Anticipated acquisition by Prince Minerals Limited of Castle Colours Limited

CR/019/09

The OFT's decision on reference under section 33(2)(a) given on 6 May 2009. Full text of decision published 22 May 2009

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. **Prince Minerals Limited** (Prince) is a subsidiary, acquired in 2006 from Tarmac Limited, of the US company Prince Minerals Holding Corp. Its principal business activities comprise the sourcing and processing of minerals and compounds and the onward supply to customers in a wide variety of industries - including brick and tile manufacturers[1] - in the UK and in parts of mainland Europe.

2. **Castle Colours Limited** (Castle) sources, processes and supplies minerals and compounds used to condition and colour clay products – principally bricks and tiles. The parties estimate that Castle's turnover for the year ended 31 December 2008 amounts to [less than £6] million.

TRANSACTION

3. Prince is proposing to acquire the entire issued share capital of Castle. The completion of this transaction is conditional on obtaining competition authority clearance. Prince notified the anticipated acquisition on 5 March 2009. The extended administrative target date for the OFT's decision on reference to the Competition Commission is 6 May 2009.

[1] Other sectors include aerospace, glass, construction and refractory.

JURISDICTION

4. As a result of this transaction, Prince and Castle will cease to be distinct. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met on the basis of the parties' overlap in the supply of additives including pigments (stains) used to colour the surface of bricks and tiles. Such overlap would give rise to a combined share of around [60-75] per cent of the supply in the UK. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

MARKET DEFINITION

Product scope

5. The parties overlap in the supply of the following three minerals and compounds (all of which are relevant to the manufacture of clay bricks and clay tiles):

   (a) **Barium**
   Prior to bricks or tiles being fired in the kiln, barium carbonate ($BaCO_3$) is mixed with wet clay – from quarries whose typical clay compositions include relatively high proportions of sulphates – in order to prevent white deposits ('scumming') of soluble sulphate emerging on the finished brick face. Barium is supplied to brick and tile manufacturers either as a fine dry powder or mixed with water and suspension agents.

   (b) **Manganese**
   Manganese oxides are used to obtain dark colours in bricks and tiles. Two variants can generally be used interchangeably for this purpose: black manganese (MnO_2), a naturally occurring ore, and brown manganese (Mn_3O_4), a by-product of steel manufacture. Both types of manganese are typically mixed with wet clay to attain 'through the body' colouring.

   (c) **Non-calcined clay stains**
   These are pigments made from blends of metal (principally iron) oxides, silicates and other glass-forming compounds which are applied, either as dry powder or as liquid suspensions, to the visible facing surface only of bricks and tiles - prior to their being baked in the kiln. The finished colour of the blended stain develops in the process of firing, vitrification and adhesion to the surface of the finished product.

6. Buyers of each of the above products submitted to the OFT that they doubted that they could substitute any other product for each of these three products. Without drawing any conclusions as to the precise product scope, the focus of the OFT's competition analysis is therefore on the impact of this merger on these specific areas of overlap between the parties.

Geographic scope

7. Prince submits that UK suppliers in all of the above segments are subject to competitive constraints posed by suppliers based in continental Europe.

8. The OFT has seen some evidence of competitors supplying customers in both the UK and in continental Europe. However, the OFT also received evidence that customers place significant value on being able to procure these products from suppliers within the UK.

9. The OFT's competition assessment is therefore cautiously focused on the impact of the merger specifically within the UK.

HORIZONTAL ISSUES

Shares of supply

Barium

10. Prince estimates that the merger would bring about an increment of less than one per cent in the parties' combined share of [35-45] per cent of the total supply of barium to brick and tile manufacturers in the UK.

11. In view of the very small increment in the share of supply, the availability of alternative suppliers to the UK (including Norkem, Kimpe and Borregaard) and the absence of any third party concerns, the OFT does not believe that any competition concerns arises in the supply of barium. Consequently this sector is given no further consideration in this assessment.

Manganese

12. Prince estimates that the parties' combined share of the UK supply of manganese used for clay colouration amounts to some [70-80] per cent: an increment of around 12 per cent.

13. Around 92 per cent of such supply is accounted for by brown manganese which, according to the available evidence, provides better and more cost-effective (by around 30 per cent) colouring properties relative to black manganese.

