

Completed acquisition by Lodge Brothers Funerals Ltd of two funeral homes in the London Borough of Hillingdon

ME/4245/09

The OFT's decision on reference under section 22 given on 26 November 2009. Full text of decision published 17 December 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. **Lodge Brothers Funerals Ltd (Lodge Brothers)** operate 37 funeral homes in Surrey, Middlesex and the South West London area. They offer funeral services, including memorials and flowers. In 2008 Lodge Brothers had a turnover of around £10 million.
2. The Goodson family operated two funeral homes (together the **Goodson Homes**):
 - (i) **Hillingdon Funeral Service** (located at 1 Whiteleys Parade, Uxbridge Road, Hillingdon, Middlesex, UB10 0PD) (Hillingdon), which conducted [] funerals in 2008 and had a turnover of around [below £500,00], and
 - (ii) **Ruislip Family Funeral Service** (located at 14 New Pond Parade, West End Road, Ruislip Gardens, Middlesex, HA4 6LR), which conducted [] funerals in 2008 and had a turnover of [below £500,000].

TRANSACTION

3. Lodge Brothers purchased the goodwill, leases, equipment, fixtures and fittings of the Goodson Homes on 21 August 2009 for £[]. The Goodson family had been operating its funeral homes for a number of years and the reason for the sale was because the main family members had reached retirement age and wished to exit the funeral market.

JURISDICTION

4. A relevant merger situation is created when two or more enterprises cease to be distinct and either the UK turnover of the target enterprise exceeds £70 million (the turnover test) or the parties together supply or procure 25 per cent or more of any description of goods or services in the UK or a substantial part of the UK (the share of supply test) (section 23 Enterprise Act 2002 (the Act)). As a result of this transaction Lodge Brothers and the Goodson Homes have ceased to be distinct. The OFT believes that the combination of assets passing as a result of the merger constitutes an 'enterprise' for the purposes of section 23. The turnover test is clearly not met. However, the OFT believes that it is or may be the case that the share of supply test is met.
5. The main area of overlap between the parties is in the supply of funeral services within the London Borough of Hillingdon. Within the Borough as a whole the parties combined share falls below 25 per cent. However, on the basis of a more narrow area covering the conurbation areas of Uxbridge, Hillingdon and Hayes, the parties' combined share would exceed 25 per cent. Given that it would cover a population of around 175,000 and bearing in mind the essentially local nature of funeral services, the OFT considers that it is or may be the case that this area constitutes a substantial part of the UK for the purposes of section 23 of the Act.¹

¹ The OFT believes this area to be 'of such size, character and importance to make it worth consideration for the purpose of merger control' in accordance with The OFT Mergers Jurisdictional and Procedural Guidance, paragraph 3.56 and R V MMC and another ex parte South Yorkshire Transport Limited [1993] 1 WLR 23. The Competition Commission found in a recent merger investigation concerning another market local in nature – local buses – that Eastbourne, with a population of around 131,000 people, could be regarded as being a substantial part of the UK for the purposes of the Act (A report on the *Completed acquisition by Stagecoach Group plc of Eastbourne Buses Limited and Cavendish Motor Services Limited*, 22 October 2009, paragraphs 3.23–3.25).

6. 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 for the purposes of section 23 of the Act.
7. The administrative deadline for this case is 26 November 2009. The statutory deadline is 21 December 2009.

COMPETITIVE ASSESSMENT

8. Lodge Brothers and the Goodson Homes overlap in the provision of 'at need'² funeral services to individuals.³

Product scope

9. The Parties overlap in the provision of funeral directing services, including services provided by the funeral director⁴ as well as services offered by others (including cemetery or crematoria services) for which funeral directors are also responsible. The majority of funeral directing services are provided to individuals as a package. The parties do not overlap in pre-paid funerals as Goodson Homes did not provide these.⁵

Geographic scope

10. Information provided by Lodge Brothers and third parties in this case – together with previous similar mergers considered by the UK competition

² 'At need' funeral services are organised following a bereavement, in contrast to those organised 'pre need' through a pre-paid funeral plan. 'At need' funeral services were most recently considered by the OFT in Anticipated Acquisition by Co-operative Group (Formerly Co-operative Wholesale Society Limited) of the Funeral Business of George Burgess & Son Ltd, 27 January 2009 (CGL/Burgess).

