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## Completed acquisition by PHS of Direct Hygiene Limited

**ME/ 5222/11**

The OFT's decision on reference under section 22(1) given on 7 February 2012.  
Full text of decision published 17 February 2012.

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**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. **Personnel Hygiene Services Limited** and its parent company PHS Group plc (jointly, '**PHS**') provide a range of workplace services in the UK, Spain and the Republic of Ireland, including workplace washroom services through the PHS Washrooms division, washroom products through the PHS Direct division and healthcare waste collection services through the PHS Wastemanagement and All Clear divisions.
2. **Direct Hygiene Limited ('Direct')** provided a range of workplace services in the UK, primarily workplace washroom services and products and healthcare waste collection services. The services for which Direct entered into contracts with customers were sub-contracted to third-party providers. In the financial year ended 31 December 2010, Direct's UK revenues were around £[ ] million.

### **TRANSACTION**

3. PHS acquired Direct on 15 July 2011 (the '**Transaction**').

### **JURISDICTION**

4. As a result of the Transaction, PHS and Direct ceased to be distinct. These enterprises overlap in the supply of workplace washroom services with a combined share of supply exceeding 25 per cent (see paragraph 18 below).

The share of supply test in section 23 of the Enterprise Act 2002 (the 'Act') is therefore met. Therefore, the OFT believes that it is or may be the case that the Transaction has resulted in the creation of a relevant merger situation.

5. The Transaction was not publicised by PHS or Direct, nor was the Transaction, as far as the OFT can ascertain, mentioned in the press. The OFT launched an own-initiative merger investigation on 6 October 2011 after learning about the Transaction from PHS. The OFT therefore believes that, in line with its published guidance,<sup>1</sup> material facts about the Transaction were not 'made public' such as to start the four month statutory clock under section 24 of the Act following the completion of the Transaction. Rather, notice of material facts about the Transaction were given to the OFT by PHS on 4 October 2011. Following an extension under section 25(2) of the Act, the statutory deadline is 10 March 2012. The administrative deadline is 8 February 2012.

## **MARKET DEFINITION**

6. The main overlaps in the merged parties' activities are in the provision of products and services to satisfy workplace washroom requirements and in the supply of healthcare waste collection services. Both are discussed below. The parties do not overlap in the manufacture of washroom products nor in the provision of cleaning services. There is also an overlap between the parties in the provision of other workplace services (in particular trade waste collection services and the serviced rental of dust control mats), but these workplace services are not further discussed in this decision as Direct's revenues from these services were minimal.

### **Workplace washroom requirements**

7. The provision of services and products to satisfy workplace washroom requirements was considered by the OFT in its recent decision regarding PHS's acquisition of Albany Facilities Limited and Capital Hygiene Services Limited (the '*PHS/Albany/Capital* decision').<sup>2</sup> The OFT's investigation of these acquisitions partly overlapped with its investigation of the present acquisition. The latter investigation has not brought any evidence to light that suggested the OFT's recent assessment of the relevant product

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<sup>1</sup>*Mergers – jurisdictional and procedural guidance* (OFT527), June 2009, paragraph 3.45.

<sup>2</sup> OFT decision of 12 January 2012, paragraphs 12 to 26.

markets for the provision of workplace washroom requirements should not be applied in the present case.

