

Anticipated joint venture between Deloitte & Touche LLP, Smith Travel Research, Inc. and The Bench Ltd

ME/3464/08

The OFT's decision on reference under Section 33(1) given on 29 February 2008. Full text of the decision published on Wednesday 12 March

Please note that square brackets indicate figures or text that have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Deloitte & Touche LLP (Deloitte)** provides business advisory services in connection with audit, tax, consulting and corporate finance. This joint venture relates to Deloitte's interest in the provision of benchmarking reports for hotels, through its '**HotelBenchmark**' division (**HotelBenchmark**) which provides a range of benchmarking reports to hotels. For the financial year ending 31 May 2007 Deloitte's UK turnover was £1,802 million. HotelBenchmark derived [less than £ 1m] from sales of benchmarking reports in the UK.
2. **Smith Travel Research, Inc. (STR)** is also active in the provision of benchmarking reports for hotels, predominantly in the USA. STR's UK turnover for the financial year ending 31 December 2006 was [less than £ 1m]. STR has no place of business in the UK.
3. **The Bench Limited (The Bench)** is also active in the provision of benchmarking reports for hotels. 44 per cent of its issued share capital is owned by **L&S**. For the financial year ending 30 June 2006, The Bench's UK turnover was estimated at [less than £ 1m].

4. **L&S Management LLC (L&S)** is a limited liability holding company and has not achieved any turnover for the year ending 31 December 2007.

TRANSACTION

5. The joint venture (JV) will be owned [...] per cent by L&S and [...] per cent by Deloitte. The OFT believes that Deloitte will retain, at least, the ability materially to influence the policy of the JV company. It is intended that the JV will acquire the non-North American hotel benchmarking business of STR, the assets and business of L&S (that is, its 44 per cent shareholding in The Bench), and the HotelBenchmark division of Deloitte. In the longer term, it is the intention of the parties that the JV will acquire the remaining 56 per cent of shares in The Bench but, in the absence of anything definitive in this regard, this is not considered as part of this transaction).
6. A satisfactory submission was received on 7 January 2008 and the 40 working-day administrative deadline therefore expires on 3 March 2008.

JURISDICTION

7. As a result of this transaction HotelBenchmark, the non-North American hotel benchmarking business of STR and The Bench will cease to be distinct. The turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not satisfied. The parties overlap in the supply of hotel benchmarking reports. The parties estimate their joint UK share of supply at between [35 and 55] per cent, and so the share of supply test in section 23 of the Act is therefore met. 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

8. The parties to the JV all overlap in the supply of benchmarking reports to hotels. They collect certain information, aggregate that information and then provide reports to hotels and investors on, for example, room occupancy levels, average daily rate of occupied rooms, and revenue per available room. A large proportion of the benchmarking reports are provided to the hotel chains free of charge¹ in return for provision of the data

¹ Deloitte estimates that it provides close to [...] per cent of its reports free of charge.

necessary to compile these reports. This data is provided on a non-exclusive basis. The market for hotel benchmarking reports has only really developed over the last decade and the parties estimate that currently [...] per cent of UK hotels (including most of the larger chains) receive benchmarking reports. This is broadly consistent with one competitor's estimates.

Product scope

9. The parties consider that the relevant product frame of reference is the provision of all benchmarking reports to hotels, on the basis of strong supply side substitution considerations.
10. However, from a *demand-side* perspective the parties state that customers are likely to view the different reports the parties produce as complements rather than substitutes as they provide different pieces of information on the performance of their hotel and the industry as a whole. This was confirmed by the market investigation by all customers who responded.
11. The parties consider that it is possible to classify the reports they produce into five categories, in two of which the parties would overlap:²
 - Traditional benchmarking reports – containing data on occupancy, average daily rate of occupied rooms and revenue per available room in relation to a particular competitive set of hotels. These reports provide a snapshot of a hotel's relative performance.
 - Ad hoc reports – bespoke reports produced on demand for a single payment. These reports provide similar information to the traditional reports but over different time periods. They are typically purchased by industry observers, potential and current investors and other financial professionals rather than hotels.
12. The parties, however, consider that *supply side* substitution is relatively easy such that the relevant market should be for the provision of all benchmarking reports to hotels. They state that new reports may be created on the basis of further analysing the information suppliers already have, or by obtaining additional data from hotels with which they already have established relationships. They also provided a recent example of

² The other three categories, namely profitability reports, forward looking reports and commentaries are only provided by HotelBenchmark.

HotelBenchmark introducing a new product on the basis of existing data. However, the views of competitors on the ease of supply-side switching were in general mixed, and therefore inconclusive.