³ Funeral homes can also provide mortuary services to local authorities and Primary Care Trusts and nursing homes. In Hillingdon, the OFT is not aware of any mortuary contracts available for tender and as a consequence these have not been considered further.

⁴ Such as providing a coffin and managing a funeral.

⁵ For completeness, while it may be plausible to consider Goodson Homes as a potential entrant in the supply of pre-paid funeral services, the OFT has not considered it necessary to assess the impact of the merger on any related 'potential competition' theory of harm given the OFT's conclusion that the merger may not be expected to result in a substantial lessening of competition in relation to 'at need' funeral services in relation to which the parties actually competed.

authorities - suggests that the market for the supply of funeral services to individuals is essentially local in nature.⁶

11. In several recent cases the OFT has used postcode brick data⁷ to inform its geographic analysis.⁸ More specifically the OFT has looked at the geographic area within which the target funeral branch derives 80 per cent of its funeral business, giving a measure of the 'share of deaths' of each of the parties.⁹
12. In this case, due to the parties being unable to obtain postcode level data,¹⁰ the methodology used has necessarily departed slightly from that of previous cases in that primary analysis has been based on approximate 80 per cent catchment areas constructed using contiguous **electoral wards**¹¹ rather than contiguous postcode bricks.
13. The OFT believes that, in this case, electoral wards provide the best available basis for determining the catchment areas of the parties at a 'local' level and which are capable of providing a meaningful indication of the ambit of competition.
14. However, the OFT appreciates that there may be some limitations to the accuracy of the information which can be inferred from a purely electoral ward catchment analysis. Electoral wards are significantly larger than postcode bricks, and as a result an 80 per cent catchment area based on electoral wards may be larger than if it were to be constructed using contiguous postcode bricks. It is possible, as a result of this, that such an analysis may not accurately reflect the actual area over which parties actively compete. For example, the parties may provide so few funerals in a

⁶ The Monopolies & Mergers Commission's (MMC) conclusions in its report on Co-operative Wholesale Society Limited and House of Fraser Plc 1987 and the Acquisition by Service Corporation International of Plantsbrook Group plc 1995 (SCI/Plantsbrook), and the OFT in Acquisition by Co-operative Group Limited of Fairways Group UK Limited, decision of 5 December 2006 (CGL/Fairways) and Anticipated Merger between Co-operative Group (CWS) and United Co-operatives Limited, decision of 3 August 2007 (CGL/United).

⁷ A 'postcode brick' is term given to the first half of a postcode (that is, the first 2, 3 or 4 digits—N8, UB8, N10 or UB10 for example). It typically covers around 150 households.

⁸ For example CGL/Fairways, and CGL/United.

⁹ This methodology was most recently applied in CGL/Burgess, and in Anticipated Acquisition by Co-operative Group Limited of Plymouth & South West Co-operative Society Limited, decision of 4 September 2009 (CGL/PSW).

¹⁰ Lodge Brothers were unable to provide the OFT with post code brick data as the requisite underlying postcode information was unavailable from the ONS.

¹¹ For information on ward boundaries see www.election-maps.co.uk/electmaps.jsf

ward that it cannot be inferred that they actively compete over the whole of that ward area.

15. In its report on the SCI/Plantsbrook merger in 1995 the (then) Competition Commission (at that time, the Monopolies and Mergers Commission or MMC) indicated that the catchment area of funeral directors in London was likely to be narrower than that represented by an 80 per cent catchment area (the MMC suggested a catchment area of one mile for inner London and one and a half miles for outer London).¹² With these considerations in mind, on a cautious basis, given that the overlapping funerals of the parties appear to be concentrated within a narrower area than the 80 per cent electoral ward catchment the OFT has also given consideration as to whether a narrower catchment area may be a more appropriate measure of 'local' competition in this case.
16. In line with previous funeral cases, additional analysis has been carried out which has looked at the share of homes¹³ within the catchment area and the location of the closest competing funeral home to the target business.