8. The main difference between the acquisitions considered in the *PHS/Albany/Capital* decision and the present acquisition is in the location of the merged parties' activities. In the *PHS/Albany/Capital* decision, the OFT considered the competition impact on the provision of washroom services both at a national level and in the South East of England, because that was where most of Albany's and Capital's turnover was achieved, although the OFT did not reach a conclusion on the precise scope of the geographic market. In the present case, Direct acted in effect as a broker for most of its sales, which it generated through its various websites and then sub-contracted to third-party providers (with the exception of sales of washroom products, some of which Direct supplied to customers from its own stocks). As a result, Direct was able to offer washroom services and products throughout the UK. Although Direct's main location was in Preston, with some stock stored in Aintree, Direct generated most of its revenues from customers in the South East of England, including London, with significant sales also deriving from the North West of England and the Midlands. Direct also generated revenues from customers in several other parts of the UK.<sup>3</sup> PHS is also active throughout the UK.
9. Given these factors, the OFT has focused its investigation on the areas where Direct achieved around most of its turnover, that is, the South East of England, including London (combined around [ ] per cent of turnover), and the North West of England (around [ ] per cent of turnover). The OFT has also considered the impact of the Transaction on the sale of washroom products and the provision of washroom services in the UK. However, in view of the lack of competition concerns, in particular Direct's very low share of supply regionally or nationally (see paragraph 18 below), there was no need for the OFT to conclude on the precise scope of the geographic market for washroom services. The OFT has further considered

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<sup>3</sup> This geographical spread of Direct revenues relates to all of its revenues, as PHS was unable to provide a geographical split of Direct's revenues for separate types of services such as washroom services. However, the OFT is not aware of evidence to suggest that there were material differences in the geographical origin of revenues between different types of services.

the impact on a combined market for washroom products and services.<sup>4</sup>

### Healthcare waste collection services

10. The merged parties overlap in the supply of healthcare waste collection services.<sup>5</sup> This consists of waste that is produced in healthcare settings, such as syringes, dressings, medicines and blood products. As for washroom services, Direct sub-contracted the provision of collection services to third-party providers. Neither of the merged parties is active in the treatment of healthcare waste. There are several previous decisions of the OFT and the Competition Commission ('CC') in relation to healthcare waste services,<sup>6</sup> which the OFT has taken into account in the present case.

### Product market

11. The OFT considered two possible distinctions in healthcare waste collection services. First, previous decisions distinguished customers based on the amount of waste they generate at each of their sites, into large quantity generator ('LQG') customers, such as hospitals, and small quantity generator ('SQG') customers, such as nursing and residential care homes. The large quantity of waste produced by LQG customers means that suppliers will often stop at only one site before disposing of the waste, while suppliers collecting waste from SQG customers will stop at several customer sites before disposing of the waste.
12. In view of the differences between services for LQG and SQG customers, in previous decisions both the OFT and the CC considered them to form

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<sup>4</sup> In previous cases with national and sub-national aspects of competition, the OFT has also considered whether separate markets may exist for 'national' customers (for example, OFT decisions *Rentokil Initial plc/pest control, fire and water businesses of Connaught plc (Santia branded businesses)*, 13 June 2011 (paragraphs 10-11) and *GB Oils Limited/Pace Fuelcare Limited*, 24 June 2011 (paragraph 12)). In the present case, this was not necessary, as Direct did not serve 'national' customers to any material extent.

<sup>5</sup> For convenience, the term 'healthcare waste' is here used as a synonym of the term 'clinical waste'.

<sup>6</sup> Most recently, OFT decision *Stericycle, Inc./Ecowaste Southwest Limited* (25 August 2011) ('*Stericycle/Ecowaste* OFT decision'). The CC issued its provisional findings report in respect of this merger on 13 December 2011 ('*Stericycle/Ecowaste* provisional CC report'), which the OFT has approached cautiously given its provisional nature. The most recent final report issued by the CC in this sector is *Stericycle International LLC/Sterile Technologies Group Limited* (12 December 2006) ('*Stericycle/STG* CC report').

separate markets.<sup>7</sup> In its submission to the OFT in the present case, PHS also adopted this distinction. The OFT and the CC also noted that there may be an asymmetrical constraint, as providers of LQG waste collection might more easily offer services to SQG customers than SQG providers would be able to offer services to LQG customers. The OFT did not receive any evidence to suggest that this was not correct in the present case. As PHS and Direct only serve SQG customers, the OFT has focused on the impact of the Transaction in the smallest plausible market, the collection from SQG customers, and the OFT has not considered the provision of services to LQG customers. However, in view of this asymmetrical constraint, it did include competition from firms offering LQG waste collection services in its assessment of the Transaction, although given the lack of competition concerns it was not necessary for the OFT to reach a conclusion in this respect.

