Anticipated acquisition by Brambles Investment Limited of IFCO Systems N.V.

ME/4794/10

The OFT's decision on reference under section 33(1) given on 7 February 2011. Full text of decision published 21 February 2011.

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. **Brambles Investment Limited** (Brambles) is indirectly owned by Brambles Limited, an Australian company that is active globally through two businesses, CHEP and Recall. CHEP provides pallet and container management services. Recall provides information management services. The turnover of Brambles and its affiliated companies in the UK was around £[ ] million (with CHEP accounting for £[ ] million) for the 12 months to 30 June 2010.

2. **IFCO Systems N.V.** (IFCO), incorporated in the Netherlands, is an international logistics service provider with a global reusable packaging business and a North-American pallet services business. Its turnover in the UK was around £[ ] million in 2009.

TRANSACTION

3. Brambles has agreed to acquire around 95.9 per cent of IFCO's shares from the current respective holders of these shares. Brambles has further made a voluntary public takeover offer for IFCO's remaining shares, which are listed on the Frankfurt Stock Exchange.

JURISDICTION

4. As a result of this transaction Brambles and IFCO will cease to be distinct. Brambles and IFCO, together with their affiliated companies, both supply reusable transport packaging services for fresh produce in the UK. The share of supply test in section 23 of the Enterprise Act 2002 is met because the parties have estimated that their combined share of supply of these services is [50-55] per cent if retailers' in-house services are excluded. 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.

5. The OFT's administrative deadline for the transaction is 7 February. The parties have also notified the transaction in Germany, Portugal, Spain, Norway, Brazil and the United States.

MARKET DEFINITION

6. In the UK both CHEP (Brambles' affiliated business) and IFCO are active in the supply of transport packaging services for fruit and vegetables with reusable plastic containers (RPCs). RPCs can be re-circulated up to 100 times. CHEP also supplies these services for other fresh produce, in particular meat and poultry, and for other products such as frozen food and beverages. Growers and packers[1] of fruit and vegetables are the parties' customers, because the parties invoice the growers for the supply of the transport packaging services. However, the parties submitted that in practice it is not the growers but rather the growers' customers, the grocery retailers, who decide which firm provides the transport packaging services and on which terms and conditions, including price. This was confirmed by third parties.

7. Transport packaging services for fruit and vegetables with RPCs consist of a number of elements that together make up an RPC's "trip cycle", in particular:

   - shipment of the RPCs to the growers
   - shipment of full RPCs from the growers to the retailers' warehouses and individual retail stores

[1] Henceforth collectively referred to as 'growers' for convenience.

- return of empty RPCs to the retailers' warehouses
- shipment to the service provider's service centre, where the RPCs are inspected and cleaned, and
- tracking services to minimise product losses.

Some grocery retailers supply some or all of these services in-house (retailer-supplied services), while other retailers manage their own transport packaging services while contracting out some or all of the service elements to third-party suppliers (retailer-managed services). Some retailers have instead outsourced both the management of their transport packaging services and the supply of all service elements to third-party suppliers (see further at paragraphs 13-15 below). Similarly, the RPCs may be owned by the service providers or by the retailers.

8. CHEP also provides transport packaging services to the automotive industry in Europe, including in the UK. IFCO has started offering these services in Europe, but it has not currently begun doing so in the UK. The parties submitted that there is no crossover with packaging services for fresh produce, for example for hygiene reasons.

Transport packaging services for fresh produce

Product scope

9. The parties submitted that the relevant product market is the supply of transport packaging services for fresh produce and associated management services. This can be narrowed in a number of ways, which are considered below.

Fruit and vegetables

10. The parties submitted that this market includes not only services for fruit and vegetables but also services for other fresh produce such as meat and poultry, because the majority of retailers in the UK enter into contracts for fresh produce generally and the most commonly-used RPCs can be used for different product categories. The parties estimated that around 60 to 70 per cent of RPC trips for fresh produce are for fruit and vegetables. However, two large grocery retailers currently have separate contracts for fruit and vegetables and third-party views were mixed on this point.