HORIZONTAL ISSUES

Local assessment

17. In past cases¹⁴ the OFT has adopted a 25 per cent threshold for share of deaths within an 80 per cent catchment area as a first screen to identify areas which will give rise to prima facie competition concerns. In this case, since there are only two funeral homes being acquired, the OFT has been able to consider each in detail and, ultimately, rule out the possibility of concerns arising.

Ruislip Family Funeral Service

18. Based on the preferred methodology of share of deaths within the wards in which the target undertakes 80 per cent of its funerals, the parties' combined share around Ruislip Family Funeral Services' is likely to be below 10 per cent. Such a low combined share would not be expected to give rise

¹² Paragraphs 2.50 and 2.51

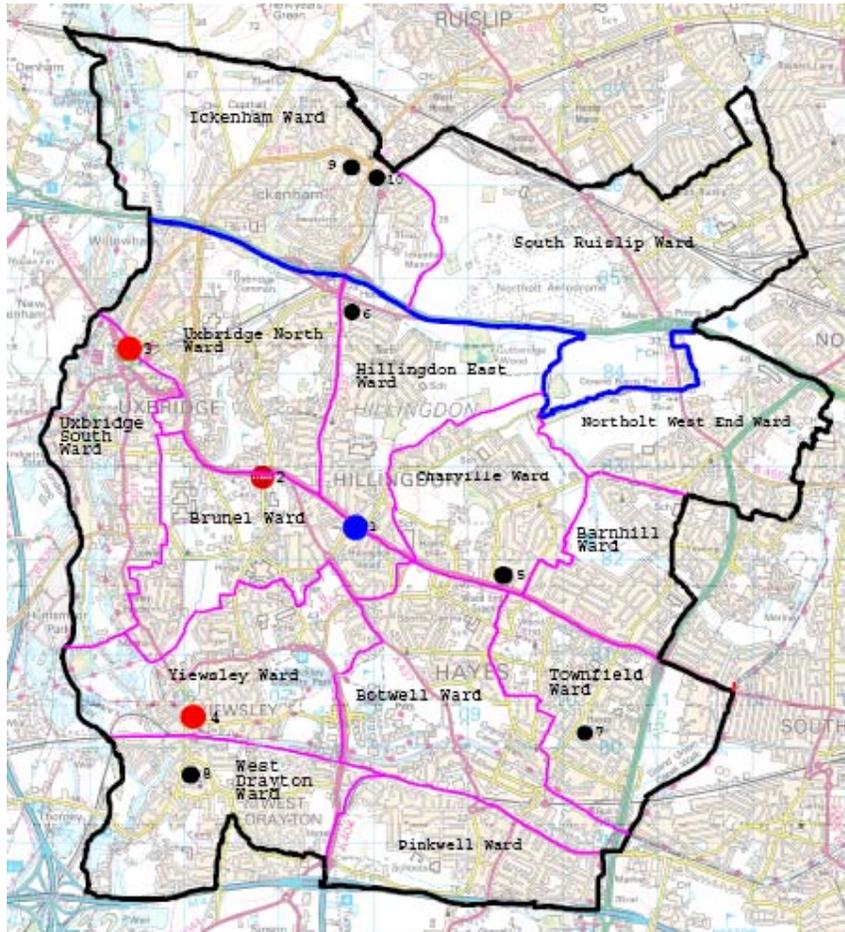
¹³ Share of homes (branches) rather than fascia have been used as this may more accurately represent the set of choices consumers have.

to any competition concerns and so no further consideration of this location is necessary.

Hillingdon Funeral Service

19. Based on an 80 per cent catchment area of contiguous wards centered on the target funeral home, Hillingdon overlaps with three Lodge Brothers branches (trading as A.V. Smith, Walding & Sons, and Yiewsley) in fourteen wards.¹⁵ Hillingdon lies approximately half a mile to the west of A.V. Smith and just below two miles from the Walding & Sons and Yiewsley branches which respectively lie to the north west and south east of the target.