14. The total value of the UK sales of brown manganese for clay pigmentation is forecast to be around [less than £1.5] million in 2009.

15. The parties estimate that the total value of the sales in the UK of black manganese used for clay pigments is likely to amount to less than £100k in 2009. Prince informed the OFT that it sources its supplies of this product from [ ] for onward resale. Given that there would be nothing to prevent customers sourcing directly from [ ] in the event of any worsening of the product

offering, the OFT does not consider that the merger will result in any consolidation of market power in the supply of black manganese.

16. The impact of the merger on the supply of black manganese as a distinct sub-segment is therefore given no further consideration in this assessment.

17. The parties submit that Castle pioneered the introduction of brown manganese as a clay pigment in the 1990s. Subsequently Castle continued to benefit from a first mover advantage. Indeed, when Prince's predecessor parent company (Tarmac) decided itself to source brown manganese and compete in the supply of that product, the parties submit that it was unsuccessful in achieving - what it considered to be - worthwhile market penetration.

18. The parties assert that Prince – shortly after it was taken over by its current US parent company – took a strategic decision to withdraw from actively competing in the supply of 'volume' brown manganese in the UK, and focus on the supply of premium grade brown manganese sourced from [ ]. Information currently available to the OFT indicates that, whereas the 'volume' grade of brown manganese is typically transported within the UK in liquefied suspensions, the specific properties of the [ ] grade of brown manganese are such that customers in the UK are able to produce liquid suspensions of this product themselves on site: a practice which is prevalent in continental Europe. As of 2009, Prince continues to supply brown manganese for what it describes as 'historical reasons' to only five customers in the UK. Prince submitted to the OFT that it has not provided quotes for the supply of brown manganese to any new UK customers for at least two years and has no intention to increase supplies to the UK given that prices obtainable in continental Europe for this product are around 30 per cent higher. Consistent with this proposition and Prince's focus on the supply of premium grade manganese, the parties submitted that the value of Prince's exports to the continent jumped from £[ ] in 2006 to £[ ] and £[ ] respectively in 2007 and 2008.

19. Third party comment supports Prince's submission that it no longer engages competitively in the supply of manganese. One customer commented that Prince has largely opted out of the manganese market. Another customer submitted that most of its facilities use product sourced from Castle and that Prince is likely to be used by customers only for historical reasons. Finally, one other customer told the OFT that Castle would not 'gain' from the merger with respect to the volume market. The OFT also has regard to the presence of Norkem whose share of the UK supply of manganese amounts, according to the parties, to over [ ] per cent.

20. On the basis of the above evidence, in particular the notable lack of significant customer concern (in contrast with the situation in relation to non-calcined products – discussed further below), the OFT considers that there is no realistic prospect of the merger giving rise to a substantial lessening of competition in the supply of manganese intended for use as a clay pigment.

Non-calcined clay stains

Introduction

21. Evidence provided by the parties and by third parties indicates that competition in the UK between suppliers of non-calcined stains takes place principally through two channels.

    - The first is when a brick or tile manufacturer wishes to introduce a new line to its range, perhaps as a result of a customer in the demand chain (for example, an architect, house-builder, developer or brick-maker) proposing an innovative pigment for brick-cladding in a new building project. One customer told the OFT that – by dropping unpopular bricks and introducing new ones – it turns over no more than 10 per cent of its range on a yearly basis.

    - The second is when such customers invite a supplier to bid to undercut its competitors by emulating an existing stain at a lower price. One customer told the OFT that it was unaware of any occasions when a new provider had undercut a single existing stain, prompting a response from the incumbent stain provider. The same customer indicated, however, that an incumbent would move to protect its business if a new provider undercut all the stains at a particular clay quarry site. (The parties' brick-maker customers commented that the ranges of stained brick stocked at any given site was considerable.)

High market shares indicate prima facie concerns

22. The parties' combined post-merger share of the UK supply of non-calcined clay stains would, according to Prince's own estimates, amount to around [in excess of 70 per cent]: an increment of [15-25] per cent.[2] This combined share is clearly high enough to give the OFT prima facie concerns over the merger giving rise to unilateral effects.

Parties argue they do not compete – given their differentiated product offerings

23. Notwithstanding their high combined market share, the parties submit that each of their product offerings is highly differentiated.