Therefore, the OFT has considered this merger in relation to transport packaging services both for all fresh produce and for fruit and vegetables.

RPCs

11. The parties further submitted that the relevant market includes not only RPCs but also one-way packaging such as cardboard and wood. Neither party supplies one-way packaging. The parties estimated that in the UK around 70 per cent of fresh produce is sold using RPCs and 30 per cent using one-way packaging. This in contrast to the rest of Europe, where one-way packaging comprises more than 70 per cent of transport packaging. The parties submitted that in the UK some retailers currently use only one-way packaging and others use this packaging to supplement RPCs. As third-party views were mixed on this point and the relevant management services are likely to be significantly different between RPCs and one-way packaging, the OFT has taken a cautious approach and considered this merger for the narrow scope of only RPCs.

Types of RPCs

12. RPCs for fresh produce take a number of different forms, with the main distinction between rigid-sided and folding models. In the UK rigid-sided models are prevalent, while elsewhere in Europe folding models are often preferred. According to the parties, different product categories of fresh produce can be transported in both models. No third parties suggested that rigid-sided and folding models constitute separate markets. Therefore, the OFT has not further considered this distinction.

Retailer-supplied and retailer-managed services

13. The parties submitted that retailer-supplied and retailer-managed RPC transport packaging services should be included in the relevant market. In particular, [two grocery retailers] both manage and supply their own RPC services (respectively for its vertically integrated supply chain and for fruit and vegetables).

14. Retailer-supplied RPC transport packaging services account for a small percentage of the overall supply, and the retailers that supply their own services did not appear to be motivated, at least primarily, by price ([ ]). Further, the OFT received no indications that retailers would forgo self-supply and sell into the 'merchant market' in response to a SSNIP. In the

light of this, it does not appear appropriate to include in-house supply in the relevant market given that in-house capabilities do not appear to compete in the market with third-party suppliers. The OFT has therefore taken a cautious approach and considered this merger on the basis of a product scope excluding retailer-supplied transport packaging services.

15. According to the parties, [three grocery retailers] manage their own service provision but have outsourced most service elements to a third-party supplier (see also paragraph 7 above). In respect of retailer-managed services, retailer views regarding a possible switch to in-house provision of management of services were mixed. However, most or all of the individual service elements are typically supplied by third-party providers even where the retailer undertakes the overall management of the provision of the services. Many providers of these service elements also provide overall management of services to other retailers. Further, one provider that currently only provides retailer-managed service elements was considered by third parties to be a viable provider of management of services (see at paragraphs 28-29 below). However, while it is therefore likely that retailer-managed services that are supplied by third-party providers form part of the 'merchant market', the OFT has taken a cautious approach and considered this merger on the basis of product scopes both including and excluding retailer-managed transport packaging services.

16. As retailers may choose to outsource service elements (as listed at paragraph 7 above) rather than the entire supply of transport packaging services, the OFT has considered whether it was necessary to define separate markets for each service element. However, in this case neither the parties nor third parties suggested that it was necessary and there was no indication that such an approach would impact on the competitive assessment. The OFT has therefore not analysed each service element separately.

Geographic scope

17. The parties noted that transportation of fruit and vegetables commonly takes place on a transnational basis, since produce is often grown in southern Europe and sold in northern Europe. However, they submitted that nevertheless the geographic scope of market for the supply of transport packaging services for fresh produce is most likely to be the UK, because the provision of these services requires infrastructure close to retail stores,

one-way packaging is often assembled where packaging takes place, and there are certain national preferences (for example in the use of one-way or RPC packaging or the type of RPC packaging). The OFT received no evidence that the scope of the geographic market was narrower than national.

18. It was not necessary for the OFT to reach a conclusion on whether the relevant market was wider than the UK since the merger does not give rise to competition concerns on both a UK and European market level.

Transport packaging services for the automotive industry

19. The parties submitted that the precise scope of the product and geographic markets for transport packaging services for the automotive industry can be left open, because the merger will not give rise to competition concerns on any basis.

