Anticipated acquisition by One Equity Partners of Linpac's Returnable Plastic Transit (RTP) business

ME/5188-11

The OFT's decision on reference under section 33(1) given on 6 December 2011. Full text of decision published 16 December 2011.

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. **One Equity Partners (OEP)** is a private equity firm which is indirectly solely controlled by JP Morgan Chase & Co (**JPMC**). OEP focuses on the acquisition of majority shareholdings in companies that are active in mature, mid-size markets with a particular emphasis on corporate partnerships and divestitures. OEP manages investments and commitments for JPMC in direct private equity transactions.

2. **Schoeller Arca Systems Services B.V. (SAS)** is a private limited company in which OEP holds [ ] per cent of the shares. SAS is active in the manufacture, design, research and development, and supply of innovative, standardised, and customised transit packaging products, which can be returned to the manufacturer or trader for re-use. SAS also provides packaging products to a range of industries. SAS achieved turnover of approximately £ [ ] million in its last financial year of which approximately £ [ ] million was achieved in the EU and approximately £ [ ] million in the UK.

3. **Linpac RTP business (Linpac)** consists of a number of private limited companies and assets that are all part of Linpac Group Holdings Limited (**Linpac Group**). Linpac was formed by its acquisition of the Allibert

business in 2007.[1] The Linpac Group was acquired by Montagu Private Equity in 2003 and is currently owned by a consortium of banks.

4. Linpac is active in the manufacture and supply of returnable transit packaging (RTP) products. Linpac provides RTP products to a range of industries including agriculture, food processing, industrial, beverages, postal services, public and government, retail and wholesale distribution, automotive, distribution and logistics. Linpac also includes a downstream business, Logtek, that provides services such as asset tracking management, equipment leasing, washing, rental and repair (see paragraph 28 below).

5. Linpac achieved turnover of approximately £ [ ] million in the financial year ended 31 December 2010 of which approximately £ [ ] million was achieved in the EU and approximately £ [ ] million was achieved in the UK.

TRANSACTION

6. LA Holding B.V. (**LA Holding**), which has been established for the purpose of the transaction, intends to purchase 100 percent of the shares of the companies and assets that constitute the Linpac RTP business.

7. LA Holding is solely controlled by RTP Holdings B.V. which is in turn solely controlled by REMA Investments Coöperatief U.A. (**Rema Coop**). Rema Coop is owned by funds controlled by OEP which is ultimately controlled by JPMC. Rema Coop also holds [ ] percent of the shares of Rema Investments B.V., which controls SAS.[2]

8. Completion of the transaction is conditional on the parties receiving merger clearance in the UK, Austria, Germany, Ireland, Spain and Brazil.

9. The OFT's administrative deadline for deciding whether to refer the merger to the Competition Commission (CC) is 6 December 2011.

[1] OFT Decision Anticipated acquisition by Linpac Materials Handling Limited of the Allibert Buckhorn Group, ME/2757/06, 17 January 2007.
[2] European Commission Decision JPMC/Schoeller Arca Systems, COMP/M.5556.

RATIONALE FOR THE MERGER

10. The parties argue that the combination of the SAS and Linpac businesses in the UK will provide synergies to create a more efficient player in the supply of RTP products. The parties also argue that the transaction represents an opportunity for SAS to enhance its offering to UK customers.

JURISDICTION

11. As a result of this transaction, the parties will cease to be distinct enterprises.

12. The UK turnover for Linpac for the financial year 2010 was £ [ ] million. Accordingly, the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not met.

13. The parties are both active in the UK in the supply of deep-nesting containers and their combined share of supply is above 25 per cent in the UK. Consequently, the share of supply test in section 23(3) of the Enterprise Act 2002 (the Act) is met.

14. 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

PRODUCT FRAME

15. The parties are both involved in the supply of plastic RTP in the UK.

Substitution between plastic RTP and other non-plastic containers

16. Plastic RTP describes a wide array of transport containers that are designed for multiple re-use and have been increasingly replacing packaging products such as wooden, metal and cardboard boxes over the past 10 to 20 years. In addition to its re-usable qualities, plastic RTP is more durable and hygienic than RTP made from other materials.