24. They argue that Prince's commercial model is based on the supply of premium 'high margin/low volume' clay stains using knowledge and expertise that allow for the stable liquid suspension of as many as nine or more raw materials in its blends of clay stains.

25. Castle's stains, on the other hand, were said to be simpler 'low margin/high volume' blends comprising an average of three pigments in liquid form.

[2] The shares of supply of PJ Colours, Lanxess and Grothe amount to [<10]%, [<5%], and [<5]% respectively.

26. These distinctions, the parties submit, are reflected in price differentials, Prince's non-calcined clay stains being on average around [ ] per cent more expensive than Castle's.

27. Furthermore, the OFT was informed that the lead times for Prince to supply its premium clay stains were considerably longer, given that it was not commercially viable for it to stock or to procure the components required to make them except when customers place specific orders. Conversely, Prince argues that for Castle's part, since it uses only a small number of components within its range of stains, it is able to maintain sufficient and accessible stock levels of those limited colours.

28. On this basis, the parties point to a lack of any substantial pre-merger competition between themselves. In particular, the parties told the OFT that they 'butt up' against each other by overlapping in no more than 15 per cent of the supply of non-calcined stains to brick and tile manufacturers.

Customers do not support the view that the parties do not compete

29. Customer views, however, do not support the parties' arguments. In fact, customers expressed the view that Prince and Castle were each other's closest competitors. For example, one large customer told the OFT that its custom was split fairly evenly between the parties and that it considered them to be fairly evenly matched.

30. Moreover, customers credited Castle's entry into the supply of non-calcined clay stains in the early 1990s as having generated lower prices and substantial improvements to the quality of products and services in that segment.

31. Customers identified a relatively small number of alternative suppliers of non-calcined stains within the UK: PJ Colours, Shire (sole UK agents for a German supplier, Grothe), Peter Skinner (agent for a Dutch supplier, Ankerpoort) and Lanxess (a German chemicals company).

32. Of these alternative suppliers, PJ Colours – having entered into the UK supply of non-calcined clay stains in 2006 – was identified as currently the most credible competitor. Since entering, it has achieved a [less than 10] per cent share of the total supply.

Expansion of existing suppliers or de novo entry not considered timely, likely or sufficient

Capacity constraints on market expansion

33. In markets such as those for the supply of non-calcined clay stains – where products are relatively undifferentiated – the extent of capacity constraints amongst rivals can have an important impact on the ability and incentive of the merged entity to raise prices by reducing output. If rivals have spare capacity, they will find it optimal to increase their output in the face of an attempted

price rise, and thereby dampen the price rise. The precise degree to which this happens depends on the extent of rivals' spare capacity relative to the incremental market share gained by the merged firm. If rivals are working at (or near) full capacity, then little dampening may be possible. Conversely, if rivals have substantial spare capacity, then more dampening may be possible.

34. In the current case, the OFT notes that the current economic climate has caused, at least for the time being, a near cessation of house-building in the UK and that brick-makers (the largest customers in this segment) in particular have stockpiles amounting to some 1.2 billion bricks – sufficient for the construction of nearly 135,000 medium-sized dwellings. As a result brick-makers are now shutting down or 'mothballing' brick production at various locations in the UK. The corollary effect of temporarily downsizing capacity in brick manufacture is, all things being equal, the temporary generation of extra capacity in the manufacture of non-calcined clay stains used in brick production. PJ Colours informed the OFT that it could expand production to [ ] tonnes, which is around [ ] per cent of the forecast market for 2009; in addition, it said it could double its current production shifts which would increase production to [ ] tonnes. On this basis, PJ Colours would potentially have sufficient spare capacity to serve [ ] forecast market output. The parties submitted that Grothe had sufficient spare capacity to serve the entire market.