20. Analogously to its discussion of retailer-supply in transport packaging services for fresh produce, the OFT also considered whether the boundaries of the product market for transport packaging services to the automotive industry should be widened to include self-supply of transport packaging services by automotive manufacturers. The parties submitted, and some third parties confirmed, that some self-supplying manufacturers were active in supplying these services to the 'merchant market'. However, it was not necessary for the OFT to conclude on this point because the merger does not give rise to competition concerns on any plausible product market definition for transport packaging services for the automotive industry.

21. The parties submitted that the geographic scope was likely to be European, given in particular the pan-European presence of most automotive manufacturers. The OFT received no evidence that the scope of the geographic market was narrower than national. However, it was not necessary for the OFT to reach a conclusion on the geographic market for transport packaging services for the automotive industry because the merger does not give rise to competition concerns on any plausible geographic market definition.

HORIZONTAL ISSUES

Transport packaging services for fresh produce

Shares of supply

22. CHEP supplies RPC transport packaging services to [ ]. IFCO supplies RPC transport packaging services for fresh produce to [ ].

23. The parties provided estimated shares in the supply of RPC transport packaging services for fresh produce on the basis of the number of trips per year. They submitted that the variety of service provision models and pricing arrangements made it impossible for them to provide reliable estimates on a turnover basis. The parties further estimated that around 60 to 70 per cent of fresh produce trips are accounted for by fruit and vegetables (with the exception of IFCO's trips, all of which are for fruit and vegetables). As a cautious approach the OFT has used the lower end of the parties' estimate of the proportion of fruit and vegetable trips (i.e. 60 per cent) to calculate shares in relation to fruit and vegetables and has excluded the trips that the OFT is aware relate only to meat and poultry. On this basis, the parties' and their competitors' shares in the UK, excluding services provided in-house by retailers (see paragraph 14 above), are set out in Table 1. The parties' combined share of [10-15] to [15-20] per cent (with an increment of between [0-5] and [5-10] per cent) is not high enough to give the OFT cause for concern over unilateral effects.

Table 1: Supply of RPC transport packaging services for fresh produce and fruit and vegetables in the UK, excluding retailer-supplied services

Supplier	Fresh produce		Fruit and vegetables	
	Trips per year	Share of trips, per cent	Trips per year	Share of trips, per cent
CHEP	[ ] million	[5-10]	[ ] million	[5-10]
IFCO	[ ] million	[0-5]	[ ] million	[5-10]
Merged entity	[ ] **million**	**[10-15]**	[ ] **million**	**[15-20]**
Norbert Dentressangle	[ ] million	[50-55]	[ ] million	[50-55]
Kuehne + Nagel	[ ] million	[25-30]	[ ] million	[20-25]
Logtek	[ ] million	[5-10]	[ ] million	[5-10]
Total	[ ] million	100	[ ] million	100

Source: parties' estimates.

24. If, in addition to retailer-**supplied** services, all retailer-**managed** services are also excluded, then the parties' and their competitors' shares are as set out in Table 2. The OFT notes that the market consists of relatively few customers with relatively large contracts, where the win or loss of a contract can change market shares significantly. High market shares in these types of markets may therefore not be good indicators of the dynamics of competition.

25. Notwithstanding this, Table 2 shows that on the narrowest possible UK market definition, i.e. those excluding both retailer-managed and retailer-supplied services, the parties have a combined share of supply of between [50-55] and [60-65] per cent (with an increment of between [15-20] and [25-30] per cent) that is high enough to give the OFT cause for concern over unilateral effects. Countervailing factors are therefore discussed in the sections on *Competing suppliers*, *Buyer power* and *Threat of entry* below.