13. The second possible distinction in healthcare waste collection is between healthcare risk waste, which requires treatment before disposal, and offensive waste, which is healthcare waste that does not require treatment (for example, soiled nappies and sanitary waste). The merged parties collect both types of waste. In a previous case, the CC found that providers of collection services for healthcare risk waste compete with providers of collection services for offensive waste for supply-side reasons, as the same assets can be used and the same firms often collect both types of waste.<sup>8</sup> In the present case, the OFT did not receive any evidence that this has changed. Accordingly, the OFT has considered collection services for all healthcare waste, comprising both healthcare risk waste and offensive waste.

#### Geographic market

14. In previous decisions, the OFT and the CC considered that the geographic scope of collection services for healthcare waste was likely to correlate closely with that of treatment of healthcare waste, as the area over which services are provided will be determined partly by the location of treatment facilities. The OFT most recently considered a catchment area of 63 miles

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<sup>7</sup> *Stericycle/STG* CC report (paragraph 4.88), *Stericycle/Ecowaste* OFT decision (paragraph 23) and *Stericycle/Ecowaste* provisional CC report (paragraph 5.12).

<sup>8</sup> *Stericycle/STG* CC report (paragraph 4.94). The OFT's and CC's most recent investigations of *Stericycle/Ecowaste* did not address offensive waste, as the main focus of those investigations was the treatment of healthcare risk waste.

for the treatment of healthcare waste, without taking a final view. However, the OFT and the CC also noted that competition for collection from SQC customers may take place in a smaller geographic market given that it involves collection from a relatively large number of customers that are likely to be located relatively closely together.<sup>9</sup>

15. Direct's business model (that is, sub-contracting all collection services to other providers) allowed it to offer healthcare waste collection services throughout the UK. PHS also offers collection services throughout the UK. As the areas where Direct achieved most of its turnover were the South East (including London) and North West of England (see the geographical spread of Direct's revenues at paragraphs 8 above), the OFT has focused its investigation on these areas. However, in view of the lack of competition concerns, in particular Direct's very low share of supply (see paragraph 24 below), there was no need for the OFT to conclude on the precise scope of the geographic market for collection services in this case.

## Conclusion

16. The OFT has considered the impact of the Transaction in the provision of collection services of SQG healthcare waste in the UK, consisting of both healthcare risk waste and offensive waste.

## UNILATERAL EFFECTS

### Workplace washroom requirements

17. PHS estimates that its share in the sale of washroom products (independent of the provision of washroom services) is around [five-15] per cent, with Direct's share at around [<one] per cent. This is based on a total market of around £[ ] million, which PHS submits underestimates the size of the market as this may not include some purchases from, for example, cash-and-carry wholesalers. In the *PHS/Albany/Capital* decision, the OFT found that PHS faces a range of competitors in the sale of washroom products. In view of these factors, the OFT has not considered the sale of washroom products further. This also applies to a possible combined market for washroom products and washroom services, in view

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<sup>9</sup> *Stericycle/STG* CC report (paragraphs 4.108-109) and *Stericycle/Ecowaste* OFT decision (paragraph 28-32). The OFT notes that, although economies of density suggest a narrower geographic scope of the market in the present case, generally such economies could instead give rise to a wider geographic scope, depending on the particular characteristics of the market in question.

of these factors and the conclusion the OFT has reached below in relation to washroom services.

18. For the provision of washroom services, PHS's estimates of the UK shares of supply of the merged parties and their main competitors are set out in Table 1 below.