35. This high level of spare capacity would, in some circumstances, be sufficient to ameliorate the upward pressure on prices arising from a merger. In this particular case, however, the parties' very high combined market shares suggest that there would still be substantial upward pressure on prices, even given the available capacity.[3]

[3] This finding is premised on the existence of Cournot competition between the parties, but absent binding capacity constraints. Under plausible yet cautious assumptions, based on such a model, the OFT estimates that the merger might give rise to upward pressure on prices of 13 per cent. This calculation also assumes linear demand and constant marginal costs (that may differ between firms). Under these assumptions, the equilibrium post-merger price increase may be written as $S_x/(N*E)$ where S_x is the merged firm's incremental market share (i.e. [15-25] per cent), N is the number of effective competitors in the market (i.e. [-]) and E is the market elasticity of demand (which responses by customers to OFT questions reveal to be inelastic). (For details, see S. Davies and B. Lyons *Mergers and Merger Remedies in the EU: Assessing the Consequences for Competition*, Edward Elgar: London, pp.127—127.) Using the standard property of the Cournot model that a firm's price-cost margin (M_x) is related to its market share and the market elasticity of demand (as $M_x = S_x/E$), this equilibrium post-merger price increase may be written as M_x/N. The parties submitted that Castle's gross margin was typically at least [-] per cent, hence [-]/[-] = [-] or [-] per cent. It should be noted that the OFT views this calculation only as a simple and convenient measure of upward pressure on prices in the light of the evidence available to it on market shares, spare capacity and margins, not as a prediction or simulation of the effect of the merger on prices (i.e. not as a measure of upward movement of prices).

The effects of customer behaviour on market entry and expansion

36. In addition, and notwithstanding the apparent existence of spare capacity in the market place, the OFT considers that evidence provided by a significant number of customers in this industry points to a reluctance to switch suppliers absent substantial incentives. Such behaviour on the part of the customer base, in the view of the OFT, places potentially high barriers to expansion in the way of existing and potential competitors.

37. According to evidence currently available to the OFT, it is not feasible for the parties' direct customers, that is, the brick and tile manufacturers, to constrain pricing behaviour by switching immediately between suppliers without having first satisfied the requirement for new blends of clay stains to be trialled on finished bricks and tiles to ensure colour consistency, durability, adhesion, weather-proofing etc. Customers submitted to the OFT that – given differences in the chemical reaction of stains and the mineralogy of clays that are quarried from individual sites – lead times for a successful outcome from the trialling of new blends of non-calcined clay stains may vary between 'weeks' and 'several months'.

38. Customer responses to questions put by the OFT with regard to their willingness and ability to switch suppliers in the event of an increase in price were overall mixed and ambiguous.[4] Some stated that, without having previously lined up 'tried and tested' alternatives, substantial cost savings would be required to justify incurring the inconvenience and costs of switching. Moreover, the OFT was provided with relatively few examples of recent actual switching. Conversely, the majority of customers expressed the desire to diversify their supplier base in the event of the merger going ahead.

39. In this regard, the OFT considered that, whilst PJ Colours has grown fairly rapidly since entering into the supply of non-calcined clays stains around two years ago, it remains a significantly smaller competitor with its [less than 10] per cent share of the overall supply of these products. In addition, the OFT is mindful of the fact that it took a significant number of years for Castle to grow its market share to its current position. Given the apparent constraints that apply to customer switching, the OFT considers that it cannot be sufficiently confident that PJ Colours will, within the next two years, be able to expand to a point where it could adequately offset the loss of competition from Prince.

40. Given also that customers identified PJ Colours as the most credible competitor to the parties, the OFT considers that there is no other viable candidate competitor capable of timely, likely or sufficient expansion in the UK.

41. Similarly, the OFT received no evidence of planned de novo entry into the UK by suppliers in continental Europe or by suppliers who currently manufacture any products similar in nature to non-calcined clay stains.

[4] Notwithstanding that the cost of stains makes up only around three per cent of the total cost of a brick.

Insufficient evidence for the OFT to rely on countervailing buyer power

42. The parties argued that the merged firm's prices of non-calcined clay stains would remain constrained by the exercise of countervailing buyer power by its customers.

43. They submitted that buyers – particularly the large brick-makers in the UK – are able to exercise buyer power by switching (or threatening to switch) to alternative suppliers for the procurement of goods in some of the merging firm's other product ranges. They also argue that these large customers – who also operate in continental Europe – are able to exercise buyer power by sourcing non-calcined clay stains from the parties' competitors for their production in continental Europe.

44. The OFT considers that, while plausible in theory, it was not provided with sufficient firm evidence of the extent or the effectiveness of the type of buyer power that the parties describe. However, the OFT also notes that the parties' arguments on buyer power are premised on the larger brick manufacturers and are of no probative value in offsetting the loss to smaller customers, including manufacturers of clay tiles, of competition between the parties.

