

## Anticipated acquisition by La Seda de Barcelona S.A. of Amcor PET Packaging Europe

The OFT's decision on reference under section 33(1) given on 4 October 2007.  
Full text of decision published 11 October 2007.

---

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

### PARTIES

1. **La Seda de Barcelona S.A.** (LSB) is a Spanish supplier of polyester-based chemicals and materials. LSB is active throughout Europe. In the UK LSB produces purified terephthalic acid (PTA) and polyethylene terephthalate (PET) resin.
2. **Amcor PET Packaging Europe** (APPE) consists of a number of group companies of Amcor Limited, an Australian company.<sup>1</sup> APPE produces PET-based food and drink packaging throughout Europe, including in the UK. APPE's UK turnover in its last financial year to 31 December 2006 was around £130 million.

### TRANSACTION

3. LSB has agreed to acquire the entire issued share capital of the legal entities that together form APPE, subject, among other things, to clearance by the relevant competition authorities.

---

<sup>1</sup> The relevant companies are: Amcor PET Packaging Europe Limited; Amcor PET Packaging Belgium NV; Amcor PET Packaging Iberia, SA; Amcor PET Packaging UK Limited; PET Packaging Amcor Maroc, S.A.R.L. A.U.; Amcor PET Packaging Deutschland GmbH; Amcor PET Packaging France SAS; and Amcor PET Recycling France SAS.

4. The parties filed a satisfactory submission on 8 August 2007. The administrative deadline is therefore 4 October 2007.

## JURISDICTION

5. As a result of this transaction LSB and APPE will cease to be distinct. The UK turnover of APPE exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. 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.

## FRAME OF REFERENCE

6. LSB produces PTA and monoethylene glycol (MEG) and combines these products to produce PET resin. APPE also produces a small quantity of PET resin by recycling used PET packaging. APPE's main activity is the production of PET packaging from PET resin, in the form of PET preforms, which consist of a fully formed bottle neck and a thick tube of polymer, and PET containers, which are made by heating and then blowing air into the PET preforms to make them expand into the shape of a container or bottle.<sup>2</sup> The parties are therefore active in vertically related markets and the horizontal overlap between the parties is very limited (only PET resin).

### Product market

7. The parties submitted that there are four product markets relevant for the assessment of the transaction: PTA, PET resin, PET preforms and PET containers. Any market for MEG, which, like PTA, is produced by LSB and used for the production of PET resin, is not considered, as LSB uses almost all of its MEG production internally.
8. In respect of PTA, no third parties submitted that the product frame of reference should be different.

---

<sup>2</sup> In 2006 LSB acquired a PET preform manufacturing business in Turkey, Greece and Romania as part of its acquisition of Advansa, which mainly produced PTA and PET resin. The sales from this business are negligible (the parties estimated that the sales from this business amount to 0.3 per cent of European sales of PET preforms, the vast majority of which is produced in Turkey). For this reason, the OFT has not further considered this part of LSB's business.

9. In respect of PET resin, one third party noted that there are different types of PET resin with different properties. The parties argued that although there are a variety of PET resins that have been developed for particular applications, the degree of differentiation is low. The parties also argued that it is normal commercial practice for PET packaging customers to source from different PET resin suppliers and that this indicates that the quality differences between PET resins are limited. Third parties confirmed that multi-sourcing occurs and no other third parties identified any material quality differences between PET resins. Accordingly, the OFT considers that it is not necessary to segment PET resin further as a product frame of reference for the purposes of the competitive assessment.
10. In respect of PET preforms, the European Commission has previously considered that PET preforms formed a separate product market, as there appeared to be no substitutes from a demand or supply side perspective.<sup>3</sup> This view was confirmed by a large majority of third party comments to the OFT. PET preforms are distinct from PET containers, because, for example, bottling companies who make their own PET containers with their own blow-moulding machines use PET preforms for this purpose.
11. The European Commission further distinguished between standard and barrier-enhanced preforms. However, according to the parties this distinction is no longer meaningful due to recent technological developments. In addition, no third parties contacted by the OFT identified a material distinction between different types of PET preforms.
12. Accordingly, the OFT considers that PTA, PET resin, PET preforms and PET containers form separate product frames of reference.

