

Completed acquisition by Masstock Arable (UK) Limited of CSC Crop Protection Limited

ME/4094/09

The OFT's decision on reference under section 22(1) given on 12 June 2009.
Full text of decision published 24 June 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. **Masstock Arable (UK) Limited (Masstock)** distributes agricultural input products, such as fertilisers, herbicides and seeds, and provides agronomy consultancy services. It also has limited activity in relation to the application of chemicals.
2. **CSC Crop Protection Limited (CSC)** also distributes agricultural input products, provides agronomy consultancy services and is active in the application of chemicals in Scotland and the North East of England. CSC's total turnover in its last financial year in the UK was approximately £35 million.

TRANSACTION

3. On 7 April 2009, Masstock purchased the entire issued share capital of CSC. The OFT's administrative deadline for making a decision in this case expires on 12 June 2009, and the statutory deadline expires on 6 August 2009.

JURISDICTION

4. As a result of this transaction Masstock and CSC have ceased to be distinct. The parties overlap in the distribution of crop protection products and supply of agronomy advice in Scotland and Northumberland, where

they submit, and the OFT agrees, they have a combined market share of approximately [40-50] per cent. Therefore the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

5. The parties' main area of overlap is in the distribution of crop protection products¹ and the provision of agronomy advice.² There is also a very small overlap in the distribution of fertiliser and the provision of chemical application services (crop spraying).
6. In relation to fertilizer distribution and chemical application, given the very small increments and combined market shares resulting from the merger,³ combined with the absence of concerns raised in the market, the OFT does not consider that competition concerns have or may be expected to arise. These markets are therefore not considered further.

Crop Protection products and agronomy advice

Product scope

7. In *Masstock/Dalgety*,⁴ the OFT found that there was evidence to suggest that distribution of crop protection products and agronomy advice should be considered as part of the same product market, although it did not consider it necessary to conclude in that case.
8. In this case, the parties argued that it is appropriate to consider the distribution of crop protection services and the agronomy advice as part of the same market, because in most cases suppliers provide them as a bundled product and service offering. The parties further submitted that crop protection products are considered to be commodity goods, with agronomy advice being a 'value added' service. As such, the parties considered crop protection product distributors compete on the quality of agronomy advice, as well as the price of products. The parties also submitted that farmers are, in general, loyal to their agronomist and would

¹ There are three main groups of crop protection products: herbicides (weed control); insecticides (pest control); and fungicides (control of fungal plant diseases).

² The principal role of an agronomist is to maximise crop yield for the farmer through the prescription of appropriate crop protection products.

³ In fertilizer distribution, the merged entity will have a market share of less than 15 per cent in Scotland and Northumberland and the North East of England, with an increment of less than five per cent in both these areas. In chemical application, the merged entity will have a combined market share of less than five per cent in both Scotland and Northumberland and the North East.

⁴ *Completed Acquisition by Masstock Arable (UK) Limited of Dalgety Arable Limited*. OFT decision 2004.

be likely to follow their agronomist to a competitor should he or she move companies. The parties cited a number of examples of customers following agronomists to other companies in support of this contention.

9. Overall, the evidence on whether agronomy advice and crop protection products should be considered as a bundled product and service offering is mixed. On the one hand, market enquiries revealed that most suppliers of crop protection products also provide agronomy advice, and that many farmers acquire both crop protection products and agronomy advice from the same company.
10. Market enquiries also supported the notion that farmers are loyal to their agronomists and would be likely to follow them should they change companies. Indeed, examples of such behaviour were also provided by third parties, supporting the merger parties' argument in this regard.
11. Nevertheless, many farmers advised the OFT that it was viable to acquire crop protection products and agronomy advice from different sources, and the evidence before the OFT suggests that a significant number do. This is especially the case with respect to crop protection products, with many customers obtaining products from multiple sources⁵ and that they would be likely to switch suppliers of crop protection products, or agronomy advice, or both, if pricing became uncompetitive.⁶ Consistent with this, competitors estimated that between 15 and 25 per cent of their customers buy crop protection products from them without also acquiring agronomy advice.
12. Finally, the OFT also notes the existence of a number of independent suppliers of agronomy advice in the UK, as well as a small number of companies that supply crop protection products without also supplying agronomy advice. The Agricultural Industries Confederation (AIC) advised that approximately 40 per cent of farmers obtain agronomy advice from an independent supplier and crop protection companies also advised that they compete against independent agronomists for the provision of agronomy advice. This suggests that it is not necessary to offer a bundled offering to customers.
13. In this case, however, it was not necessary to conclude on whether crop protection products and agronomy advice form part of the same product market. In practice, the suppliers the OFT considers are effective competitors in the supply of the bundled offering also appear to be effective suppliers for the distribution of crop protection products only. Further, while a very small number of suppliers may not offer agronomy advice, there are a significant number of independent agronomists with which they compete. Therefore, if competition concerns do not arise in the