Table 2: Supply of RPC transport packaging services for fresh produce and fruit and vegetables in the UK, excluding retailer-managed and retailer-supplied services

Supplier	Fresh produce		Fruit and vegetables	
	Trips per year	Share of trips, per cent	Trips per year	Share of trips, per cent
CHEP	[ ] million	[35-40]	[ ] million	[30-35]
IFCO	[ ] million	[15-20]	[ ] million	[25-30]
Merged entity	[ ] **million**	**[50-55]**	[ ] **million**	**[60-65]**
Logtek	[ ] million	[35-40]	[ ] million	[35-40]
Kuehne + Nagel	[ ] million	[10-15]	[ ] million	[0-5]
Total	[ ] million	100*	[ ] million	100*

Source: parties' estimates.

* The percentages in the column do not add up to 100 per cent due to rounding.

26. At a European level, the parties' estimated shares in the supply of RPC transport packaging services for fresh produce and fruit and vegetables are set out in Table 3.

Table 3: Shares of supply of RPC transport packaging services in Europe, per cent

Product scope	CHEP	IFCO	Merged entity
Fresh produce*	[5-10]	[10-15]	**[15-20]**
Fruit and vegetables	[5-10]	[15-20]	**[20-25]**

Source: parties' estimates.

* The shares for fresh produce are calculated on the parties' lower-end estimates of the size of the total market.

27. The shares in Table 3 include retailer-managed and retailer-supplied services. Excluding these would make the parties' shares higher, though the parties were unable to estimate by how much. Set against this, the parties' European shares would be significantly lower (a combined share below [5-10] per cent) if one-way packaging was included, which is estimated to comprise around 70 per cent of transport packaging in Europe (see paragraph 11 above). The parties further noted that their shares would also be lower if services to non-retailers such as municipal markets were included. The OFT received no evidence that the shares in Table 3 were likely to understate the parties' competitive strength in a manner that may

give the OFT cause for concern over unilateral effects. Given this and the lack of any third-party concerns on a European basis, the OFT does not consider that the merger is likely to give rise to a realistic prospect of a substantial lessening of competition in any putative European market for transport packaging services.

Competing suppliers

28. The parties submitted that they face competition from Norbert Dentressangle, Kuehne + Nagel and Logtek. They stated that although Norbert Dentressangle currently only supplies services to retailers that manage their service provision themselves (hence Norbert Dentressangle's absence from Table 2), it is regarded as a viable competitor for non-retailer-managed services as well, as shown by the fact that it was among the suppliers recently asked for bids by three grocery retailers that do not manage their own services. On this basis, the OFT therefore considers that the current large size of the parties' combined share (if all retailer-managed services are excluded from the market) overstates the parties' competitive position after the merger. The parties further noted that Euro Pool System, which already is a significant supplier of RPC transport packaging services in other European countries, has recently entered the UK and that one major grocery retailer has asked Euro Pool System, along with the parties and other suppliers, to provide proposals for a new service for imported produce.

29. Third parties confirmed that the parties face competition from a number of other suppliers. They also saw Norbert Dentressangle as a competitor for non-retailer-managed services. However, third-party views were mixed as to their willingness to switch to these suppliers in the event that the merged entity raised prices by five per cent. One grocery retailer named four alternative suppliers it would consider in the event of a price increase. Conversely, another grocery retailer stated that, while it would in the event of a price increase consider moving to one of four alternative suppliers, these suppliers do not have the global presence that this retailer would ideally prefer (as they can pack produce where it is grown in the world). This retailer also noted that the parties may have a slight cost-advantage over competing suppliers due to their global presence. That said, this same customer indicated that self-supply and the possibility of switching to a 'cardboard solution' were also options in the event of a price increase. The OFT therefore considers that alternative suppliers exist who customers

would consider switching to if the merged party attempted to raise prices by five per cent.

Buyer power

30. The parties submitted that they also face a significant constraint from the presence of powerful grocery retailers as their customers. These retailers can pick and choose the provision of service elements and service management to suit their own requirements. The parties provided several examples of large grocery retailers switching suppliers in recent years. Grocery retailers confirmed that the costs of switching providers are generally not so high that this would prevent them from switching.