17. In its *Linpac/Paxton* report, the CC concluded that because of their particular product characteristics, plastic RTPs cannot be readily substituted for products made of other materials, and that the product market definition is unlikely to go wider than plastic RTPs.[3] Similarly, the OFT concluded in a more recent decision, *Linpac/Allibert*, that RTPs made of non-plastic materials are not substitutable for plastic RTPs.

18. The majority of customers responding to the OFT in the current case indicate that a five per cent price increase would not lead them to switch to using non-plastic RTPs.

19. The OFT therefore concludes that the relevant frame of reference is no wider than plastic RTP.

Further segmentation of plastic RTP

20. The parties submit that plastic RTP is produced by injecting plastic into a mould in an injection moulding machine. If a company has access to a suitably sized injection moulding machine, it only requires a different mould to produce a differentiated product. Manufacturers are mainly the injection moulding factories. They do not produce their own products, but offer capacity. SAS and Linpac, as well as their competitors, only have to provide a mould after which the factory manufactures the product.

21. The parties argue that a standard range of products – deep-nesting containers, stack-nest containers, stackable containers, attached lid containers, rigid large containers, small parts storage and dollies - should be considered a single market.

22. In *Linpac/Paxton*, the CC concluded that there are two RTP categories that cannot be readily substituted for one another. Stack-nest containers are generally used to transport goods over long distances. Stacking containers are typically used for long-term storage. Within these two categories the CC also identified sub-groups, which are not substitutable for one another as the functionality requirements are different.

23. In *Linpac/Allibert,* the OFT found that, in terms of supply substitution, the investment and time involved in designing and manufacturing an injection

[3] Linpac Group Limited and McKechnie Paxton Holdings Limited: A report on the merger

mould would mean that supply side substitution to another type of plastic RTP category is unlikely to occur following a five per cent price rise.

24. A majority of competitors responding to the OFT say that they would not switch production to another category of plastic RTP in the event of a five per cent price increase.

25. The categories identified by the CC and OFT in previous cases, and which are relevant to the current transaction, are:

- deep-nesting containers (also known as maxi-nest containers)[4]
- stack-nest containers in general
- attached lid containers
- stackable containers
- rigid large containers (big boxes)
- folding containers
- large size folding containers
- intermediate bulk containers (IBC)
- small parts storage
- pallets
- dollies
- beverages.

26. On the basis of the past decisional practice in this area, and given the results of its market investigation in this case, the OFT has taken a cautious approach and considered the competitive effects of the merger in relation to each plastic RTP category in which the parties overlap separately (see paragraph 40 below).

RTP related services markets

27. The parties are also active in a number of RTP related services, such as pooling and value added logistics services.

28. Logtek, which is part of Linpac, provides services such as asset tracking management, equipment leasing, washing, rental and repair and a number

---

[4] 'Maxi-nest' is a Linpac trademark, but the term 'maxi-nest' is now used more generically to refer to all manufacturers' containers which operate with the Linpac range.

of identification and tracking technologies. Logtek achieved £ [ ] million turnover in 2010, [ ].

29. Logtek purchases RTP products from Linpac and others (including SAS) on behalf of its customers and for its own account.

30. Smart Carriers Services (**SCS**), which is a subsidiary of SAS, is a company which has pooling company activities as well as rental activities of big plastic boxes (through its subsidiary Rentabox in Spain). SCS had £ [ ] million turnover in 2010, [ ].

31. Given that SCS is not active in the UK and that no third party concerns were received in relation to RTP related services, the OFT does not consider RTP related services further in terms of horizontal unilateral effects but does consider whether any vertical concerns may arise as a result of the transaction (see paragraph 88 below).

GEOGRAPHIC FRAME

32. Linpac submits that it competes across Europe, even though a substantial proportion of its output is supplied to UK customers.

33. SAS does not have any export sales from the UK as it has no production capacity there.

34. Plastic RTP suppliers, responding to the OFT, advise that transport costs can vary between two and fifteen per cent of the purchase price of plastic RTPs. Most estimates are below 10 per cent. This is consistent with the CC's findings in *Linpac/Paxton*.

