. This generally involves one van making a number of collections/deliveries in an area before returning to the depot. In order for the route to be viable, a company must have enough of a customer base to arrange multiple collections/deliveries per trip. Thus, it will only be profitable for a company to serve a customer if they are near one of their delivery routes.

## **National scope**

45. The parties submit that in the *Fishers/Sunlight* decision,<sup>22</sup> the OFT did not discount the possibility of the geographic scope being wider than regional, as some of the contracts with large hotel chains are tendered nationally.
46. As discussed above, the OFT considers that there may be a segmentation of the supply of textile maintenance services by type of customer and that it is necessary, on a cautious basis, to consider national multi-site customers in the UK as a separate frame of reference.

## **Local scope**

47. The parties stated that the relevant geographic market definition should be at least supra-regional but, on a conservative basis, they considered the narrowest geographic scope to comprise of all textile maintenance services in Scotland and within approximately 100-mile radius of each of the CTC plants (five laundries and two depots) being acquired. The parties stated that this is based on the maximum distance a van could realistically drive in compliance with driving regulations, and is in line with previous OFT decisions.<sup>23</sup>
48. Furthermore, the parties submitted that, via trunking, alternative suppliers outside the 100-mile radius may be able to offer a competitive constraint, and, to support this, the parties provided examples of where they supply customers beyond 100 miles of their laundries via trunking.
49. Information provided by third party customers suggested that a geographic scope of 100-mile radius is too wide, with some indicating that they have a preference for suppliers with a local presence who can respond quickly to emergencies. The response from third party competitors was mixed but the

<sup>22</sup> *Supra*.

<sup>23</sup> In *Fishers/Sunlight, supra*, the OFT considered the geographic scope to be the North of Scotland, and in *Davis/Co-operative, supra*, the OFT stated that it was very difficult to delineate exactly the geographic scope but regional and supra-regional issues were considered. The decision states that third party information suggested that the maximum distance for trunking was between 80 and 100 miles.

vast majority confirmed that their catchment areas (the area where they derive 80 per cent of their turnover) are between 50 and 60 miles.

50. The OFT requested a detailed breakdown of postcodes allocated to the sales team for each CTC plant<sup>24</sup> as a proxy for the smallest geographic market from the demand-side perspective. The OFT also requested information about sales to customers according to the distance from each plant. An analysis of the information provided strongly indicated that, in general, a 50 mile radius more closely represents the area over which each plant actively seeks to win business. The main exceptions are Glasgow ([ ] miles) and Bristol ([ ] miles).<sup>25</sup>
51. The OFT does not accept the argument that trunking enables the geographic scope to be widened to 100-mile radius or above. Whilst trunking is a factor that the OFT has considered in its assessment, this does not mean that the catchment area of a laundry, servicing its depot 100 miles away, extends to the catchment area of the laundries competing with that depot: rather, it is the depot's own catchment area, where it overlaps with the catchment areas of the relevant local laundries/depots, that is taken into account for the purposes of the local analysis. In fact, the customers in the catchment area of the laundry trunking to the depot do not necessarily benefit from competitive constraints imposed by competitors operating in the catchment area of the depot (or of the laundries competing with it).
52. From a supplier's perspective, the OFT notes the parties' submission that transport costs are a significant factor. Third party information also suggests that the majority of suppliers use sophisticated routing software to optimise delivery and collection routes. Consequently, transport costs dictate that suppliers of textile maintenance compete on a local basis.

<sup>24</sup> The OFT accepts that a competitor's local depot served via trunking (by one of its distant laundries) can constrain a local laundry in the same way as a laundry processing textiles onsite, albeit probably at a higher cost. The OFT has therefore considered CTC's depots in its competitive assessment of local issues. CTC's depots are located in Gateshead and Birmingham.

<sup>25</sup> The OFT noted that there were other exceptions in relation to JAM's plants in Letchworth ([ ] miles) and Perth ([ ] miles).