31. The parties stated that many retailers are also willing and able to self-supply by operating their own transport packaging services, and some retailers currently already do so (notwithstanding that self-supplying retailers do not supply transport packaging services into the 'merchant market', see paragraph 14 above). Third parties provided some support for this submission. One grocery retailer also said it would consider switching from RPCs to one-way packaging.

Threat of entry

32. The parties submitted that they face potential competition from RPC transport packaging service providers that are not currently active in the UK. They pointed to recent entry into the UK by Euro Pool System as an example (see paragraph 28 above). They further submitted that they face potential competition from UK service providers that can expand or adapt their services relatively easily, such as Teacrate, which is currently active in the provision of poultry transportation services to one food supplier. However, it has not been necessary for the OFT to conclude on barriers to entry and expansion because the merger does not give rise to competition concerns.

Transport packaging services for the automotive industry

33. The parties estimated that CHEP's share in the supply of transport packaging services to the automotive industry in Europe is around [5-10] per cent. They estimated it is around [25-30] per cent if manufacturer-owned suppliers are excluded. However, they submitted that these suppliers do form part of the market since a number of manufacturers' subsidiaries already provide automotive transport packaging services to third parties – such as GEFCO, part of the PSA Peugeot Citroën Group, and Volvo Emballage – and other manufacturers are considering doing so. Some third parties supported that manufacturer-owned suppliers were alternative suppliers.

34. IFCO does not currently offer these services in the UK. However, the parties argue (see paragraph 21) that the market is likely to be European wide and on this basis their activities do overlap. Nevertheless, IFCO has only recently started offering these services in Europe and [ ], resulting in a share of only around [less than one] per cent even if manufacturer-supplied transport packaging services are excluded. Therefore, current overlap between the parties in Europe is minimal, although IFCO may, absent the merger, form a growing competitive constraint. However, the OFT will consider that the removal of a growing competitor may represent a substantial lessening of potential competition where that competitor is very (or even uniquely) well placed to develop in the market.[2] No evidence was presented to the OFT that this was the case.

35. Indeed, customers of the parties named several alternative suppliers of transport packaging services. They also stated that they would consider bringing these services in-house if the parties were to increase their prices.

CONGLOMERATE ISSUES

36. One third party raised a strong concern about the impact of the merger on CHEP's position in the provision of pallet services in Europe. These services comprise the provision of pallets to manufacturers and producers for the distribution and transport of a variety of products. According to this third party, CHEP has a very strong position in the provision of pallet services, which was confirmed by several third parties. This third party estimated

[2] *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraphs 5.4.13 to 5.4.18. See also OFT decision of 9 May 2008, Completed acquisition by Air France Finance S.A.S. / City Jet Ltd of VLM Airlines N.V., paragraph 118ff.

that CHEP has an [85-90] per cent share of supply in Europe and a [90-95] per cent share in the UK, with potentially only two competing suppliers. This third party stated that CHEP's share had only fallen slightly in recent years. According to the parties, IFCO provides pallet services only in the United States and has no intention of providing them in Europe. This was not disputed by any information provided by third parties.

37. The third party submitted that RPC transport packaging services and pallet services are complementary, because producers of fresh produce and distributors require both services to transport their produce. As an example, the third party stated that elsewhere in Europe a provider of RPC transport packaging services had entered into an agreement with a provider of pallet services to offer a bundled RPC and pallet service to a grocery retailer. The third party submitted that customers have a strong incentive to buy RPC and pallet services from a single supplier to save costs. It was concerned that CHEP will be able to use its dominant position in pallet services, combined with its strengthened position in RPC services as a result of the merger, to tie or bundle RPC and pallet services, resulting in the exclusion of CHEP's existing competitors in the supply of pallet services and in higher barriers to entry for potential competitors.

38. In response to this third-party concern, the OFT considered whether the merged entity would have the ability or incentive to pursue a foreclosure strategy by either tying or bundling pallet services and RPC services, that is, whether the merged firm might increase the selling price of RPC services when sold on a stand-alone basis, but might not do so if customers buy both pallet services and RPC services from it. If so, then this may give customers the incentive to buy pallet services from the merged firm as well, putting competitors in the supply of pallet services at a disadvantage.