35. The parties submit that they are increasingly constrained by producers from emerging markets.

36. All customers that responded to the OFT's investigation say that they would, and most already do, source plastic RTP from a supplier based elsewhere in the EU. A small proportion of customers say that they would purchase supplies from outside the EEA following a five per cent price increase.

37. *In Linpac/Paxton* and *Linpac/Allibert*, the CC and OFT respectively concluded that the geographic scope varies with the category of plastic RTP. For example, the CC found that the relevant geographic market for deep-nesting containers and bakery trays was the UK because these products are not widely used outside of the UK. For the other categories, the CC found that transport costs are not prohibitive and therefore the relevant market is at least EU wide. However, in its competitive assessment, the CC concluded that international competitors constrained UK suppliers of deep-nesting containers.

38. In *Linpac/Allibert*, the OFT followed the CC's geographic market definition, but analysed in more detail the overlaps in which the parties had a share of supply of more than 25 per cent share in the UK.

39. The OFT has proceeded to analyse the merger on a cautious basis by looking at a UK market for deep-nesting containers and EU wide markets for the other overlap markets. However, tor the purpose of the present transaction, the OFT has not had to reach any firm conclusion on the frame of reference given its view that competition concerns do not arise from the present transaction.

COMPETITIVE ASSESSMENT: HORIZONTAL UNILATERAL EFFECTS

40. There are a limited number of RTP categories in which the parties overlap but have a combined share of supply of below [10-20] per cent.

41. No third party expressed any concerns in relation to these categories.

42. The OFT considers in greater detail below the competitive effects of the merger in relation to each plastic RTP category where the parties' combined share of supply is larger than [10-20] per cent, namely:

- deep-nesting containers
- rigid large containers
- dollies
- folding containers
- large size folding containers
- beverage crates.

Deep-nesting containers

43. The parties' combined share of supply of deep-nesting containers in the EU is high at almost [65-75] per cent (about [65-75] per cent in the UK). However, the increment is [five to 10] per cent for the EU and just [zero to five] per cent for the UK.

44. Linpac submits that its share of supply of deep-nesting containers is a historical legacy, as it developed its deep-nesting container (that is the maxi-nest) with Tesco in the mid-90s. The parties maintain that, since the invention of the deep-nesting container, the use of plastic RTPs in the food sector has increased significantly.

45. Consistent with this assertion, Linpac's largest customers of deep-nesting containers for the past three years have been mostly grocery retailers. Indeed, two large grocery retailers, combined, account for around [70-80] per cent of Linpac's plastic RTP sales in the UK in 2010.

46. The parties submit that SAS's main market for deep-nesting containers is Scandinavia and that SAS's European retail customers use small folding containers rather than deep-nesting containers. The parties note that SAS has a minimal presence in deep-nesting containers in the UK.

47. The parties name Mailbox and McKechnie as producing deep-nesting containers. In addition, the OFT's investigation indicated that sizeable competing providers of deep-nesting containers will remain in order to constrain the merged entity. Customers identify Polymer Logistics, Utz, and Rehrig as alternative suppliers of deep-nesting containers. One large customer states that it would look for suppliers outside the EU following a five per cent price rise. In addition, competitors identify Auer, Bekuplast, and Schaefer as also producing deep-nesting containers. All of these latter suppliers are larger than SAS in the supply of deep-nesting containers in the UK.

48. Examination of the parties' internal documents did not suggest that they exerted a strong competitive constraint on each other. Linpac's internal documents suggests that, pre-merger, Linpac did not consider SAS to be a particularly strong competitive constraint in the supply of deep-nesting containers. Consistent with the analysis set out above, SAS's internal documents note in relation to the UK market that it is the home market of

Linpac and that SAS will mainly focus on niche areas as rigid stack-nest systems are highly competitive.

49. In terms of how competition takes place in this market, supermarkets and other customers regularly use open tendering, switch suppliers or multi-source. As a result, customers state that they are able to use a range of techniques to gain maximum advantage from competition amongst suppliers of deep-nesting containers.