## Conclusion on relevant geographic frame of reference

53. The OFT has taken a cautious approach in this case and has considered the geographic scope at both the national and local level. With reference to the local frame of reference, evidence available to the OFT suggests that an appropriate catchment area for consideration of the merger is a 50-mile radius around each of the CTC plants.

## HORIZONTAL ISSUES

54. The OFT considers that the main area of overlap arising from the merger is in the supply of workwear maintenance services. There is no overlap in the healthcare category, and the overlap is very limited in the categories of hospitality and washroom services.<sup>26</sup> This is shown by the low combined market shares (see below) and small increments at both the local and national level in relation to each of these other categories.
55. In light of the above, the absence of third party concerns in relation to hospitality and washroom services, and the lack of competition concerns arising from the proposed transaction, the OFT considers that there is no realistic prospect of a substantial lessening of competition ('**SLC**') arising in the hospitality and washroom services categories post-transaction. Therefore, the OFT has concentrated its competitive assessment of the proposed transaction on the supply of workwear maintenance services.
56. The OFT has therefore identified the following areas of potential concern:
- the supply of workwear maintenance services within a 50 mile radius of each of the seven CTC plants being acquired, namely: Glasgow, Balham, Newmarket, Bristol, Manchester, Gateshead and Birmingham, and
  - the supply of workwear maintenance services to national multi-site customers in the UK.

<sup>26</sup> It is noted that JAM currently provides a limited range of washroom services (comprising mats and towels) as an ancillary service to its workwear maintenance customers.

## Shares of supply

57. The parties consider that there is very limited information about the textile maintenance sector, and that the best source is a 2007 study by the European Textiles Services Association ('ETSA'). However, the parties also provide shares of supply based on their own internal classifications. Both sets of share of supply figures are provided in Table 1 below.

**Table 1: Shares of supply (per cent) UK-wide, by value**

Segment	Based on JAM's estimates 2010-2011 (per cent)			Based on ETSA segments size estimates 2007 (per cent)		
	JAM	CTC	Combined	JAM	CTC	Combined
Workwear	[30-40]	[0-10]	[40-50]	[10-20]	[0-10]	[20-30]
Healthcare	[0-5]	—	[0-5]	[0-5]	—	[0-5]
Hospitality	[0-10]	[0-5]	[0-10]	[10-20]	[0-10]	[10-20]
Washroom	[0-10]	[0-5]	[0-10]	[0-10]	[0-5]	[0-10]
Total	[10-20]	[0-10]	[10-20]	[10-20]	[0-10]	[10-20]

58. At the OFT's request, the parties provided shares of supply for each category at a local level based on (i) competitors **located** within a 50-mile radius and (ii) competitors **doing business**<sup>27</sup> within a 50-mile radius, of each of the seven local areas identified.<sup>28</sup>

<sup>27</sup> 'Doing business' means that the competitor's catchment area partially overlaps with CTC's area (that is, in general, the competitor is located up to 100 miles from CTC, or more than 100 miles, provided that specific justification is given as to the reason for the overlap).

<sup>28</sup> The first set of figures, set out in Table 2, is a conservative approach to the calculation of shares of supply as it only measures the competitive constraint from competitors located within the 50-mile radius. The second set of figures, contained in Table 3, takes into account competitors doing business within the 50 miles' radius (but not necessarily located within the 50-mile radius). The catchment area of these competitors will partially overlap with the parties and their turnover attributable to this overlap is taken into account for the purposes of calculating the shares of supply.