39. By way of background to its assessment, the OFT notes that tying and bundling are generally competitively-benign practices at worst, and may even be pro-competitive.[3]

[3] *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 5.6.1.

Ability

40. The merged firm may have the ability to foreclose by tying or bundling if its RPC services are regarded by customers as 'must have' (for example, because the merged firm has a very strong position in the market). Even then, the parties are only likely to have the ability to foreclose by tying or bundling if there is a large pool of common customers for pallet services and RPC services, and if pallet services and RPC services are complementary — such that a fall in the price of one service increases demand for it and for the other service. The OFT notes that the mere fact that pallet services and RPC services are bought together does not mean that they are complements in the economic sense needed for the merged firm to pursue a foreclosure strategy.

41. The OFT firstly notes that it was told that in the UK, in contrast to RPC transport packaging services, where the services are negotiated by retailers, growers choose their suppliers of pallets and negotiate the terms and conditions of supply with them directly. Several growers also noted that RPCs are supplied to them on pallets, where the provider of pallets is chosen by the RPC provider. The OFT has therefore sought to obtain information from growers as well as other relevant third parties.

42. It appears very unlikely that the merged firm's RPC services will be regarded as 'must have' by customers. As set out above, the combined parties account for only around [15-20] per cent of RPC services for fruit and vegetables (excluding retailer-supplied services), with a number of competing suppliers of these services. The parties account for around [60-65] per cent of RPC services for fruit and vegetables if retailer-managed services are also excluded from the market, but, as noted above, the OFT considers this overstates the parties' competitive position. The OFT has also not received any information that suggests that the parties' RPC services can be distinguished from their competitors' RPC services in such a way that could make customers regard the parties' services as 'must have'.

43. In addition, it is not clear that there is a large pool of common customers for pallet services and RPC services. Although growers indicated that RPCs are generally transported on pallets, the OFT notes that pallets are used not only by growers or RPC service providers but also by manufacturers of other goods. Indeed, the largest customers of one of CHEP's competitors in

the supply of pallet services are all manufacturers of products other than fresh produce. The merger will not affect the ability of CHEP to foreclose its competitors in relation to these customers.

44. Further, the OFT has considered to what extent pallet services and RPC services are complementary. Generally, demand for both pallet services and RPC services is likely to be a derived demand, in the sense that demand for both services goes up if the volume of fresh produce is sold. Growers indicated to the OFT that it can be convenient or cost-effective to use the same pallet provider to supply their customers that the RPC arrives on, but growers also told the OFT that they are not obligated to do so and were aware of other pallet providers than CHEP. Further, one example was raised of a grower utilising a different pallet provider to that which supplied the pallets the RPCs arrive on. Nevertheless, two growers concurred that the merger may strengthen CHEP's ability to hold onto the pallet market and may make it more difficult for smaller pallet providers to penetrate the market.

Incentive

45. The merged firm may have the incentive to engage in a potential strategy to foreclose CHEP's pallet competitors by attempting to tie/bundle the supply of RPCs and pallets if the gains in profits from customers who switch to buying both RPC and pallet services from the merged firm exceed the loss in profits from customers who no longer buy RPC services on a standalone basis.

46. As noted above, growers indicated to us that it may be convenient to purchase pallet and RPC services from the same provider. To this extent, tying or bundling may be driven by customers' own choice (which in itself, as noted above, does not mean that pallet services and RPC services are complements in the economic sense needed for the merged firm to pursue a foreclosure strategy). To the extent that the merged firm tries to impose a tie or bundle on customers, the OFT notes that such a strategy seems likely to carry significant risks for CHEP, given that the potential gains in the form of an improvement in its position in pallet services are necessarily small (due to the fact that it already supplies [90-95] per cent of the market, according to third-party information) and the risk of losing customers in the supply of RPC transport packaging services is significant (due to the presence of a significant number of competitors). Any

difference in profitability between pallet services and RPC services is also relevant to assess the risks for CHEP of such a strategy, but there is no need for the OFT to reach a conclusion on the merged firm's incentive since it does not consider that the merged firm is likely to have the ability to pursue a foreclosure strategy.