**Table 1: Provision of washroom services in the UK in 2011**

Company	Turnover (£m)	Share (per cent)
PHS <sup>10</sup>	[ ]	[30-40]
Direct	[ ]	[ < 1]
<b>Merged firm</b>	[ ]	<b>[30-40]</b>
Cannon	[ ]	[10-20]
Rentokil Initial	[ ]	[10-20]
Sunlight <sup>11</sup>	[ ]	[5-15]
Cathedral	[ ]	[0-10]
Others	[ ]	[15-35]
<b>Total</b>	[ ]	<b>100</b>

Source: PHS estimates. The estimates of competitors' turnover figures is for 2010. As noted in the *PHS/Albany/Capital* decision, PHS's estimate of the size of the market is based on a market research report that was prepared for PHS independently of the OFT's investigation of PHS's acquisitions.

19. The merged parties' combined national share of around [30-40] per cent in the provision of washroom services is considerably larger than its competitors'. That said, although this share is not so low as to rule out possible concerns over unilateral effects (not least given it is not drawn on the narrowest plausible market), the increment to PHS's share resulting from the Transaction is very low at only around [ < one] per cent, suggesting that Direct was not a significant constraint to PHS nationally.
20. At a regional level, as noted above (paragraphs 8 and 9), Direct achieved most of its turnover in the South East (including London) and North West of England. Although the OFT did not receive share of supply estimates for the merged parties in these areas, it received no evidence that they were

<sup>10</sup> PHS's turnover and share include the recently acquired Albany Facilities Limited and Capital Hygiene Services Limited, which PHS also acquired in 2011 and were the subject of the *PHS/Albany/Capital* decision.

<sup>11</sup> PHS noted that [ ].

out of line with the national shares above. In particular, given the very small turnover of Direct in the UK as a whole it is very unlikely that Direct's share of supply in these areas was significant.

21. No customers were concerned about the impact of the Transaction on competition in the provision of washroom services, noting a number of alternative suppliers. This included customers in the areas where Direct achieved most of its turnover. Competitor concern was limited. One small competitor raised a concern that the Transaction, along with PHS's acquisitions of other small washroom services providers, made it more difficult to offer nationwide coverage to customers, as it was becoming increasingly difficult to find small providers in other regions to which services can be sub-contracted. However, as Direct did not itself provide washroom services, the OFT considers that the Transaction will not have the result that this competitor is concerned about.
22. Further, in the *PHS/Albany/Capital* decision, the OFT referred to several factors to allay any significant competition concerns, including the presence of several alternative suppliers and the apparent ease of customer switching. In addition, as Direct did not provide washroom services itself but sub-contracted these services to other providers, the Transaction has not removed competitive capacity in the provision of washroom services from the market.
23. Taking these factors into account, the OFT considers that after the Transaction the merged firm continues to face sufficient competitive constraints to reach the conclusion that the Transaction does not give rise to a realistic prospect of a substantial lessening of competition ('SLC') in the provision of washroom services, either at a national level or in any regions of the UK.

#### **Healthcare waste collection services**

24. PHS provided the OFT with a market research report that was prepared for it independently of the OFT's investigation of PHS's acquisitions. This report estimates that PHS's share in healthcare waste collection services in the UK is between around [20-30] and [30-40] per cent, based on an estimate of the total market of around £[ ] to £[ ] million. Although the report does not explicitly distinguish between SQG and LQG customers, the customers that this market size estimate relates to can all be described as SQG customers. The top end of the estimated range of PHS's share, at

around [30-40] per cent, is not so low as to rule out possible concerns over unilateral effects (not least given it is not drawn on the narrowest plausible market), but the increment from the Transaction is very small, as Direct's share in this market was less than one per cent, at between around [<one] and [<one] per cent. The report further estimates that the share of SRCL, a subsidiary of Stericycle, Inc., is between around [10-20] and [15-25] per cent.

