

OFFICE OF FAIR TRADING

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Date	25 March 2011	Fax	+44 20 7211 8916
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Dear Alexander

I enclose a request pursuant to Article 22 of the EC Merger Regulation a request for the proposed acquisition by Aditya Birla Group of Columbian Chemicals to be referred for review by the European Commission.

Please note that the OFT will be publishing a non-confidential version of this request as soon as is practicable.

Yours sincerely

Sheldon Mills
Director of Mergers



INVESTOR IN PEOPLE

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**CASE M.6191: PROPOSED ACQUISITION BY ADITYA BIRLA
GROUP OF COLUMBIAN CHEMICALS ACQUISITION LLC**

**REQUEST PURSUANT TO ARTICLE 22
OF COUNCIL REGULATION (EC) 139/2004**

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

INTRODUCTION

1. This request is made by the United Kingdom's ('UK's') Office of Fair Trading ('OFT') to the European Commission ('the Commission') pursuant to Article 22(2) of Council Regulation 139/2004 ('EC Merger Regulation'). It requests that the UK aspects of the above transaction be examined by the Commission instead of by the OFT in the UK.
2. The request is made pursuant to Article 22(2) since Germany (the Bundeskartellamt) made the initial Article 22 request with respect to the same transaction (the 'Initial Request'). The OFT was informed by the Commission of the initial request on 4 March 2011. Therefore, the 15 working days deadline by which the OFT must join the request is Friday 25 March.
3. While the OFT believes that the proposed transaction would be likely to qualify for investigation in the UK under the UK's Enterprise Act 2002, the parties have not (as yet) notified it in the UK.¹ Therefore, the OFT has had a limited amount of information with which to consider its request to transfer jurisdiction.

THE UNDERTAKINGS CONCERNED

4. According to the Commission's summary of the Initial Request, Aditya Birla Group ('Birla') is an Indian company which manufactures and supplies a broad variety of industrial products including carbon black. Carbon black is a substance (made from petroleum products) used mostly in the production of tyres (for

¹ The UK has a voluntary merger notification regime.

cars and other vehicles) but also in plastics, hoses, cables, seals, coatings, paint and inks. Further information on carbon black, submitted to the OFT by the parties, is in Annexe A. Birla is the fourth largest producer of carbon black in the world.

5. The proposed transaction is being undertaken by Indigold Carbon (Netherlands) B.V. ('Indigold'). The parties told the OFT that Indigold and Birla are connected via various Birla companies. The parties told the OFT that this link is sufficient to consider that the enterprises Birla and Columbian Chemicals Acquisition LLC will cease to be distinct as a result of the proposed merger for the purposes of both UK's Enterprise Act 2002 and the EC Merger Regulation.
6. Columbian Chemicals Acquisition LLC ('Columbian') is a US company which manufactures and supplies carbon black. Columbian is owned by funds affiliated with One Equity Partners LLC which, in turn, is ultimately owned by JPMorgan Chase & Co.

THE PROPOSED TRANSACTION

7. On 28 January 2011, Indigold agreed to acquire the entire issued share capital of Columbian. On 31 January Birla announced that it had entered into an agreement to acquire Columbian.

UK DOMESTIC JURISDICTION

8. OFT guidance states that the OFT would be unlikely, absent unusual circumstances, to make an Article 22 request unless the merger would qualify for investigation under the Enterprise Act 2002.²
9. In this case the OFT's preliminary view is that it would have jurisdiction under the Enterprise Act 2002. The parties submitted, via the Commission, table 1.

² 'Mergers – jurisdictional and procedural guidance', OFT527, June 2009, paragraph 11.46.

Table 1: Estimated UK shares of supply, 2010 (per cent)

Product	Birla	Columbian	Combined
All carbon black	[5–15]	[10–20]	[25–35]
Carbon black for rubber	[10–20]	[10–20]	[25–35]
Carbon black for tyres	[10–20]	[20–30]	[30–40]
Carbon black for non-tyres	[5–10]	[0–5]	[5–10]

Source: The Parties.