⁵ It is less common for farmers to use more than one agronomist, however.

⁶ This is discussed in more detail later on in the 'Horizontal Issues' section.

supply of the bundled product, competition concerns are unlikely to arise on either product considered individually, given that customers are not tied to purchasing them from the same supplier.

Geographic scope

14. While Masstock had depots located across the UK, CSC was active only in Scotland and Northumberland and the North East of England.
15. In Scotland, Masstock had two depots, and CSC six. These depots only served customers in Scotland. Both parties also had a depot in Coldstream on the Scottish Border, which supplied customers both in Scotland and Northumberland. In the North East, Masstock and CSC each had two depots, which generally supplied customers in the North East only.
16. Despite the geographic overlap of the parties being limited to the two aforementioned areas, however, the parties submitted that crop protection products can be sourced nationally, with prices set on the basis of delivery to anywhere in the UK. This would suggest that a national market may be the appropriate reference area. However, the parties accepted that products are often sourced regionally, particularly where agronomy advice is also required. This is because agronomy advice is typically delivered 'on-site' and agronomists will not normally want to travel more than two hours to visit a customer. The parties therefore considered that the two relevant geographic areas for examination in this case were Scotland and Northumberland, and the North East of England.
17. Market enquiries supported the contention that the scope of the relevant markets in this case is likely to be regional. Competitors surveyed indicated that the majority of their customers are located within a 1.5 to 2.5 hour drive time of their depots, and interviews with customers generally supported this.
18. In this case, however, the OFT did not need to conclude on the precise geographic scope of the market, given it makes no material difference to the substantive analysis. The merger has therefore been considered on both a regional geographic market definition – Scotland and Northumberland, and the North East of England – and on the basis of two hour travel times.

HORIZONTAL ISSUES

19. The parties overlapped in the distribution of crop protection products and the provision of agronomy advice in two regions – Scotland and Northumberland, and the North East of England. Masstock was the largest national supplier with 24 depots located across the UK, whereas CSC was only located in Scotland and the North East with 12 depots.

Market Shares

20. In Scotland and Northumberland, CSC had a market share of approximately [30-40] per cent, while Masstock's share was approximately [10-20] per cent, giving the merged entity a combined market share of approximately [40-50] per cent (by sales revenue). The next three largest companies in the area – of which two have national operations – each had a market share of approximately 10 per cent.
21. In the North East, Masstock's market share was approximately [10-20] per cent pre-merger and CSC's approximately [0-10] per cent, giving the merged entity a combined share of approximately [20-30] per cent. Two other competitors had a market share of just over ten per cent, while a further two had a share of just under 10 per cent.

Closeness of competition

22. Given the substantial market shares that the merged entity has accrued as a result of the merger (particularly in Scotland and Northumberland), the OFT considered the closeness of competition, and thus the competition lost, between the merger parties. In this regard, the parties argued that the merger was unlikely to substantially lessen competition, as the merged entity would continue to face competition from national and regional players post-merger.
23. In Scotland and Northumberland, just under half of the customers surveyed indicated they used both Masstock and CSC, with the majority indicating that the parties were close competitors. Competitors surveyed also indicated that the merger parties were close competitors. Nevertheless, post-merger, there will be at least six remaining competitors within a two hour drive of each of the merged entity's Scotland and Northumberland depots in most cases, with at least one of these being a national operator.⁷ If the market is defined as Scotland and Northumberland, the merged entity would face competition from all the other national players as well.⁸
24. In the North East, market participants noted that, while the parties competed for customers in this area, their presence in this area was not as large as in Scotland and they faced closer competition from a wider range of competitors. Indeed, market enquiries revealed there will be at least nine remaining competitors within a two hour drive time of each one of the merged entity's depots, with at least two being national players. If the

⁷ The exception is Culbokie, where only three competitors will remain within a two hour drive time of CSC's depot. However, given Masstock does not have a depot within two hours' drive, competition concerns do not arise in this area.