Map of Local Area



¹⁴ See SCI/Plantsbrook and CGL/Fairways.

¹⁵ Specifically within the electoral wards of Barnhill, Botwell, Brunel, Charville, Hillingdon East, Townfield, Uxbridge North, Uxbridge South, Yiewsley, Ickenham, South Ruislip, Northolt West End, West Drayton, and Pinkwell. .

Key:¹⁶

1. Hillingdon Funeral Service
2. A. V. Smith (Lodge Brothers)
3. Walding & Son (Lodge Brothers)
4. Lodge Brothers Yiewsley
5. Co-op Funeralcare
6. Haven
7. A. Caine
8. H. C. Grimstead (Co-operative Group)
9. W. Sherry Sons
10. Henry Paul (Dignity)

20. Based on this 80 per cent catchment area, the parties' combined share of supply in these 14 electoral wards is estimated (on 2007 data) to be just below 25 per cent with an increment of around five per cent. This would not normally be expected to give rise to competition concerns. However, as explained above, on a cautious basis the OFT believes it may be appropriate in this case to look at a narrower catchment area which may more accurately reflect competition in the area.
21. The parties provide a minimal number of funerals in two electoral wards in the north of the catchment area¹⁷ which lie to the north of the A40. Funeral directors within these two wards confirmed that they viewed the A40 as a topographical barrier to the boundaries of the local market, and they did not believe they actively competed with funeral homes in wards to the south of this. Similarly, funeral homes to the south of Hillingdon confirmed that they likewise did not perceive there to be competition between them and funeral homes to the north of the A40. For this reason, on a cautious basis, the OFT has also looked at competition within the area excluding these two wards.
22. Based on this narrower catchment area, the parties' share is between 25 and 30 per cent with an increment of around five to eight per cent. In addition, one of the Lodge Brothers branches (A.V. Smith) is the nearest funeral home to Hillingdon, located about half a mile to the west on the Uxbridge Road. Notwithstanding that Lodge Brothers is taking over its

¹⁶ The black line shows the larger catchment area. The area to the south of the blue line but within the black line is the narrower catchment identified.

¹⁷ Ickenham and South Ruislip.

geographically closest competitor, in this case, the OFT considers that there are strong indications that sufficient competition remains in the local area.

23. Within the narrower catchment area (that is, the 12 wards noted above), there are four remaining independent and 'national' funeral homes (operating under three different fascia). Collectively these competitors supply over 70 per cent of funerals in the area.
24. Importantly, two of these four funeral homes, Haven and Co-operative Group, are located close by to Hillingdon – while neither is located as close as the A.V. Smith Lodge Brothers branch, they are nevertheless (in absolute terms) close by (Co-operative Group is less than one mile away, and Haven about one and half miles away). While the OFT was not able to obtain specific information from it, the OFT understands that the Co-operative Group undertakes a large number of funerals. Haven is a new entrant to the area and has steadily grown to over half the size of Hillingdon in less than four years. Haven told the OFT that, while Lodge Brothers was not its main competitor, it believed that it had won business away from them. In the wider 80 per cent catchment area identified there is a far larger number of funeral homes (seven funeral home operating under seven different fascia).
25. Considering the catchment area of Hillingdon on a more detailed basis, it is noticeable that most of its customers come either from the north or east of its Uxbridge Road premises (the Lodge Brothers funeral homes are all to the west). Within these areas, to the north Hillingdon will continue to face competition from Haven and to the east from the Co-operative Group. Hillingdon also appears to face competition from A. Caine funeral home which lies to its east and undertakes twice the number of funerals and draws customers from a larger catchment area than does Hillingdon.
26. In terms of the potential loss of competition to the three Lodge Brothers branches, Lodge Brothers provided evidence that they generally view the larger national chains as direct competitors. They monitor and compare their pricing against that of Dignity and Co-operative Group. There are branches of both of these chains within the 80 per cent catchment area. The Co-operative Group has two branches one of which is located less than a mile from Lodge Brothers' A.V. Smith branch.