13. Whilst there may be a degree of overlap between traditional benchmarking reports and ad hoc reports - with the main difference being the time frame and the audience - it has not been necessary to conclude as this case is not considered to raise competition concerns irrespective of whether each type of report is considered separately or both types of reports are taken together.
14. Some smaller competitors have suggested that they may not directly compete with the parties as these smaller competitors focus on smaller hotel chains and independent hotels, rather than the larger hotel chains targeted by the parties. While there is supply-side evidence to suggest that the same software and distribution systems are required and the same information is collected regardless of the size or nature of the hotel (chain), it has not been necessary to conclude on this point as the OFT considers that even on the cautious basis of considering large customers only, no competition concerns arise.

Geographic scope

15. The parties consider that the market for hotel benchmarking is likely to be worldwide as customers are willing to switch to suppliers located in areas outside the country in which they are located. They believe that there is no cost advantage to being a local supplier as the whole process – collating data, production and product distribution is done electronically. The parties to the JV - HotelBenchmark, the non-North American hotel benchmarking business of STR and The Bench – as well as third party providers such as MKG and TRI all provide benchmarking reports to hotels in countries where they do not have offices. The parties further believe that big multinational hotel groups such as the Intercontinental Hotel Group, Marriott and Hilton source benchmarking reports from providers on a global basis.
16. The majority of customer responses supported the parties' view, indicating that having a local supplier was not essential. However, one customer stated that they require a supplier who covers the whole EMEA area.

17. Overall, the available evidence suggests that the relevant geographic market may be wider than the UK, possibly significantly wider. However, in this case it has not been necessary to conclude on geographic scope as the JV does not give rise to competition concerns even on a more narrow UK basis.

HORIZONTAL ISSUES

Market shares

18. Pre-transaction HotelBenchmark is already the largest supplier of hotel benchmarking reports³ with a share of [15 to 30] per cent in the UK. This is based on the parties' estimates as no independent data were available. The parties further submit that after implementation of the JV the new entity will hold a share of [35-55] per cent (assuming that hotels have only one benchmarking report supplier). Some third parties estimated that this share might be higher. However, many hotels in the UK provide information to more than one hotel benchmarking report supplier and receive more than one report. This means that it is difficult to determine the total number of hotels which receive benchmarking reports. Therefore, this data may in fact overestimate the parties' 'net' market shares.⁴
19. According to the parties, the JV will continue to face two competitors with a share of [10-25] per cent and a fringe of several smaller suppliers with shares below 10 per cent. The parties consider that MKG, TRI, Lynn Jones Research, Best Practice Forum and TravelCLICK all supply similar reports, and this was largely confirmed by third parties. The parties further list TNS and Horwath, an international supplier, as their competitors.
20. The market investigation has revealed that at least TRI and MKG are considered strong competitors of the parties to the JV by customers, but smaller suppliers may provide only a limited constraint on the parties, as they focus on smaller hotel chains and independents.

³ The only data available was for all types of benchmarking reports listed in paragraph 11. However, the OFT has received no evidence to suggest that shares of supply would differ substantially with regard to traditional benchmarking reports and ad hoc reports respectively.

⁴ STR estimates that around [...] of their UK customers also use The Bench. There was no data available on how many of Deloitte's customers also use STR and/or The Bench.

Unilateral effects

21. As mentioned above, a considerable number of hotels in the UK currently do not currently receive benchmarking reports. However, according to the OFT's market investigation, some hotels may consider purchasing these reports in the future if they consider them to contain valuable information. This increased demand could stimulate new entry or expansion.
22. However, competitors commented to the OFT that switching between suppliers may not be straightforward, as it would depend on the ability of other suppliers to mirror the parties' reporting capabilities, and therefore provide a comparable service. One competitor said that customers might switch, but only in response to a 10-20 per cent price increase.
23. Customer comments were more mixed, with a majority (three out of five) of respondents saying that switching was either easy or would be considered at a price rise of over 10 per cent. The parties have provided several recent detailed examples of actual switching.
24. However, all respondents agreed that the parties are close competitors and (some of) the main players in the sector. The OFT has therefore further assessed the impact of barriers to entry and buyer power in considering the possibility of unilateral effects arising from the proposed transaction.

Barriers to entry and expansion

25. The parties consider barriers to entry to be low. They submit that benchmarking reports are relatively unsophisticated products, and that entry costs are low. They claim that new entry could be completed in 6-12 months, whereas expansion by a current provider into a new country would take only 3-6 months.
26. Competitors largely disagreed with the parties. In sum, their concerns related to: i) entry costs being potentially much higher than the parties suggested, ii) hotels not having any incentive to supply their data to another provider, and iii) the fact that Deloitte also offers other business reports which might make it more difficult for other providers to compete with the new entity.