⁸ The crop protection companies with national operations in the UK are: Masstock, HL Hutchinson, UAP, Procam, Frontier and Agrovista.

market were defined as the whole of the North East, each of the other national players would also compete with Masstock.

25. Finally, if the provision of agronomy advice is considered as a separate product market, the competition provided by independent agronomists that operate in the Scotland and Northumberland and the North East can also be taken into account as a constraint on the merged entity.
26. In light of the above, while the merged entity may be the largest player in both Scotland and Northumberland and the North East, it is likely to continue to face competition from a substantial number of competitors, including national competitors, in each region.

Switching

27. The OFT also considered whether there were any barriers to customers switching to competitors of the merger entity in the event of an attempted exercise of market power.
28. As noted in the ‘Market Definition’ section, earlier, there is a significant degree of loyalty between farmers and agronomists, to the extent that customers will switch companies as their agronomist does. While in practice this may affect the level of customer switching, market enquiries did not uncover any material barriers to customer switching such as long term contracts. Further, competitors and the majority of customers agreed that customers would be likely to switch if prices increased by ten per cent, even if that meant changing agronomists. Evidence of this behaviour was provided both by the merger parties and third parties to support this contention, although the OFT notes that levels of actual switching appear to be low.⁹ Some customers also advised that they may continue to use a company’s agronomist, but source crop protection products elsewhere, in order to combat the effects of a price rise.
29. The parties submitted that agronomists are often resistant to proposed price increases and act on behalf of farmers. [] This contention received only limited support from the market, however.

Conclusion

30. Post merger, the merged entity is likely to face significant competition from other crop protection companies, with at least four being within a two hour drive of its depots in Scotland and Northumberland, and nine within this range in the North East. Despite the importance of the relationship between agronomists and customers, switching appears to be a viable option for

⁹ The parties and the AIC contend that this is likely to be because the market is very competitive. Indeed, the AIC advised that competitors know that a price rise of even five per cent is likely to result in a loss of custom.

customers when faced with a price rise. The OFT therefore considers that competition concerns are unlikely to arise in this case.

Barriers to entry and expansion

31. The parties argued that barriers to entry and expansion are likely to be low, with the main requirements for starting a crop protection and agronomy business being a depot (including vehicles) and agronomists. Given the OFT considers the merger is unlikely to give rise to competition concerns, however, it is not necessary to conclude on the likelihood of entry or expansion into Scotland/Northumberland and the North East.

THIRD PARTY VIEWS

32. In general, customers were not concerned about the impact of the transaction. A small number raised issues about the ability to source alternative crop protection and agronomy products in the event of a price rise. These concerns, however, have been addressed above.
33. Competitors were also generally neutral as to the effect of the merger, although some did have some concerns. One stated that the merger will reduce competition, while another indicated that aggressive pricing by Masstock could squeeze competitors out of the market.

ASSESSMENT

34. Masstock and CSC mainly overlapped in the distribution of crop protection products and provision of agronomy advice in Scotland/Northumberland and the North East.
35. In Scotland and Northumberland, the merger has resulted in Masstock having a market share of approximately [40-50] per cent, being significantly larger than the next largest competitor. In the North East, the merged entity will also be the largest competitor, with a market share of [20-30] per cent. In both regions, however, a significant number of alternatives exist for customers, with at least four being within a two hour drive time in Scotland and Northumberland, and nine in the North East. If the markets are defined as Scotland/Northumberland and the North East, the merged entity will continue to face competition from the five other national players.
36. While limited evidence of actual switching was received, competitors and customers agreed that customers are price-sensitive and would switch suppliers, either for crop protection products or agronomy advice or both, if prices increased by ten per cent.

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

DECISION

38. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.