Assessment of the impact of the merger in the absence of countervailing constraint from buyer power and from market entry or expansion

45. The OFT therefore makes its assessment of the impact of the merger taking account of evidence of the parties' very substantial combined shares of the supply in the UK of non-calcined clay stains – in conjunction with the information submitted to it by customers and competitors.

46. The OFT considers that taken as a whole this evidence indicates that anticipated merger raises a realistic prospect of a substantial lessening of competition in the supply of non-calcined clay stains to customers in the UK.

VERTICAL ISSUES

47. No vertical issues arise in the context of this merger.

THIRD PARTY VIEWS

48. Comments from third party customers and competitors have been addressed where appropriate throughout this decision.

ASSESSMENT

49. Prince and Castle overlap in the supply of additives and stains – specifically: barium, manganese and non-calcined clay stains – used in the production of clay bricks and clay tiles.

50. The OFT considers that the merger will not give rise to a realistic prospect of a substantial lessening of competition in the UK supply of barium or of manganese.

51. In the case of barium, there would be only a very small increment of less than one per cent in the merged entity's share of [35-40] per cent of the total UK supply. Third parties were generally unconcerned by the merger.

52. In the case of manganese – where the merger would bring about an apparent increment of [10-15] per cent of a combined share of [70-80] per cent of the total UK supply – evidence from customers supports the parties' proposition that Prince is no longer an active competitor in this segment but has merely continued with the ex-gratia supply to five customers in the UK.

53. The OFT does, however, consider that the merger raises a realistic prospect of a substantial lessening of competition in the supply of non-calcined clay stains. This is on the basis of (a) very substantial combined market shares of [greater than 70] per cent (an increment of [15-25] per cent), (b) a body of third party concerns with regard to the ability of the merged entity to raise prices, (c) evidence pointing to barriers to timely de novo market entry and to expansion within this particular market segment, and (d) a lack of evidence of sufficient countervailing buyer power.

54. Consequently, the OFT believes 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.

EXCEPTIONS TO THE DUTY TO REFER

55. The OFT's duty to refer under section 33(1) of the Act is subject to the application of certain discretionary exceptions, including those that apply to undertakings in lieu of reference under section 73(2) and to markets of insufficient importance: the de minimis exception under section 33(2).

Undertakings in lieu of reference and de minimis

56. In keeping with its reasoning in Dunfermline/BRN[5] and in BOC/Ineos[6], the OFT considers that it would be proportionate not to apply any de minimis exception

[5] Completed acquisition by Dunfermline Press Limited of the Berkshire Regional Newspapers business from Trinity Mirror plc – 4 February 2008

[6] Anticipated acquisition by BOC Limited of the Packaged Chlorine Business and Assets carried on by Ineos Chlor Limited – 29 May 2008

and to refer a problematic merger to the Competition Commission where is it clearly open to one or both of the merging parties to offer a clear-cut undertaking in lieu of reference but they choose not to do so. The OFT reasons that the recurring benefits of avoiding consumer harm by means of undertakings in lieu in a given case – and in all like cases in future – outweighs the one-off costs of a reference.

57. In this case, however, the OFT considers that – given the integrated nature of the production processes across all products – a structural remedy solely to address concerns in non-calcined clay stains is not realistically available to the parties by way of undertakings in lieu. On this basis, the OFT accepts that it would be appropriate to consider an evaluation of the de minimis exception in this case.

Evaluation of de minimis exception to the duty to refer

58. The pivotal consideration for the OFT in its assessment of whether to apply the de minimis exception is the significance of the impact of the merger.

59. The factors on which the OFT bases such an assessment, as set out in detail in BOC/Ineos, are:

- the size of the market in which the OFT has found a substantial lessening of competition
- the strength of the OFT's concerns
- the magnitude of the competition lost as a result of the merger
- the durability of the merger's impact
- the rationale of the transaction of the value of deterrence

60. Consequently, the OFT examines each of these factors in turn.

Market size

61. The merger leads, in the view of the OFT, to a realistic prospect of a substantial lessening of competition in the supply of non-calcined clay stains used to pigment the visible facing surfaces of bricks and tiles. The value of the market based on total sales in 2007 was [less than £4] million. However, the OFT has considered whether this figure was an accurate estimate for market size going forward.