**Table 2 - Local shares of supply (2010) by value and by geographical area for competitors located within 50 miles' radius (per cent)**

Area	Workwear only			Textiles maintenance		
	JAM	CTC	Combined	JAM	CTC	Combined
Glasgow	0	[10-20]	[10-20]	[0-10]	[0-10]	[10-20]
Balham	[10-20]	[0-10]	[20-30]	[0-10]	[0-10]	[0-10]
Newmarket	[20-30]	[10-20]	[40-50]	[10-20]	[10-20]	[10-20]
Bristol	[30-40]	[0-10]	[40-50]	[10-20]	[0-10]	[10-20]
Manchester	[20-30]	[0-10]	[20-30]	[0-10]	[0-10]	[10-20]
Gateshead	[40-50]	[0-10]	[40-50]	[10-20]	[0-10]	[10-20]
Birmingham	[30-40]	[0-10]	[40-50]	[10-20]	[0-10]	[10-20]

Source: the parties

**Table 3 - Local shares of supply (2010) by value and by geographical area for competitors doing business within 50 miles' radius (per cent)**

Area	Workwear only			Textiles maintenance		
	JAM	CTC	Combined	JAM	CTC	Combined
Glasgow	[30-40]	[0-10]	[30-40]	[10-20]2	[0-10]	[10-20]
Balham	[20-30]	[0-10]	[20-30]	[10-20]	[0-10]	[10-20]
Newmarket	[20-30]	[0-10]	[30-40]	[10-20]	[0-10]	[20-30]
Bristol	[40-50]	[0-10]	[40-50]	[10-20]2	[0-10]	[10-20]
Manchester	[20-30]	[0-10]	[30-40]	[10-20]	[0-10]	[10-20]
Gateshead	[30-40]	[0-10]	[40-50]	[10-20]	[0-10]	[10-20]
Birmingham	[30-40]	[0-10]	[30-40]	[10-20]	[0-10]	[10-20]

Source: the parties

### Fascia counts

59. A straightforward count of suppliers of textile maintenance services present can provide some information on local concentration, although it does not reflect differences in market size and the size distribution of firms.<sup>29</sup> The OFT considers the number of fascia available in each local area as an indicator of the choice available to all customers. Since the fascia count is derived by the dataset on shares of supply which only covers the larger laundries,<sup>30</sup> this is a cautious approach to measuring concentration. As an additional precaution, the OFT has also considered a fascia count

<sup>29</sup> *Merger Assessment Guidelines, supra*, paragraphs.5.3.4.

<sup>30</sup> The OFT understands from the parties that only larger laundries are included in their calculation of the share of supply figures as they do not have detailed knowledge of the smaller laundries. The OFT therefore considers that by excluding the competitive fringe of smaller competitors, the above shares of supply are essentially a 'ceiling' estimate of the actual concentration and as such represent a cautious approach to measuring concentration.

that excludes those laundries that have less than one per cent share of supply, as these competitors may represent a weak competitive constraint.

60. Following a fascia count analysis, there is only one area which will result in a 'four to three' reduction in fascia post-transaction, that being Birmingham. The other areas will all have four or more competitors present post-transaction.
61. As explained above in paragraph 55, the OFT has specifically considered the impact of the proposed transaction with reference to the supply of workwear maintenance services, as a lack of concern using this frame of reference would indicate a lack of concern in the other categories of textile maintenance services (hospitality and washroom services) given the relative shares of supply.

#### **Unilateral effects in the supply of workwear maintenance and textile maintenance services in local areas**

62. The parties' combined share of supply for workwear maintenance services at a local level raises prima facie concerns in the majority of the areas under investigation and thus warrants further scrutiny. Similarly, the fascia count in Birmingham suggests that the market is concentrated in this area, with the merger resulting in a 'four to three' reduction in fascia located within 50 miles (only taking account of competitors with a one per cent or more share of supply).
63. The OFT notes that the increment from the proposed transaction is small in many cases, the lowest in relation to Birmingham. In terms of remaining competition in Birmingham, there is one further competitor active within 50 miles but with a share of supply of less than 0.5 per cent. However, flexing just outside the 50-mile catchment area, and within 61 miles of CTC's plant, are two competitors with an estimated share of supply of greater than one per cent. Indeed, one of these competitors has an estimated share of supply in excess of the increment attributable to CTC in Birmingham.
64. The OFT is aware of the limitations in the methodology used for the estimation of the above shares of supply, which in some respect is based on assumptions and estimates from industry knowledge. However, the OFT considers that, as far as reasonable, adequate precautions have been put in

place to avoid over or under-estimating shares of supply, and to provide a cautious estimate of local concentration.