### **Geographic market**

13. The parties argued that the geographic scope of the PTA market is the EU. No third parties submitted that the geographic scope should be narrower.
14. In respect of PET resin, the parties argued that the geographic scope of the market is at least the EU. They stated that around 30 per cent of the PET resin used in the UK is imported and that similarly around 27 per cent of the PET resin used in the EU is imported. Also, [40-50] per cent of the PET

---

<sup>3</sup> Tetra Laval/Sidel, Case No COMP/M.2416, decision of 13 January 2003, paragraphs 23 to 25.

resin produced by LSB in the UK is exported from the UK. Comments from third parties confirmed that the market is at least EU-wide.

15. The parties also stated that APPE currently buys some of its PET resin from an Asian supplier and that this demonstrates that transport costs are not a material cost barrier for PET resin suppliers from outside the UK. An independent report on PET resin produced by Tecnon OrbiChem stated that around 13 per cent of PET resin in the EU was imported from South Korea, Taiwan and China.<sup>4</sup> Third parties suggested that it is possible to buy PET resin from outside the EU, but that anti-dumping duties against some Asian countries limit imports from Asia. The OFT has therefore taken a cautious approach and has considered the EU as the appropriate geographic frame of reference for PET resin.
16. The parties argued that the geographic scope of the market for PET preforms is also EU-wide. This is consistent with the European Commission's previous view.<sup>5</sup> However, some internal documents from the parties indicate that the market is smaller than the EU due to transport costs. Third party comments were mixed. Some PET preform customers stated that they needed a UK supplier of PET preforms due to transport costs, the need for quick delivery times and the requirement for technical support. Other customers stated that they would also consider buying PET preforms from suppliers outside the UK. One PET preform supplier stated that the majority of its sales were made in the UK, Ireland and north-western Europe. In this case it is not necessary for the OFT to determine whether the geographic scope is the UK or the EU, because, as set out below, the merger does not give rise to competition concerns on either basis.
17. The parties also argued in respect of PET containers that the geographic scope of the market is the EU. However, the European Commission's previous view was that the market was narrower for reasons including high transport costs relative to the value of the product.<sup>6</sup> This view was broadly supported by third parties, who considered transport costs to be higher for PET containers than for PET preforms due to the air being shipped in PET containers. An internal document from the parties also indicates that the market is narrower than the EU. The OFT has taken a cautious approach

---

<sup>4</sup> Tecnon OrbiChem, *Chemical Business Focus*, 20 March 2007.

<sup>5</sup> Tetra Laval/Sidel, Case No COMP/M.2416, decision of 13 January 2003, paragraph 54.

and considered the UK as the appropriate geographic frame of reference for PET containers.

## HORIZONTAL ISSUES

18. The only overlap between the parties is in the production of PET resin. LSB is the largest supplier of PET resin in the EU. The parties estimated LSB's share of supply as [15-25] per cent. Third parties and the Tecnon OrbiChem report broadly supported this share of supply. APPE only produces a small quantity of PET resin from recycling PET packaging and uses most of this PET resin internally. If all of APPE's PET resin production is taken into account, the parties estimated that the merger will result in an increment in share of supply of [less than one] per cent of PET resin production in the EU. No third party considered APPE to be a potential supplier of PET resin and no concerns were raised about the merger on the basis of the overlap between the parties in the production of PET resin. On the basis of this evidence, the OFT does not consider that the merger gives rise to competition concerns in relation to this overlap.

## VERTICAL ISSUES

19. The merger between LSB and APPE will create a vertically integrated company that produces PTA and MEG, PET resin and PET packaging. Several third parties raised concerns in relation to this vertical integration. One competitor of APPE in the supply of PET packaging was concerned that after the merger LSB could restrict supply of PET resin to APPE's competitors and that the resulting reduction in competition could lead to an increase in the price of PET resin. This concern was also expressed by a customer of APPE, in addition to a concern that if LSB were to become the sole supplier of APPE, the customer would be prevented from using what it considers to be the best PET resin for its packaging. All of APPE's competitors that responded to the OFT were also concerned that the merger will give the merged company an unfair competitive advantage because of its ability to move profit up and down the supply chain. Further, two suppliers of PET resin to APPE expressed concern that the merger could negatively affect their sales to APPE.

---

<sup>6</sup> Ibid.