50. Analysis of the parties' bidding data for tenders in 2010 and 2011 does not suggest that the merging parties are particularly close competitors in the supply of deep-nesting containers. Neither of the parties won a customer from the other in tenders held in 2010 and 2011.

51. No third party concerns were raised in relation to the supply of deep-nesting containers.

Conclusion

52. In summary, the OFT did not receive any evidence that SAS's deep-nesting containers are closer substitutes to Linpac's in comparison with those produced by alternative suppliers, or that SAS is an important competitive force in relation to the supply of deep-nesting containers, particularly in the UK. As such, the OFT does not believe that competition concerns arise in the supply of deep-nesting containers.

Rigid large containers

53. The parties have a combined EU market share in rigid large containers of just above [15-25] per cent, with an increment of [zero to five] per cent.

54. The parties submit that there are other competitors active, including Schaefer, Palbox, Capp Plastics and Utz. Third parties suggest that, in addition to those competitors identified by the parties, Dolav, Auer and Interbox are also active in the supply of rigid large containers. Therefore, sizeable competitors remain, with three competitors having a greater market share than SAS.

55. Bidding data for 2010 and 2011 indicates that the parties have not been particularly close competitors. Neither of the parties won a customer from the other during tenders held in 2010 and 2011.

56. No third party concerns were raised in relation to the supply of rigid large containers.

57. As a result of the above, the OFT did not identify competition concerns in relation to the supply of rigid large containers.

Dollies

58. The parties have a combined EU market share in dollies of just above [15-25] per cent, with an increment of [five to 10] per cent.

59. The parties submit that there are others competitors active in the supply of dollies, including Utz, Polymer Logistics, Mailbox, Rehrig and others. Third parties suggest that, in addition to the competitors identified by the parties, Auer, Bekuplast, Bito, Schaefer, Fami and Complaster, are also active in the supply of dollies.

60. Bidding data obtained by the OFT for the year 2010 and 2011 does not indicate that the parties are close competitors. Neither of the parties won a customer from the other in tenders held in 2010 and 2011.

61. No third party concerns were raised in relation to the supply of dollies.

62. Therefore, the OFT did not identify competition concerns in relation to the supply of dollies.

Folding containers

63. The parties have a combined EU market share in folding containers below [30-40] per cent, with an increment of [zero to five] per cent.

64. The parties submit that there are other competitors active in the supply of folding containers, including Utz, Schaefer, Polymer Logistics, Mailbox, Rehrig, Auer, and Bekuplast. The parties provided estimates of competitors' market shares, which indicate that four competitors are larger than Linpac. Third parties suggest that, in addition to those competitors identified by the

parties, Walter Faltsysteme, Chep, Bito, Dolav and Europol, are also active in the supply of folding containers.

65. Bidding data for 2010 and 2011 shows that the parties were not particularly close competitors. Neither of the parties won a customer from the other in tenders held in 2010 and 2011.

66. The large majority of customers raise no concerns in relation to the supply of folding containers. Only one customer raises concerns, namely, that the transaction might lead to a reduction in its bargaining power as it currently procures only from the parties. However, the OFT did not receive any information as to why that particular customer would not be able to source supply from the other competitors identified during the OFT's market investigation.

67. On the basis of the evidence, the OFT did not identify competition concerns in relation to the supply of folding containers.

Large size folding containers

68. The parties have a combined EU market share in large size folding containers of just above [10-20] per cent, with an increment of [five to 0] per cent.

69. The parties submit that there are other competitors active in the supply of large size folding containers, including Utz, Schaefer and KTP. Third parties suggest that, in addition to those competitors identified by the parties, Auer and Capp Plastics are also active in the supply of large size folding containers. The OFT therefore considers that sizeable competitors remain in the market. The parties provided estimates of competitors' market shares, which indicate that three competitors are larger than Linpac.

70. Bidding data for 2010 and 2011 indicates that there existed limited competition between the parties, with SAS winning a small proportion of contracts in which Linpac participated in 2011.