65. In this respect, the OFT is aware that smaller laundries have been excluded altogether from the calculations, which makes the above shares and fascia count a very conservative estimate of actual concentration.<sup>31</sup> While smaller laundries' market shares may be low, third party feedback indicates that independent local laundries may be effective competitors to the larger players in a given local area, since the majority of the parties' turnover is derived from small customers in the local area.

### **Closeness of competition**

66. The OFT is wary of placing too much weight on market shares alone, especially when products are differentiated such as in the case of textile maintenance services.<sup>32</sup> In particular, the OFT considers the closeness of competition between the parties and the nature and extent of remaining competition by other suppliers.
67. It is often the case that physical closeness to demand is an important competitive driver, so that distance may represent an indicator of the extent of competitive constraint imposed by a supplier. The OFT notes that Sunlight is the closest competitor (in terms of distance from CTC) in four local areas, including Birmingham. JAM is the closest competitor in the remaining three areas.
68. The vast majority of third parties did not raise any competitive concerns at the local level, with many respondents acknowledging that the merger does not remove the primary constraint on JAM imposed by Sunlight. The third party information gathered by the OFT suggests that JAM's closest competitor is Sunlight.
69. The parties provided data about customers switching away from JAM (in terms of value of weekly invoices), but unfortunately there are large gaps

<sup>31</sup> For example, on the OFT's request, the parties provided details of five other laundries active in workwear maintenance services within 50 miles, and one just outside 50 miles, of CTC's Birmingham plant.

<sup>32</sup> Suppliers compete on a range of dimensions other than price, such as garment quality, reliability of deliveries and collections, local presence, and responsiveness to local issues.

in the database: for example between 60 to 90 per cent of switchers were to an 'unknown supplier'. The data that is available indicates that diversion to Sunlight is far higher than diversion to CTC. To this extent, the data available confirms that Sunlight is by far the closest competitor to JAM which is in line with third party comments.

70. The parties were unable to provide ratios of diversion away from CTC, but they submitted some evidence about business won by JAM from other competitors. In 2011, JAM won the vast majority of its business from [ ], and business from CTC and [ ] in almost equal amounts. Once again, [ ]'s proportion of business won from JAM is greater than would be proportional to its market share, which may indicate closeness of competition between [ ] and JAM.

## Conclusion

71. The OFT acknowledges that the transaction will result in a combined share of supply that raises prima facie concentration concerns, at a level between 30 and 45 per cent, in the different local areas. The major prima facie concern, based on fascia counting, is in Birmingham, where on a cautious basis (only including competitors **located** within 50 miles of the target and with a share of supply in excess of one per cent) the transaction will result in a 'four to three' reduction in competition.<sup>33</sup>
72. However, the OFT found that other local suppliers will continue to impose a significant competitive constraint in each of the local areas, these suppliers being Sunlight and established regional suppliers such as Fenland, Fishers, Paragon, Lindstrom, Jacksons and Cleancare.<sup>34</sup> Third party information also indicates that smaller local laundries (that the parties did not include in their estimates of concentration) are a competitive alternative for local customers, which represent the majority of demand (in value) for workwear maintenance.
73. The OFT also looked at closeness of competition, and found that, across the local areas, CTC was not the closest competitor to JAM in terms of

<sup>33</sup> If all competitors within a 50-mile catchment area are included, the fascia count analysis results in a 'five to four' reduction in competition.

<sup>34</sup> Not all of these regional suppliers are active in each local area.

service offering. In terms of closeness by proximity, JAM was also not the closest competitor to CTC in Birmingham.

74. On the basis of the above, the OFT does not consider that the merger gives rise to a realistic prospect of a SLC in any of the local areas around CTC's plants.