20. According to the parties, in the year to 30 June 2007 LSB supplied [15-25] per cent of its UK production of PET resin to APPE and APPE obtained [15-25] per cent of its UK purchases of PET resin from LSB. The parties noted that [ ]. They also submitted that even if LSB increased its supplies to APPE and reduced supplies to APPE's competitors, these competitors could obtain supplies from APPE's former suppliers as well as from a large number of other PET resin suppliers within and outside of the EU. The parties also argued that it would not be beneficial for APPE to renege on its current supply agreements with other suppliers of PET resin since [ ].
21. To assess whether a merger could have foreclosure effects as described above, the OFT considers both the ability and the incentive of the merged company to adopt a foreclosure strategy.

#### **Ability to foreclose**

22. For a vertically-integrated firm to have the ability to foreclose supply or market access, it must have a degree of market power on at least one level of the supply chain. The OFT has therefore considered whether the merged company will have market power in the supply of PTA, PET resin, PET preforms and PET containers.

#### **PTA**

23. LSB is already currently vertically integrated in that it produces both PET resin and its inputs, PTA and MEG. LSB already uses almost all of its MEG production internally. It supplies PTA to third parties, but its market power is limited. The parties estimated that LSB's share of supply of PTA in the EU is [10-20] per cent. According to the parties, two competitors have significantly higher shares and there are several other smaller competitors. One third party commented that it is easy for customers to switch suppliers of PTA.

#### **PET resin**

24. As discussed above, LSB is the largest supplier of PET resin in the EU with a share of supply post-merger of around [15-25] per cent (see paragraph 18). According to both the parties and the Tecnon OrbiChem report, there are at least seven other suppliers of PET resin in the EU with a share of more than five per cent.

25. Third parties stated that customers would switch suppliers in response to a price increase of PET resin. Comments were mixed with regard to the cost of switching: some third parties said that costs were minimal, while other third parties said that there were costs related to changes to machinery that was dedicated to a particular supplier's type of resin and that quality testing of a new supplier's resin resulted in some switching costs and time delay. The parties acknowledged that qualification times range from a week to several months but they also noted that it is normal commercial practice for PET resin customers to have several qualified suppliers. The parties submitted that APPE regularly switched part of its PET resin demand between suppliers in the past three years in response to price changes. Some third parties also stated that they obtain supplies from a wide range of suppliers and that they switch suppliers in response to price changes.
26. Comments from third parties further indicate that barriers to entry and expansion are relatively low. Third parties stated that production technology for PET resin is easily available, although they pointed out that the pay-back period would currently be relatively long given the very competitive environment. Third parties referred to recent entrants in Poland and Lithuania.

#### PET preforms and containers

27. According to the parties, APPE is the largest supplier of PET preforms in both the EU and the UK.<sup>7</sup> The parties estimated that APPE's share of supply of PET preforms in the EU is [15-25] per cent, with six other suppliers having shares between five and 10 per cent. In the UK the parties estimated that APPE's share of supply is significantly higher at [35-45] per cent, but that there are two other large suppliers with shares between 15 and 20 per cent as well as a number of smaller suppliers.
28. The parties estimated that APPE's share of supply of PET containers in the UK amounts to [15-25] per cent. Although this share is in itself not very high, the parties estimated that the shares of APPE's competitors are considerably smaller (up to five per cent). However, there are also a number of PET preform customers who perform their own conversion of preforms into containers.

---

<sup>7</sup> One third party stated that one of APPE's competitors, Alpla, is in fact larger in the EU.

29. The evidence on switching in relation to both PET preforms and PET containers is mixed. The parties submitted that the duration of contracts is only between one and three years. Both the parties and third parties stated that customers would switch suppliers in the event of a price increase of five to 10 per cent and they provided a number of examples of customers switching suppliers. The parties also referred to a number of customers threatening to switch in order to negotiate better prices. Most customers confirmed that they would switch if prices increased. However, most customers also indicated that switching would incur some cost.
30. Several of the parties' customers also indicated that they would consider switching to in-house production, in particular for the conversion of PET preforms into PET containers, in the event of a price increase of five to 10 per cent, although some customers noted that such a switch would have significant cost implications. According to the parties, up to 17 per cent of PET preforms in the EU are self-manufactured and the vast majority of bottlers carry out the conversion process themselves to make PET containers. Internal documents provided by the parties indicate that the potential move to in-house production is seen as a significant threat.
31. The parties argued that barriers to entry are low, because the equipment required to produce PET preforms and PET containers is readily available at a relatively low cost. This was confirmed by the only third party that commented on barriers to entry. The parties argued that barriers to expansion are also low, but that capacity expansion is unlikely given the fact that there is currently over-capacity in the industry. The parties and third parties stated that currently most PET packaging manufacturers are operating at 70 to 90 per cent of capacity. One third party agreed that expansion is unlikely, in view of low margins.