71. The majority of customers do not believe that the merger raises competition concerns in relation to the supply of large size folding containers. However, one customer highlighted the role of intellectual property (IP) rights in what it otherwise regards as a competitive market. Another customer expressed

concerns that the transaction might result in a reduction of its bargaining power as it currently procures from only the parties. However, the OFT did not receive any information as to why that particular customer would not be able to source supply from the other competitors identified during the OFT's market investigation.

72. Overall, on the basis of the evidence received during its investigation, the OFT considers that the transaction does not give rise to competition concerns. In so doing, the OFT took account of the fact that large customers generally consider themselves to have some degree of buyer power. The OFT's market investigation has also indicated that large customers have successfully required the granting of IP rights, for products developed to fulfil the bid, to the customer. This reduces the power of an individual incumbent supplier and facilitates switching to another competitor.

Beverage crates

73. The parties have a combined EU market share in beverage crates of below [30-40] per cent, with an increment of [zero to five] per cent.

74. The parties submit that there are other competitors active in the supply of beverage crates, including Delbrouck, DW Plastics and Oberland. Third parties suggest that, in addition to those competitors identified by the parties, K Hartwell, Polymer Logistics, Chep, Cypherco (Brewery Plastics Limited), are also active in the supply of beverage crates. Additionally, suppliers outside the EU were identified as potential sources of supply. Sizeable competitors therefore remain in the market. The parties provided estimates of competitors' market shares, which indicate that three competitors are larger than Linpac.

75. Bidding data for 2010 and 2011 indicates that the parties are not close competitors. Neither of the parties won a customer from the other in tenders held in 2010 and 2011.

76. No third parties raised concerns in relation to the supply of beverage crates.

77. As a result, the OFT considers that competition concerns do not arise in the supply of beverage crates.

BUYER POWER

78. Contracts for RTP products are awarded through a tender process. The parties maintain that there is considerable price competition between RTP manufacturers given the negotiating power of large buyers. The parties argue that buyer power has been further enhanced in the industry by the introduction of 'Dutch auctions'.[5] Additionally, the parties submit that some large customers have successfully required the granting of IP rights, for products developed to fulfil the bid, to the customer.

79. The presence of buyer power in the RTP market was recognised, in *Linpac/Paxton*, where the CC found evidence that there was a substantial degree of buyer power in plastic RTP markets. A large majority of customers indicate that they consider themselves to have some degree of buyer power.

80. Therefore, consistent with the CC's finding in *Linpac/Paxton* and *Linpac/Allibert,* the OFT's investigation in the present case indicates that customers of plastic RTP products have some degree of buyer power. However, the OFT has not had to reach any firm conclusion on this given its view that competition concerns do not arise from the present transaction.

BARRIERS TO ENTRY AND SWITCHING

81. The parties submit that access to the market is relatively easy since no significant investment is required to enter. Deep-nesting containers, for example, are considered simple products. Manufacturers are mainly the injection moulding factories. Their principal role is to offer capacity. SAS and Linpac, as well as their competitors, provide a mould after which the factory manufactures the product.

82. In *Linpac/Paxton,* the CC was informed that a mould takes around 21 weeks to produce, but can take anywhere from two weeks to 12 months to design, depending on its size and complexity.

---

[5] Suppliers subscribe to the tender and after a pre-determined period in time prices drop, this continues until the time limit for the auction expires. The potential supplier is the one that offered to supply at the lowest price, although the customer has the right to withdraw the order.

83. The parties submit that, consistent with the CC's findings in *Linpac/Paxton,* IP rights do not create a meaningful barrier to entry. This is because:

- customers have the ability to insist that a new design be made available to other manufacturers

- manufacturers can licence their design to other producers in return for a fee or royalty, and

- RTP patents can be easily circumvented by relatively small changes in a design, which nevertheless means that the resultant products are still interoperable.

84. The parties also note that the industry practice of subcontracting manufacture is an important element facilitating entry into the supply of plastic RTP and that capacity utilisation in the sector is currently below 70 per cent, thereby allowing for expansion by existing suppliers. Competitors confirmed that they did, in general, have spare capacity.