Barriers to entry and expansion

27. In some recent funeral merger investigations the OFT has found that entry would not be sufficient, likely or timely to prevent competition concerns from arising in those cases.¹⁸ However, in the last three years in this part of London there has been recent successful entry/expansion from established operators. As noted above, Haven successfully entered the market less than four years ago.
28. As regards new entry, W. Sherry & Sons funeral home (Sherry's) which lies to the north of the A40 in Ickenham successfully entered the area less than three years ago and now undertakes around [] funerals a year – a similar number to Hillingdon Funeral Service. While the OFT has not taken Sherry's into account in its competitive assessment (given its location north of the A40), its recent entry nearby suggests that entry in the area may be feasible.
29. In addition, one of the common themes emerging from the OFT's third party consultations was the existence of significant spare capacity which could be brought to the market relatively easily. Most third party competitors commented that the market had been in decline recently and that all could (and would) expand (by offering more funeral services) if there was demand to do so.

Conclusion

30. In summary, the parties' combined share of funerals could, on some basis, be above 25 per cent and therefore indicate prima facie competition concerns. However, there are a number of other factors such as the presence of other national/independent competitors, the apparent lack of substantial pre-merger competition between the parties (with Lodge Brothers competing more with Co-operative Group and Dignity than with Hillingdon), and the existence of substantial spare capacity which all indicate that the reduction of competition arising from the merger is not expected to be substantial. The combination of the above factors leads the OFT to the conclusion that there is no realistic prospect of a substantial lessening of competition in the area.

¹⁸ For example, CGL/PSW and CGL/United.

THIRD PARTY VIEWS

31. Most competitors (five out of six) that responded to the OFT's enquiries expressed a general concern about the further expansion by Lodge Brothers. In terms of the potential impact on competition arising from this specific merger, any such concerns have been dealt with above.

ASSESSMENT

32. The parties overlap in the provision of 'at need' funeral services.
33. As in previous mergers involving this market, the transaction has primarily been examined at a local level, based on an 80 per cent catchment area centred on each of the two target businesses. However, instead of basing the analysis on postcode bricks, in this case the OFT has in the first instance had to use contiguous electoral wards in assessing this merger.
34. The parties' combined market share of the 80 per cent catchment area around Ruislip Family Funeral Services is likely to be below 10 per cent and, therefore, was not expected to give rise to competition concerns on any reasonable basis.
35. In relation to Hillingdon, based on an 80 per cent catchment area of contiguous electoral wards the parties have a combined share of deaths of marginally below 25 per cent. However, given the parties do not appear to carry out a significant number of funerals in the wards at the fringes of the catchment, the approach of using contiguous electoral wards may over-estimate the scope of the relevant local market and so may under-estimate the parties' combined share of supply. For this reason, and on a cautious basis, the OFT has also given consideration to competition within a narrower area around Hillingdon which excludes some of the wards to the north of the Borough, where the local road network forms something of a natural boundary.
36. On the more narrowly drawn catchment area the parties' combined share is between 25 and 30 per cent with an increment of around five to eight per cent.

37. There are at least another two other funeral homes in the narrower catchment identified other than Lodge Brothers' closest branch, A.V. Smith, as well as six competitors within the wider catchment area identified (excluding those funeral homes who told the OFT they did not compete with the parties). In addition, close analysis of data for Hillingdon shows that most of its custom comes from the east (where competition comes from Co-operative funeral services) and/or north of the premises (where competition is provided by Haven) while the Lodge Brothers outlets are all to the west. This might tend to suggest that pre-merger the parties were not as close competitors as their geographic closeness might suggest. Lodge Brothers submitted evidence to show that they monitor the pricing of national chains such as Dignity and Co-operative Group, both of which are present in the Hillingdon area which indicated they viewed these generally as competitors. There is also some evidence of significant spare capacity within the market and indications that barriers to expansion may not be too high.
38. Therefore, although the combined share of supply exceeds 25 per cent and the parties are geographically the closest competitors, there are a number of countervailing factors present in this case which leads the OFT to believe that the merger is not expected to give rise to a substantial lessening of competition in the provision of funeral services in the area.

DECISION

39. This merger will not therefore be referred to the Competition Commission under section 22 of the Act.