
Completed acquisition by Capita Financial Group Limited of the Sinclair Henderson companies

The OFT's decision on reference under section 22(1) given on 24 October 2006. Full text of decision published 31 October 2006.

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

PARTIES

1. Capita Financial Group Limited (Capita) is a subsidiary of Capita Group plc. Capita provides investment and unit trust administration services (including hosting services) for investment managers of collective investment schemes both in the UK and offshore.
2. The Sinclair Henderson companies (Sinclair Henderson) comprise Sinclair Henderson Limited, ACD Services Limited and Sinclair Henderson Fund Administration Limited. Prior to this transaction, these companies were part of a group, the parent company of which was Imlia Investment Group Plc. Sinclair Henderson provides investment trust and unit trust administration services (including hosting services) for investment managers of collective investment schemes in the UK and to a certain extent in the Channel Islands. Sinclair Henderson's UK turnover was £[] million for the year ended 31 December 2005.

TRANSACTION

3. Capita acquired the total share capital of Sinclair Henderson on 14 July 2006, after receiving regulatory approvals from the Financial Services Authority (FSA) and the Guernsey Financial Services Commission. The parties submitted a satisfactory notification to the OFT on 29 August 2006. Therefore the administrative deadline is 24 October 2006. The statutory deadline is 29 November 2006.

JURISDICTION

4. As a result of this transaction Capita and Sinclair Henderson have ceased to be distinct. The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met in relation to the supply of hosting services to open ended funds (by number of funds), in which the parties have a combined share of supply of [60 per cent to 70 per cent] with an increment of [less than 5 per cent]. The OFT

therefore believes that it is or may be the case that a relevant merger situation has been created.

RELEVANT MARKET

Product frame of reference

5. The parties overlap in the following areas: (i) the supply of third party administration services to closed ended funds¹ (for example, investment trust plcs and offshore investment companies); (ii) the supply of third party administration services to open ended funds² (for example, unit trust funds and open ended investment companies (OEICs)); and (iii) the supply of hosting services to open ended funds.
6. The supply of third party fund administration services may be segmented on a number of different bases, for example by the type of fund to which the services are provided or by the activities that make up such services. The parties submitted that although there are differences between the constitution and governance of open and closed ended funds, the third party administration services provided to each of these types of funds overlap in many instances.
7. The parties submitted that third party fund administration services consist of the following services:
 - (i) Ongoing fund administration services to closed and open ended funds. This comprises fund accounting, investment administration, pricing and valuation, tax services and the publishing of documentation
 - (ii) Transfer agency services to closed and open ended funds. This includes registration services, income distribution and management accounting
 - (iii) Compliance services to closed and open ended funds, and
 - (iv) Company secretarial services to closed ended funds.
8. In addition to the third party administration services outlined above, some service providers (including the parties to this transaction) offer 'hosting' services to their clients' open ended funds. This involves a service provider not only providing the administration services listed above, but also taking on the legal responsibility for operating the scheme and accepting accountability to the FSA. The service provider acts as the principal rather than the agent in relation to these funds.
9. The OFT considers that the third party administration services outlined at paragraph 7 above fulfil distinct needs and are not substitutable on the demand side. However on the supply side, the parties submitted that third party administration services are often sold together in different packages, often tailored to the specific needs of each client. This indicates that there is a degree of supply

¹ Closed ended funds have a fixed capital and the ability to transfer shares in the fund is driven purely by the availability of willing purchasers and willing sellers.

² Open ended funds are investment funds with variable capital, such that units or shares can be issued or redeemed at any time.

side substitutability between the services. The OFT did not receive any third party evidence to contradict this view.

10. In addition, prior to this transaction both parties offered third party administration services to closed and open ended funds, albeit that Capita and Sinclair Henderson specialised in services to open ended funds and closed ended funds respectively.
11. Therefore, the OFT has considered the supply of all types of third party administration services (as listed at paragraph 7 above) to both open and closed ended funds to constitute a distinct product frame of reference.
12. Hosted services are only offered to open ended funds and can be distinguished from other (third party) administration services by virtue of the legal risk that is assumed by the service provider. Due to this key difference, the OFT has taken a cautious approach and has considered the supply of hosting services separately.

Geographic frame of reference

13. The parties submitted that the relevant geographic scope was likely to be worldwide, or at least EU-wide, and referred to several third party fund administration service providers that operate on a worldwide basis. One third party customer agreed with this view by commenting that those within the financial services sector operated within a global market place. However, other third party customers indicated that they preferred working with local service providers, particularly where they valued a more personalised service.
14. Ultimately however, no conclusion need be drawn as to the relevant geographic scope as the OFT has considered the effects of this transaction at the national level (which it considers to be the narrowest plausible geographic frame of reference in respect of both third party fund administration and hosting services) and no concerns arise on this basis.

HORIZONTAL ISSUES

15. The parties have a combined UK share of supply of third party fund administration services to UK funds of [15 per cent to 25 per cent] (with an increment of [5 per cent to 10 per cent]) by volume, or [0 per cent to 10 per cent] (with an increment of [less than 5 per cent]) by value.
16. The parties submitted that prior to this merger Capita and Sinclair Henderson focused on providing third party administration services to open ended funds and closed ended funds respectively. This is supported by some third party responses which suggested that there was only limited pre-merger competition between the parties. However, the OFT has considered that open and closed ended funds form part of the same product frame of reference in relation to third party administration services for the reasons outlined above. The OFT has therefore assessed the competitive effects of this transaction on this basis. The parties submitted that there are several other providers that offer third party administration services to open and closed ended funds in the UK. This has been

supported by third party comment. Furthermore, data from the UK FIRD³ 2005 indicates that there are other significant suppliers of third party administration services which the OFT considers represent competitive alternatives to the merged entity.