85. The OFT solicited views from customers to understand how easy it was for them to switch supplier. The large majority of customers indicated that switching is easy. One customer observed that switching is particularly easy towards the end of a contract.

86. A few customers note that ease of switching was dependent upon the compatibility of the competitor's products with that of the incumbent, whilst another customer notes that switching can be a time-consuming process if it requires the development of new prototypes and the ordering of injection moulds.

87. The OFT considers that, overall, switching between competing suppliers of plastic RTP products is easy. Furthermore, consistent with the CC's finding in *Linpac/Paxton,* barriers to entry and expansion are not insurmountable. However, for the purposes of the current transaction, the OFT did not have to conclude on this point as it considers that no competition concerns arise in any event.

VERTICAL EFFECTS

88. Logtek, a Linpac subsidiary, offers asset management services, which includes a pooling services for RTP offered to one customer. In this capacity, Logtek has acted as a purchaser of RTP, sourcing them from companies other than Linpac where Linpac does not manufacture a particular line of RTP.

89. The parties indicate that the pool was established through a series of purchases in 2009, around fifty per cent of which was purchased from SAS and the remainder from another party.

90. If these purchases were ongoing and represented a significant proportion of a RTP competitor's sales, the parties may have the ability to foreclose an upstream competitor by switching downstream demand away from them. The OFT has therefore investigated whether is a prospect of such customer foreclosure occurring as a result of the merger.

91. The parties state that the set up of the pool represented a one-off purchase of RTP, and indicate that there would be limited future demand of RTP to foreclose since any additional purchases would be to replenish existing stock. On this basis, the parties argue that they would not have the ability to foreclose other upstream competitors.

92. Third parties raised no concerns about the vertical effect of the transaction.

93. Based on the information received in its investigation, the OFT does not consider that vertical concerns arise as a result of the transaction.

CO-ORDINATED EFFECTS

94. No third party concerns were raised in relation to the existence of co-ordinated effects in any of the markets under consideration, or to suggest that the merger may create the conditions for co-ordination going forward.

95. The OFT notes that, in line with the approach set out in the OFT/CC Merger Assessment Guidelines,[6] market conditions in relation to the supply of RTP are not conducive to coordination since customers can (and do)

[6] Merger Assessment Guidelines, OFT1254, paragraph 5.5.9.

split bids between a number of suppliers, and large customers (such as the supermarkets) tend to have buyer power.

THIRD PARTY COMMENTS

96. The OFT received comments from customers and competitors. Third party views have been discussed in the decision where appropriate.

97. No significant concerns were raised by third parties in relation to the merger.

ASSESSMENT

98. Linpac and SAS overlap in the supply of a number of categories of plastic RTP products. The parties have a combined share of supply of over [20-30] per cent in beverage crates, folding crates and deep-nesting containers. The parties face at least two competitors in all product areas.

99. In relation to deep-nesting containers, the increment to the share of supply in the UK is negligible, sizeable suppliers remain and no third parties were concerned.

100. The merger results in an increment of less than [zero to five] per cent in folding containers and less than [zero to five] per cent in beverage crates in the EU. Sizeable competing suppliers remain, the bidding data show that the parties were not particularly close competitors and no third parties were concerned.

101. Following the merger, the parties will have a combined EU market share in large size folding containers of just above [10-20] per cent, with an increment of [five to 10] per cent. Bidding data for 2010 and 2011 indicates that there existed limited competition between the parties. Sizeable competitors, however, remain in the market and customers use a range of techniques to gain maximum advantage from competition amongst suppliers of large size folding containers.

102. The OFT therefore considers that in each market in which the parties overlap sufficient alternative suppliers remain such that customers will

retain the ability to switch. This is in addition to significant spare capacity and relatively low barriers to entry.

103. The large majority of third parties expressed no concerns in relation to the transaction.

104. In relation to the vertical relationship that exists between the parties in relation to the supply of plastic RTP to companies offering pooling services, there is no evidence that the combined entity will have the ability to foreclose rivals by diverting purchases from its pooling arm, Logtek.

105. 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

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