62. Customer demand for these clay stains is derived from the demand for bricks and tiles which is in turn derived from demand for new buildings – principally housing – where architectural aesthetics call for bricks to comprise part or all of the cladding material used in construction.

63. The parties argue that demand for bricks (as opposed to other materials used for cladding in new build) has been in steady decline over the previous eleven years. In the current economic climate there has been a near cessation of homebuilding in the UK and brick-makers have accumulated stockpiles amounting, at the last count, to some 1.2 billion bricks (sufficient for the building of 133,000 medium-sized housing units).

64. Evidence available to the OFT also indicates that brick-makers are now shutting down or 'mothballing' brick production at various locations in the UK.

65. As a result of this decline in the demand for bricks and tiles, the value of sales of non-calcined clays stains forecast by the parties for 2009 amounts to some [less than £2.5] million – a decline of [more than £1] million compared with 2007.

66. Taken as a whole, the OFT considers credible the argument that the size of the market going forward should be considered to be significantly lower than its value in 2007, and therefore supportive of the application of de minimis. However, even on the basis of the market size as at 2007, the measure of the market, valued on the basis of total sales of [less than £4] million, renders the market size in this case a reasonable on-going candidate for application of the de minimis exception.

Strength of OFT's concerns

67. The OFT's assessment that the transaction results in a substantial lessening of competition is at the 'realistic prospect' standard rather than being on the balance of probabilities.

68. Although the OFT was unable to conclude as a result of buyer power or entry prospects that no competition concerns arose, nevertheless comments from customers – including two of the three largest brick-makers in the UK – evidence their intention to endeavour to ensure competitive conditions, going forward into economic recovery, by seeking out alternative suppliers to the merged entity.

69. These indications of credible future market developments ushering in more competitive conditions – served to mitigate the strength of the OFT's concerns and are supportive of the application of the de minimis exception in this case.

Magnitude of competition lost by the merger

70. The OFT has regard to customer comments indicating that Prince and Castle are each other's closest competitors – and also to the very high combined shares of the supply of non-calcined stains brought about by the merger. Such high shares would normally be indicative of a large degree of competition lost by the merger.

71. However, the OFT has regard to the post-merger possibilities of customers switching (or threatening to switch) to PJ Colours, and the existence of significant spare capacity in the market to meet substantial increases in demand.

72. Overall, then, the OFT does not consider that the magnitude of competition lost by the merger is a factor pointing strongly against the application of the de minimis exception.

Durability of the merger's impact

73. Given that the OFT does not consider that a viable alternative supplier of non-calcined stains will emerge in the current economic climate, the OFT is mindful that the durability of the significant lessening of competition is likely to be at least commensurate with the duration of the current economic downturn.

74. However, the OFT finds it credible that, depending on the level of customer switching post-merger, PJ Colours will continue to expand its sales to grow to a level broadly equivalent to that operated by Prince to date. As a result, the OFT does not consider it appropriate to regard the duration of the merger's impact as a decisive factor either for or against the application of the de minimis exception.

Rationale and Deterrence

75. The stated rationale for the transaction is that the merger is required, not least in the current economic climate, to accommodate the fluctuating demands of customers.

76. The parties submit that the anticipated economies of scale would have the immediate impact of equipping the merged entity with the opportunity to survive the current and prolonged economic crises.

77. Overall, the OFT considers that the application of the exception to refer on the grounds of de minimis in this particular case will not set a precedent that will compromise the deterrence of particularly problematic mergers going forward.

Conclusion on de minimis

78. Overall the OFT believes that the evidence points to an expectation that the merger will have a relatively limited adverse impact on competition. In particular, the size of the market that is the subject of the OFT's concern is, even on a conservative estimate, well within the de minimis threshold. In addition, the OFT considers that the scale of any anti-competitive effects attributable to the merger is limited by the evidence of low levels of pre-merger switching by customers – and the fact that there are indications that the customer base is currently, or in due course will be, focused on identifying further alternative sources of supply to the merged entity going forward.

79. The OFT therefore considers that, taking all the above factors into consideration, the market concerned in this particular case is of insufficient importance to justify the making of a reference.

DECISION

80. This merger will therefore **not be referred** to the Competition Commission pursuant to section 33(2)(a) of the Act.