#### **Unilateral effects in the supply of workwear maintenance to multi-site national customers in the UK**

75. Some large customers raised concerns that only a very limited number of suppliers are able to provide textile maintenance services to customers with multiple sites located throughout the UK, and that the merger further reduces this narrow supply basis.
76. While customers' concerns were in the main not specifically made with reference to workwear maintenance, the OFT notes that the latter is the segment with the highest concentration level and the highest overlap between the parties. Consequently, the OFT focused its analysis on the supply of workwear maintenance services to customers requiring multi-site national coverage.
77. Using the parties' definition of a 'national customer' as set out in paragraph 33 above, the OFT notes that workwear maintenance 'national contracts' falling within categories A and C are not common (although when they are agreed, the value of the tender is potentially high). The parties stated that there have been only about [20-30] 'national contract' tenders in the last five years.
78. The majority of third parties considered JAM, CTC, Sunlight, and Brilliant Laundry<sup>35</sup> to clearly have national coverage capability.
79. The parties compiled tender information (to the best of their knowledge) which shows that the following suppliers are active as a 'single supplier' in

<sup>35</sup> [www.brilliantlaundry.com](http://www.brilliantlaundry.com) Brilliant Laundry is a consortium of laundry providers that is active in the hospitality and workwear categories. Another example of a consortium laundry is the National Laundry Group which is predominantly active in hospitality services. Information provided to the OFT during its market investigation suggests that consortia, and in particular Brilliant Laundry for workwear, is a credible competitor for national customers.

supplying national customers with more than 15 sites: JAM, Sunlight, CTC, Brilliant Laundry, PHS, London Linen and Tibard.<sup>36</sup>

80. Overall, the evidence provided suggests that there are a number of providers of workwear maintenance services in addition to the four competitors mentioned in paragraph 78 above, which at a minimum include Fenland and PHS and possibly Cleancare and Lindstrom. Third party information confirmed that Fenland is active on a national basis, and that Cleancare and Lindstrom have both tendered for national contracts.
81. Some third party feedback also suggests that established players with regional or multi-regional coverage (for example, Fishers and Paragon) may expand their coverage by sub-contracting with local laundries where they have gaps in their coverage.

### **Closeness of competition**

82. Tender lists for the last four years [ ] show that CTC is tendering at national level alongside JAM, Sunlight, Brilliant Laundry, Cleancare, Fenland and Lindstrom.
83. The largest customer, in terms of the number of sites served by CTC (as a single supplier), is noted to have 17 sites, below the number of sites served by PHS, Brilliant Laundry and London Linen.
84. Similar to the discussion of closeness of competition at a local level, the evidence available indicates that the parties are not each other's closest competitor at a national level. In relation to the concerns expressed by the multi-site national customers, of which there were four, one uses a number of suppliers (including smaller locally based suppliers). The remaining three indicated that CTC was either not a runner up in the previous tender, was not a close competitor to JAM in terms of quality of service, or that CTC did not have full national coverage. This information indicates that JAM and CTC are not each other's closest competitor at a national level.

<sup>36</sup> Tibard is a garment manufacturer that supplies 1600 sites for a customer but it does so by sub-contracting to other laundries such as Jam, Sunlight, Cannon and Fenland. This was confirmed by one third party response, although such services are more common for high-visibility or personal protection equipment which requires less frequent washes.

## **Multi-Sourcing**

85. Whilst the evidence discussed above indicates that there are a number of credible competitors for multi-site national customers, for completeness, the OFT considers the option of multi-sourcing. Multi-site customers can multi-source, and by doing so may be able to achieve better service from local suppliers.
86. The parties provided tendering information (to the best of their knowledge), which suggests that multi-sourcing is a widespread practice by national customers in categories A and C. Further information provided by the parties suggests that the following players are involved in multi-sourced national contracts: JAM, Sunlight, CTC, Brilliant Laundry, Fenland, Cleancare, PHS and Lindstrom.
87. The OFT considers that the widespread use of multi-sourcing provides a constraint on national suppliers, since a tender for a single supplier may be easily turned into a tender for multiple suppliers, if the prices for single provision were too high.