Conclusion

47. For the reasons set out above, the OFT does not consider that the merged entity is likely to have the ability to foreclose CHEP's competitors in the provision of pallet services as a result of the merger. Consequently there is no need for the OFT to conclude whether CHEP is likely to have the incentive to foreclose, although the OFT's assessment indicates that foreclosure may carry significant risks for CHEP.

THIRD-PARTY VIEWS

48. Third-party views have been discussed above where relevant. The level of third-party concern about the merger was generally low. As regards the supply of services for fresh produce, some grocery retailers stated that the merger meant a narrowing of their choice of suppliers but they considered they either had sufficient alternative suppliers available or could switch to using one-way packaging/in-house supply instead. Automotive manufacturers also were generally unconcerned about the merger. One third party raised a strong concern in relation to pallet services, but other third parties, including customers of pallet and RPC services, were not seriously concerned.

ASSESSMENT

49. The parties overlap in the supply of RPC transport packaging services for fruit and vegetables to grocery retailers in the UK and elsewhere in Europe. The way in which these services are provided varies: some retailers supply services in-house (retailer-supplied services), some retailers contract out individual service elements to third-party providers but undertake overall management of the services themselves (retailer-managed services), while other retailers contract out both the provision of individual service elements and the overall management. The parties' combined share of supply of RPC transport packaging services for fruit and vegetables is around [15-20] per cent (increment [5-10] per cent) if retailer-supplied services are excluded

from the market and, on a narrower basis, around [60-65] per cent (increment [25-30] per cent) if all retailer-managed services, including those provided by third parties, are also excluded. The parties' shares on a wider market of services for all fresh produce are slightly lower.

50. The parties face a number of competitors, two of which have a larger share than the parties' combined share if retailer-managed services are included in the market. One of these competitors currently only provides service elements to retailers who manage their own service provision, but at least one customer viewed this competitor as a viable supplier of the overall management of services. The OFT therefore considers that the current large size of the parties' combined share if all retailer-managed services are excluded from the market overstates the parties' competitive position after the merger. In addition, there is evidence that retailers are willing and able to switch between the parties and their competitors as well as provide services in-house. Customer concern about the merger was low.

51. In a possible European market for RPC transport packaging services for fruit and vegetables the parties' combined share of supply is [20-25] per cent (increment [5-10] per cent), or slightly lower if the market is widened to all fresh produce. These shares may be larger if retailer-supplied and all retailer-managed services are excluded from the market, but as noted above, excluding all retailer-managed services may not be appropriate. The parties' shares would be much lower (combined share of around [5-10] per cent) if one-way packaging was included, which is estimated to comprise around 70 per cent of transport packaging in Europe compared to around 30 per cent in the UK. The OFT received no third-party concerns regarding the supply of RPC transport packaging service on a European basis.

52. The parties also overlap in the supply of transport packaging services to the automotive industry in Europe but not in the UK. IFCO currently [ ] and its share of supply is minimal. There is no indication that it is very or uniquely well placed to develop in the market. There are also a number of competing suppliers to the parties and third-party concerns were low.

53. One third party raised a strong concern about the impact of the merger on the provision of pallet services in Europe, where there is no overlap between the parties but CHEP has a strong position. Some third parties concurred that the merger may strengthen CHEP's position in the provision of pallet services, but the OFT does not consider that as a result of the

merger the merged party is likely to have the ability to foreclose any provider of pallets from any relevant market, or indeed the incentive to do so, given in particular the limited strength of the parties in the supply of RPC services.

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

DECISION

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

END NOTE

With regard to paragraph 37, the OFT clarifies that the reference to a 'dominant position' of CHEP in pallet services represents the concern raised by a third party rather than the OFT's view. There has been no need for the OFT to conclude on the existence of a dominant position of CHEP in any market for pallet services.