10. On the basis of the information supplied in table 1, the OFT considers that it is likely to have domestic jurisdiction in this case since the parties' combined share of the supply is estimated by them to be greater than 25 per cent for carbon black for tyres, carbon black for rubber and for all carbon black.³

THE MARKET FOR CARBON BLACK

11. The OFT has not previously examined a case involving the production and supply of carbon black. Further, on the information available to it, the OFT is unable to come to a preliminary view on what an appropriate product or geographic market might be. The OFT notes, however, the reference in the Initial Request to Commission case CVC/RAG/Evonik⁴ which, in part, concerned a related product to carbon black, namely pigment blacks.⁵ In that case the geographic market was left open but considered by the parties to be at least EEA-wide. The reasons supporting this were confirmed by the Commission's market testing.
12. Moreover, in this case the OFT understands that carbon black is imported into the UK from within the EEA. Columbian itself imports into the UK from []. Further, the parties told the OFT that carbon black is imported into the EEA, and perhaps into the UK, from non-EEA locations including Russia, Mexico and Venezuela. Birla imports into the UK from Egypt.⁶ This indicates that the geographic

³ UK merger control jurisdiction can be achieved on the basis of the UK turnover of the target company (of at least £70 million) or on the basis of the parties' combined share of supply of any good or service being at least 25 per cent.

⁴ M.5243

⁵ The CVC/RAG/Evonik case (paragraph 11) describes pigment blacks as a substance which consists mostly (99 per cent) of carbon black.

⁶ Via the Birla subsidiary company, Alexandria Carbon Black Company SAE.

market may well be wider than national and perhaps at least EEA-wide.

THE ARTICLE 22 REQUIREMENTS

13. Article 22 of the EC Merger Regulation states that Member States may request the Commission to examine any concentration that does not have an European Union dimension but affects trade between Member States and threatens to significantly affect competition within the territory of the Member State making the request.
14. Carbon black is imported into the UK by Columbian from other EU Member States. Whilst Birla imports its carbon black from Egypt, it has refilling/decanting stations in Spain, Italy, Belgium and the UK. The OFT considers that this evidence indicates that the proposed merger will affect trade between Member States.
15. Further, the OFT considers that, on a preliminary, prima facie basis, the proposed transaction raises the possibility of unilateral or coordinated effects in the UK and thus it deserves the close scrutiny that a merger investigation will bring.

Table 2: Estimated UK shares of supply of all carbon black, 2008–2010 (per cent)

	2008	2009	2010
Columbian	[20–30]	[15–25]	[10–20]
Birla	[5–10]	[5–10]	[5–15]
Combined	[25–35]	[25–35]	[25–35]
Cabot	[50–60]	[50–60]	[45–55]
Evonik	[5–10]	[5–10]	[10–20]
Other Imports	[10–20]	[10–20]	[10–20]

Source: The parties.

16. Table 2 shows that currently the top four suppliers (including the merger parties) together supply over [70–80] per cent of the UK's consumption of carbon black. Thus, the merger could be viewed as reducing the number of suppliers in the UK from four to three.
17. As such, the merger should be investigated to see whether it is likely to lead to unilateral effects. Moreover, given the

homogenous nature of the product, the merger should also be investigated as to whether it is likely to lead to the creation or strengthening of coordination in the marketplace.

18. These are issues which the OFT considers need to be investigated. But given the little information that it has, the OFT does not have a view on the likelihood of any harm to competition arising from the proposed merger. For example, the OFT does not have sufficient information to form a view as to whether Columbian has been a significant competitive force in the marketplace. Nor does the OFT have sufficient information on other important factors such as the barriers to entry and expansion in the market, capacity constraints, countervailing buyer power, customer switching costs and the level of transparency in the market.