25. One of PHS's competitors suggested to the OFT that PHS has a significantly lower share at around [five-15] per cent, with competition from SRCL (share around [15-25] per cent), Initial (share around [10-20] per cent) and Cannon (share around [five-15] per cent). However, [ ].
26. At a regional level, as noted above (paragraph 15), Direct achieved most of its turnover in the South East (including London) and North West of England. Although the OFT did not receive share of supply estimates for the merged parties in these areas, it received no evidence that they were out of line with the national shares above. In particular, given the very small turnover of Direct in the UK as a whole, it is very unlikely that Direct's share of supply in these areas was significant.
27. Third parties confirmed that PHS continued to face significant competitors, including Healthcare Environmental Services Group, Polkacrest (now part of SITA UK), Veolia, Tradebe and Grundons, in addition to the competitors mentioned at paragraph 24 above. The OFT also notes that the Transaction has not removed competitive capacity in the provision of collection services from the market, as Direct did not provide healthcare waste collection services itself but sub-contracted these services to other providers, including PHS.
28. The OFT did not receive any customer concerns about the Transaction in relation to healthcare waste collection. Competitor concerns about the impact of the Transaction on competition for healthcare waste collection were limited. One competitor expressed a concern that the Transaction would result in a greater cost advantage for PHS due to its increased ability to spread its fixed costs over a greater number of customers, which could allow it to undercut its competitors and drive them out of business, in the long term reducing competition. However, even if this were a concern that the OFT could take into account, the Transaction is unlikely to have a significant effect in this respect given both Direct's small size and the fact that it already sub-contracted some of its services to PHS.

29. Taking these factors into account, the OFT considers that the Transaction does not give rise to a realistic prospect of an SLC in the provision of SQG healthcare waste collection services, either at a national level or in any regions of the UK.

## **BARRIERS TO ENTRY**

30. PHS submitted that barriers to entry in the washroom industry are low. This was confirmed by most competitors. PHS also provided some examples of entry in the past five years. In relation to healthcare waste collection services, PHS referred to the OFT's and the CC's previous decisions in this sector, which suggest that barriers to entry are not insignificant.<sup>12</sup> However, as the Transaction does not give rise to concerns over unilateral effects, there is no need for the OFT to reach a conclusion regarding barriers to entry.

## **THIRD-PARTY VIEWS**

31. Third-party views have been discussed above where relevant. No customers and very few competitors raised concerns about the competition impact of the Transaction.

## **ASSESSMENT**

32. The merged parties overlap in the provision of products and services to satisfy workplace washroom requirements and in the provision of healthcare waste collection services. The services for which Direct entered into contracts with customers were sub-contracted to third-party providers, including PHS.
33. The merged parties' combined share in the provision of washroom products (independent of services) was small at around [five-15] per cent. Their combined shares in the provision of washroom services and the provision of SQG healthcare waste collection services, at around [30-40] per cent and between [20-30] and [30-40] per cent respectively at a national level, are not so low as to rule out possible concerns over unilateral effects (not least given they are not drawn on the narrowest plausible markets), but for both services the increment resulting from the Transaction is very small. Both parties are active nationally and there is no indication that either party

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<sup>12</sup> *Stericycle/STG* CC report (paragraphs 5.88-94), *Stericycle/Ecowaste* OFT decision (paragraphs 78-79) and *Stericycle/Ecowaste* provisional CC report (paragraph 7.85).

has a share in any region that is materially different from its national share, including in the South East (including London) and North West of England where Direct generated most of its turnover. In particular, given the very small turnover of Direct in the UK as a whole, it is very unlikely that Direct's share of supply was significant in any specific area of the UK.

34. The OFT found that there are several alternative suppliers in the provision of washroom services and SQG healthcare waste collection services. It also found that customer switching between providers of washroom services appears to be easy. No customers were concerned about the competition impact of the Transactions and competitor concern was very limited.
35. Consequently, the OFT does not believe that it is or may be the case that the Transaction has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

36. The Transaction will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.