## **Conclusion**

88. The evidence available indicates that there are a number of suppliers active at a national level that can provide workwear maintenance services to multi-site national customers. These suppliers are JAM, Sunlight, Brilliant Laundry, Fenland, Cleancare, PHS and possibly Lindstrom.
89. The information from third party customers, including those that had concerns about the transaction, indicates that CTC is not JAM's closest competition.
90. In light of the above, the OFT does not consider that the merger creates a realistic prospect of a SLC in relation to multi-site national customers post-transaction.

## BARRIERS TO ENTRY AND EXPANSION

91. Any analysis of a possible SLC includes consideration of the responses of other market players (such as entry of new firms or expansion of competitors), which may in the longer term mitigate the initial effect of the merger on competition and, in some cases, may mean that there is no SLC.<sup>37</sup>
92. In assessing whether such entry or expansion may prevent a SLC, the OFT will consider whether such entry or expansion would be likely, timely and sufficient. In this case, the OFT considers that the evidence on barriers to entry or expansion is mixed.
93. The parties provided one example of **de novo** entry in the last three years by Cleancare, which entered the market for food industry workwear and is expanding quickly. Third party information has confirmed this submission.
94. The parties also stated that there are several examples of expansion by existing suppliers in the last three years, and highlighted that Clean Linen, London Linen, Afon Wen and Fishers as such examples.
95. Set against the examples above, there is mixed evidence about the **likelihood** of future entry:
  - High upfront investment requirements may make entry unlikely. Laundries require significant upfront capital investment in machinery (at least £1 million for infrastructure costs for textiles maintenance or at least £500,000 for workwear maintenance, according to the parties),<sup>38</sup> and for rental contracts it also requires the upfront purchase of textiles (linen, garments, and towels). Third party information confirmed this submission.
  - However, the parties submitted that less capital-intensive options exist to achieve expansion in a new category:

<sup>37</sup> *Merger Assessment Guidelines, supra*, paragraph 5.8.1.

<sup>38</sup> This includes: 60 per cent for plant and equipment, 20 per cent for fit-out; 10 per cent for legal and administrative costs; and, 10 per cent for IT costs.

- Opening a depot and trunking from an existing laundry. The parties highlighted that JAM has four depots, CTC two, and that competitors such as Fenland, Rentokil, PHS and Afon Wen also use trunking.
  - The entrant could purchase second-hand machinery on the market, for example from Laundry Equip and Goudkil. The parties have not provided evidence about the take up or feasibility of this option, but one third party confirmed that this is an option.
96. The market for textile maintenance is mature, if not slightly declining due to the recession, with overcapacity installed. These market conditions may make entry or expansion less likely as there is not enough room in the market to sustain additional capacity (even assuming the capital costs discussed above were not an issue). Information from third parties suggests that there have been several examples of attempts of entry on a small scale that were unsuccessful.
97. Information gathered during the course of the OFT's market investigation suggests that entry is unlikely to be **timely**. While the infrastructure investments may be completed within a relatively short time frame, the widespread use of long-term contracts (up to three years) with penalties for early termination (to cover the residual value of rented textiles) makes it difficult to build up a significant customer base quickly (say, five per cent of local supply). Third party information confirmed that the length of existing contracts acts as a barrier.
98. On balance, the evidence available indicates that entry is unlikely to be **sufficient**. While the OFT recognises that lack of scale is not important to compete at the local level for small customers, it is not certain that the small scale (and often unsuccessful) entry described above can pose, on its own, a sufficient competitive constraint on larger players, particularly on a national level (the OFT recognises that multi-sourcing may involve the use of smaller suppliers).
99. On the basis of the above, the OFT has doubts as to whether entry could be said to be timely, likely and sufficient at either a local or national level. However, given the OFT's conclusions in relation to the competitive effects

of the proposed transaction, the OFT does not need to conclude definitively on this point.