FURTHER REASONS FOR USING ARTICLE 22

19. According to the Commission's Notice on case referral⁷ ('the Commission's Notice') in making a request Member States should take account of the principle of subsidiarity, and, in particular, which is the more appropriate authority for carrying out the investigation, the benefits inherent in a 'one-stop shop' system and the importance of legal certainty with regard to jurisdiction.⁸ In this case, the OFT understands that the merger also qualifies for notification in Germany and Spain. Therefore, the locus of any impact on competition may very well be in other Member States in addition to the UK.
20. The OFT does not consider that joining this request under Article 22(2) affects legal certainty.
21. The OFT has also had due regard to the factors that it outlined in its own guidance on making an Article 22 request.⁹ These factors (which overlap considerably with the Commission's Notice) are whether:

⁷ 2005/C 56/02

⁸ Paragraph 8.

⁹ 'Mergers: Jurisdictional and Procedural Guidance', OFT527, June 2009, paragraphs 11.45–11.55.

- the merger would qualify for investigation under UK domestic law¹⁰
 - the relevant geographic market is likely to be wider than national
 - the merger is subject to filing in several EU Member States (and as such the parties would benefit from a 'one-stop shop' review)
 - suitable remedies to competition concerns lie outside of the UK
 - the transaction has already been reviewed by one or more Member States and, if so, whether a further review by the Commission would be useful and proportionate.
22. Some of these factors have already been discussed.¹¹ Production facilities are not located within the UK. Whilst Birla's facilities are outside of the EU, Columbian's are within the EU (but outside the UK). Thus, if the UK were to investigate the proposed merger and find that it is likely to lead to a substantial lessening of competition, a structural remedy would not be available to the UK authorities. Therefore, the Commission is better placed to examine the merger.

CONCLUSION

23. The OFT considers that the conditions set out in the Commission's Notice on referrals and its own guidance on handling Article 22 requests point toward a referral of jurisdiction to the Commission in this case.
24. In line with its own guidance and the Commission's Notice, the OFT's is requesting the Commission to investigate the proposed transaction because of the one-stop shop benefits that exist in this

¹⁰ Enterprise Act 2002. The OFT's Jurisdictional and Procedural Guidance expressly notes that whilst this is not a prerequisite for making (or joining) an Article 22 request (paragraph 11.46) it is nevertheless a factor the OFT will take into account.

¹¹ The OFT has reason to believe that it does have jurisdiction in this case under domestic UK law; the geographic market may be wider than national; and the merger is subject to multiple filings.

case, the possibility that the geographic market is wider than national and the fact that the production facilities are not located within the UK.

25. The OFT therefore joins the existing Article 22 request to have the UK aspects of Birla's proposed acquisition of Columbian investigated by the Commission.

OFFICE OF FAIR TRADING
25 March 2011

ANNEXE A CARBON BLACK

- A.1 Carbon black is virtually pure elemental carbon in the form of colloidal particles that are produced by incomplete combustion or thermal decomposition of gaseous or liquid hydrocarbons under controlled conditions (in a reactor). Its physical appearance is that of a black, finely divided pellet or powder. Its use in tyres, rubber and plastic products, printing inks and coatings is related to properties of specific surface area, particle size and structure, conductivity and colour.
- A.2 Almost all carbon blacks are produced by the so-called furnace black process through partial pyrolysis of hydrocarbons. The raw material (in particular heavy crude oil, but also distillates from coal tar or residual oils) or 'feedstock' is supplied by the mineral oil industry or can be obtained from the distillation of coal tar.
- A.3 In order to produce carbon black, the most usual process is to divide the feedstock in a furnace under high temperatures into the elements carbon and hydrogen. This is achieved with the use of another fossil fuel (for example, fuel oil or natural gas). Depending on the required grade of carbon black, the characteristics of the carbon black produced (such as size and structure of the particles) can be determined precisely in advance by appropriate adjustment of the furnace.
- A.4 Carbon blacks are used as reinforcing filling agents in the production of rubber tyres and technical rubber products. Rubber blacks improve the mechanical properties of the rubber, and increase the life span of the product. For example, the addition of rubber blacks in tyres ensures high abrasion resistance and good road handling.
- A.5 Carbon blacks are also, as mentioned above, used for industrial applications outside the rubber industry, primarily in the plastics, coatings and printing inks industries.