27. With regard to (i) (entry costs), the parties have provided details of The Bench's launch which demonstrate that successful entry has been possible on a much smaller scale than some competitors suggest. The Bench was able to gain critical mass in a very short space of time (around 6 months) with a small initial group of hotels, spending no more than £ [...]. By targeting specific local competitors, individual hotels or hotel chains did not require head office approval to enter into agreements with The Bench.
28. On (ii) (the need for a new entrant to receive data for its comparison), evidence from the parties and customers demonstrates that customers regularly provide information to, and receive reports from, more than one company. As the type of data requested by another supplier is similar to the data already supplied to existing benchmark report providers, the incremental cost for hotels is considered to be low. The parties submit that Hilton, Intercontinental Hotel group, Marriott, Radisson SAS, Starwood, Four Seasons and Hyatt, as well as most other major hotel chains, currently provide data to two or more suppliers. There is no evidence to suggest that hotels would not have an incentive to provide this data to new entrants in order to increase their choice of product, in particular where prices increased or quality deteriorated post-transaction.
29. In relation to (iii) (the concern that Deloitte offers a range of other business reports), this is not an effect of the merger or specifically a barrier to entry. If it was a significant factor then it might have been expected that HotelBenchmark would have been able to exploit this advantage currently. Moreover, as a result of the merger Deloitte will only hold a minority interest (albeit one with material influence) in the JV thus making the offer of 'bundled' reports less likely to occur.
30. Most significantly, there is evidence of actual successful recent entry in the industry. The Bench entered in 2003, had grown organically and by 2007 held a market share of [5 to 20] per cent. TRI entered in the last five years, building up a strong market position. Hotelcontrol.com, a Vienna based company launched in January 2007 with a staff of five, plus a technical team, providing monthly traditional and profitability reports across continental Europe and according to its website it has already started collecting data in the UK.
31. There is also evidence of recent expansion by existing suppliers. In addition, a number of international competitors (such as Horwath which

has a well established hotel consulting practice in the Asia Pacific region) are well positioned to enter the UK.

32. Therefore, the OFT considers that barriers to entry are manageable, and in any event low enough to alleviate any potential competition concerns through sufficient, timely and likely entry and expansion.

Buyer power

33. The parties consider that they face considerable countervailing buyer power, which is further strengthened by the non-essential nature of the product. As well as threatening to switch suppliers, crucially in terms of bargaining strength, hotel operators control the flow of their own data to benchmarking report providers, and therefore any threat to switch means a loss of data for the supplier in addition to the direct loss of revenue from that customer. The parties consider this is a powerful bargaining tool and this specific point has been confirmed by one customer. The parties (in particular The Bench) state that they are reliant on a small number of customers for a relatively high proportion of their revenue; [...] per cent of The Bench's total turnover, and [...] per cent of HotelBenchmark's total turnover comes from their top five customers.
34. The existence of buyer power was supported by the majority of customers who responded. Two out of four customers submitted that they had strong buyer power that would not be reduced as a result of the merger. A third customer thought that they could use volume purchases to negotiate with their suppliers. Accordingly, the OFT considers that providers do face a degree of countervailing buyer power from customers.

THIRD PARTY VIEWS

35. The concerns raised by four out of seven competitors have been dealt with in the barriers to entry section above. Some competitors said that they expected the JV to decrease prices. The majority of customers who responded were unconcerned. One of the four customers that responded raised concerns on the basis that they were only aware of the parties operating in this sector in the UK. The remaining customers were aware of several suppliers, considered switching to be relatively straightforward and stated that they had at least some ability to negotiate on price.

ASSESSMENT

36. HotelBenchmark already has the largest share of supply pre-transaction, and the JV would lead to an increase of market share for the new entity to [35-55] per cent, or, according to some competitors, even higher. Yet, these shares may overestimate the JV's market position as they do not take into account those customers who currently use more than one party.
37. Notwithstanding the JV's relatively significant market share, the OFT considers that the existence of relatively low barriers to entry and expansion, and the existence of countervailing buyer power would off-set the loss of any rivalry between the parties.
38. In this regard, several suppliers including The Bench have successfully entered this market in the last decade. Further, evidence supplied by the parties and the market investigation revealed that hotels have an important bargaining tool by controlling the necessary data to input into these reports which is provided on a non-exclusive basis, thereby exercising a degree of buyer power. In addition, many customers told the OFT they believe they have buyer power and can switch relatively easily.
39. 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

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