## **BUYER POWER**

100. Buyer power can be generated by different factors. An individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, or where it can otherwise constrain its behaviour.<sup>39</sup> The OFT has been presented with mixed evidence on this:

- When an existing contract is due to expire, a customer could switch supplier without penalties. Textile maintenance services are sometimes procured via competitive tenders and are often individually negotiated (based for example on the type and personalisation of garments, number of changes per wearer and frequency and distance of deliveries), which could provide customers with a credible threat of switching.
- One third party customer told the OFT that they had sponsored entry at the local level. The OFT considers that this option is only open to large customers, which could procure enough services to sustain the sponsored entrant.
- The parties submitted that OPL and/or home laundry is a credible constraint (as previously discussed in paragraphs 16 to 19). The OFT received mixed evidence on this submission and whilst competitors suggest that OPL is a constraint (albeit declining), the majority of customers did not consider these two options as credible alternatives.

101. Overall, while a competitive tender process, threat of sponsoring entry or OPL/home-laundry may give some negotiating strength to an individual customer, the OFT considers that other customers cannot rely on these factors in their negotiations to protect them from price increases.

102. While on balance the evidence suggests that only larger customers may have some countervailing buyer power, the OFT in this case does not need to conclude on the extent of buyer power, as the merger does not create a realistic prospect of a SLC in any event.

<sup>39</sup> *Merger Assessment Guidelines, supra*, paragraph 5.9.2.

## **VERTICAL ISSUES**

103. The parties have limited vertical links, which are mainly in relation to the supply of workwear, with both parties using the company Alsico. However, third party information confirmed that these links do not give rise to a realistic prospect of a SLC, as there are many alternative workwear suppliers active in the UK, including: Wearwell, Faithful, Alexandra, Orbit and Cosalt. Third party information also indicated that workwear may also be sourced directly by the textile maintenance services provider.

## **THIRD PARTY VIEWS**

104. As part of its market investigation, the OFT sent out approximately three hundred questionnaires to third party customers of the parties, covering large (multi-site national customers), medium and small customers. Third party information was also received from competitor suppliers of textile maintenance services.

105. Approximately thirty five customer responses were received. The large majority of customers were not concerned about the effects of the merger. However, two customers expressed concerns at a local level and four multi-site national customers expressed some degree of concern. The concerns raised were taken into account during the OFT's assessment of the proposed transaction and, where relevant, are referred to above.

## **ASSESSMENT**

106. The parties overlap in the provision of textile maintenance services, primarily in workwear maintenance but also to a lesser extent in linen maintenance for the hospitality sector, and in washroom services. The OFT considers that the area in which competition concerns were most likely to arise – given the relative shares of supply – is in the supply of workwear maintenance services and therefore the OFT has concentrated on this overlap in its assessment.

107. In relation to workwear maintenance services, the OFT acknowledges that the merger results in shares of supply that raise prima facie concentration concerns at a local level, with the main area of concern, on a fascia count analysis, being Birmingham.

108. However, the OFT considers that there are credible alternative suppliers at each local level to impose a significant competitive constraint post-transaction. Third party information also indicates that smaller local laundries are a competitive alternative for local small customers.
109. The OFT considered carefully whether competition concerns could arise in relation to the supply of workwear maintenance services for national multi-site customers. In this respect, the evidence gathered suggests that there are a number of suppliers active at this level, namely: JAM, Sunlight, CTC, Brilliant Laundry, Fenland, Cleancare, PHS and possibly Lindstrom.
110. The OFT also looked at evidence on the closeness of competition between the parties, and found that CTC was not the closest competitor to JAM. In terms of geographic proximity, Sunlight was the closest competitor to CTC in Birmingham.
111. In light of the above, the OFT considers that there is no realistic prospect of a substantial lessening of competition arising from the merger in relation to the supply of workwear maintenance services, and overall in the supply of textile maintenance services at a local or national level.

## **DECISION**

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