17. Prior to the merger, Capita and Sinclair Henderson provided hosting services to [] and [] open ended funds in the UK respectively. The parties estimated that they have a combined UK share of supply of hosting services to UK open ended funds of [60 per cent to 70 per cent] (with an increment of [less than 5 per cent]) by number of funds.
18. A number of third party customers raised concerns about the effects of this merger, particularly in relation to the hosting services provided by the parties. The merged entity possesses a significant share of supply of hosting services, however the increment is minimal. The parties submitted that the merged entity would be constrained by other existing service providers and also by expected new entrants in this sector. Some third parties supported this contention and others considered that the merger would not have a significant effect on the choices available to existing and potential customers.
19. Some smaller customers suggested that post merger there would be very few (if any) remaining service providers that could offer a tailored and personalised service to the smaller funds, particularly in relation to hosting services. However, the OFT did not obtain clear evidence to justify distinguishing between customers on the basis of the size of their fund. In addition, a third party competitor confirmed that it competes actively in the provision of hosting services to both large and small fund managers. Another third party provided evidence of a number (albeit limited) of other hosting service providers available to fund managers.
20. In light of the parties' significant combined share of supply of hosting services (despite the minimal increment) and the third party concerns outlined above, the OFT has considered whether there are any further possible constraints on the parties' behaviour.

Barriers to entry and expansion

21. The evidence before the OFT indicates that barriers to entry are relatively low in relation to third party administration and hosting services. Third party competitors and customers (including those third parties who expressed concerns about the merger) confirmed that new entry into the fund administration and hosting service sectors is likely to be relatively easy, as is diversification between individual administration services. In particular, third party responses indicated that a provider of third party administration services would not find it very difficult to begin offering hosting services to managers of open ended funds. For example, Sinclair Henderson was able to enter the hosting services sector on a small scale, as an addition to its pre-existing third party administration offerings.
22. In addition, the parties submitted that rapid expansion was also feasible in this sector and, by way of example, noted that Marlborough Fund Managers had

³ Fund Industry Review & Directory 2005.

increased the number of funds it hosted from [] to [] between 2005 and 2006. The OFT did not receive any evidence to contradict this view.

Buyer power

23. Buyer power may arise if customers are able to switch to in-house provision of fund administration services or to sponsor new entry. The parties submitted that the ability of funds to take administrative functions in-house acted as a constraint in certain instances.
24. However most third party responses indicated that they would not consider taking the provision of fund administration services in-house due to the business model they were operating under.

VERTICAL ISSUES

25. This transaction does not raise any vertical concerns.

THIRD PARTY VIEWS

26. The OFT received mixed responses from third parties. Third party competitors were generally unconcerned by this transaction, as were the larger customers of these services. However, the OFT received a number of complaints from smaller customers who suggested that post merger there would be very few (if any) remaining service providers that could offer a tailored and personalised service to the smaller funds, particularly in relation to hosting. The main elements of these third party responses have been discussed above.

ASSESSMENT

27. The parties overlap in the supply of third party fund administration and hosting services to fund managers. Post merger, the parties have a combined UK share of supply of third party fund administration services to UK funds of [15 per cent to 25 per cent] with an increment of [5 per cent to 10 per cent] by volume or [0 per cent to 10 per cent] (with an increment of [less than 5 per cent]) by value. In relation to the supply of hosting services to UK open ended funds, the parties have a combined share of supply of [60 per cent to 70 per cent] (with an increment of [less than 5 per cent]) by number of funds.
28. In relation to third party fund administration services, the parties submitted that there are several other providers that offer administration services to open and closed ended funds. This has been supported by third party comment. Moreover, some third party responses suggested that there was only limited pre-merger competition between the parties. This supports the parties' contention that prior to this merger, Capita and Sinclair Henderson focused on administration services to open ended funds and closed ended funds respectively.
29. In relation to hosting services supplied to UK open ended funds, the parties' combined share of supply is significant; however the increment is very low. Some third party customers raised concerns that there would only be a limited number of hosting service providers available to smaller fund managers post merger. However, one third party confirmed that it is an active competitor in the provision

of hosting services to both large and small fund managers; another provided evidence of a number (albeit limited) of other hosting service providers available to fund managers.

30. The OFT received mixed responses from third parties. Third party competitors and larger customers were generally unconcerned about this transaction. The OFT received a number of complaints from smaller customers who suggested that post merger there would be very few (if any) remaining service providers that could offer a tailored and personalised service to the smaller funds, particularly in relation to hosting.
31. However, the OFT considers that barriers to entry and expansion are relatively low. Third party customers and competitors (including those third parties who expressed concerns about the merger) confirmed that new entry and diversification between individual administration services is relatively easy. In particular, third party responses indicated that a provider of third party administration services would not find it very difficult to begin offering hosting services to managers of open ended funds.
32. Notwithstanding the complaints from certain smaller customers, the OFT does not therefore consider that this transaction gives rise to competition concerns in light of the minimal increments to the shares of supply; the relatively low barriers to entry and expansion that exist in this sector; and the fact that there remain several other providers of third party fund administration services and a number (albeit limited) of other providers of hosting services (including one third party provider which has specifically stated that it offers its services to the smaller funds).
33. 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

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