#### Buyer power

32. The parties' ability to foreclose the supply of PET resin after the merger is also constrained by a degree of buyer power. The parties submitted that buyer power is significant. LSB sells PET resin to large industrial companies, with its top five customers representing [30-40] per cent of its sales. APPE sells PET packaging to large food, drink and pharmaceutical companies, with its top five customers representing [50-60] and [70-80] per cent of its sales of PET preforms and PET containers respectively. The parties submitted that this makes them relatively reliant on a small number

of large customers. They also referred in this respect to the ease of switching and the threat of in-house production.

33. The parties argued that another constraint is formed by the existence of 'tolling' arrangements with APPE's PET packaging customers. These arrangements take the form of 'soft-tolling', where customers select the supplier of PET resin and negotiate the price with this supplier directly. Subsequently APPE purchases the PET resin from this supplier on the conditions negotiated by the customer. In comparison, 'hard-tolling' is where customers purchase PET resin themselves and simply deliver this to APPE for use in the PET packaging for these customers. An internal document from APPE suggests that the impact of tolling on margins is of major concern for the PET packaging industry.
34. Third parties confirmed that buyers have a degree of buyer power in relation to PET resin and PET packaging.

## Conclusion

35. The parties' position in the supply of PTA does not indicate market power, in view of the presence of two larger competitors in the market and the ease of switching. In relation to PET resin, the parties' combined share of supply is relatively low and there are a number of alternative suppliers. There is evidence of customer switching and new entry. In relation to PET preforms, although APPE's share of supply in the UK is relatively high, its share in the EU is significantly lower and in the UK there are some large alternative suppliers. In relation to PET containers, although APPE is by far the largest supplier, its share of supply is not in itself very high and there are a number of PET preform customers that perform their own conversion into PET containers. In relation to both PET preforms and PET containers, the evidence on switching and barriers to entry is mixed, but the parties are also constrained by the possibility of customers moving production in-house, in particular in relation to PET containers. In addition, the parties' customers can exercise a degree of buyer power, as the parties are relatively reliant on a small number of customers, especially for PET containers. Tolling arrangements further limit the ability of the parties to make LSB the only supplier of PET resin to APPE after the merger, as pursuant to such arrangements the choice of PET resin supplier is in the hands of the customers rather than the parties.

36. On the basis of this evidence, the OFT considers that the parties do not have the ability to foreclose either the supply of PTA or PET resin to APPE's competitors, foreclose access to PET preform and PET container manufacturers to LSB's competitors or gain an unfair competitive advantage. For this reason, it is not necessary to assess whether the merged company would have the incentives to pursue a foreclosure strategy.

## **THIRD PARTY VIEWS**

37. No third parties raised horizontal concerns but several third parties raised vertical concerns, in particular that after the merger LSB may restrict the supply of PET resin to APPE's PET packaging competitors, that the merged entity will obtain an unfair competitive advantage, and that APPE may reduce its purchases of PET resin from LSB's competitors. Third party views are addressed in more detail above.

## **ASSESSMENT**

38. The parties to the merger are vertically related but there is little horizontal overlap in their activities. LSB produces PTA and MEG, which are ingredients of PET resin. APPE produces PET preforms and PET containers from PET resin. APPE also produces some PET resin itself from recycling used PET packaging.
39. The only horizontal overlap between the parties is in the supply of PET resin. The merger does not raise competition concerns in this regard, as the production volume of PET resin by APPE is very small and there are several competing suppliers of PET resin.
40. The OFT has further assessed whether the vertical integration between the parties could give rise to foreclosure of either the supply of PTA or PET resin to APPE's competitors or foreclosure of access to PET preform and PET container manufacturers to LSB's competitors or to any other uncompetitive advantage for the parties. On the basis of the evidence available to the OFT in relation to the parties' shares of supply, the presence of competing suppliers, limited barriers to switching and to entry, and the presence of a degree of countervailing buyer power, the OFT has

concluded that after the merger the parties will not have the ability to pursue a foreclosure strategy or gain an uncompetitive advantage.

41. 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**

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