
Completed acquisition by Danoptra Limited of Certain Assets of
Inspired Gaming Group plc

ME/3766/08

The OFT's decision on reference under section 22(1) given on 9 September
2008. Full text of decision published 18 September 2008.

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

PARTIES

1. **Danoptra Holdings Limited** is the holding company for the Danoptra Group's activities in the gaming sector. Its wholly owned subsidiary, RLMS Acquisitions Limited, is a new company set up for the purposes of acquiring the assets of IGG the subject of this merger. Danoptra Limited (Danoptra) is the parent company of Gamestec Leisure Limited (Gamestec) and Bell Fruit Games Limited (Bell).¹
2. Gamestec is active in the operation and rental of amusement and gaming machines in the UK. Gamestec supplies amusement and gaming machines to customers across a range of sectors including the pub, motorway services and bingo sectors, while Bell is active in the manufacture and design of amusement and gaming machines.
3. **Inspired Gaming Group plc** (IGG) develops and supplies gaming and amusement machines and server based gaming technology. Its customer base includes pubs and bars, casinos, licensed betting offices, bingo halls,

¹[]

holiday parks and out of home leisure venues. The assets Danoptra acquired from IGG related to IGG's gaming activities only in the pub sector which represents [less than 50 per cent] of all IGG's machines' business. The UK turnover generated by the assets acquired by Danoptra for the year ending 30 September 2007 was [less than £70 million].

TRANSACTION

5. The assets acquired by Danoptra ('Acquired Assets') include:
 - approximately 25,000 gaming and amusement machines located on customers' premises
 - some 800 employees
 - leases for some 630 cars and vans, and
 - the benefit of certain supply contracts for the continuing operation of the business of the Acquired Assets.
6. The Acquired Assets include a mix of traditional gaming machines and digital gaming machines, which permit gaming content to be supplied and managed remotely.
7. Danoptra Holdings Limited completed the acquisition of the Acquired Assets on 7 July 2008. The Statutory deadline expires on 6 November 2008. Danoptra notified the transaction on 16 July and the administrative deadline for a decision expires on 11 September 2008.

JURISDICTION

8. As a result of this transaction Danoptra and the Acquired Assets – which the OFT considers to form an 'enterprise' for the purposes of section 23 of the Enterprise Act 2002 (the Act) - have ceased to be distinct. Danoptra overlaps with the Acquired Assets in the operation and rental of gaming and amusement machines to the UK pub sector creating a share of approximately [35-40] per cent, the share of supply test in section 23 of the Act is therefore met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

Background

9. The OFT previously considered this market in 2004 when it considered the anticipated acquisition by Gamestec Leisure Limited of Rank Leisure Machine Services Limited.² The European Commission also considered the market in its decision on the Candover/Cinven/Gala merger in 2003.³

MARKET DEFINITION

10. Danoptra supplies amusement and gaming machines to retail customers across a range of sectors including the pub, motorway services and bingo sectors. The Acquired Assets were all supplied by IGG to the pub sector. The overlap, at its narrowest, was therefore in the supply of gaming and amusement machines in the pub sector. Danoptra and IGG will continue to compete against each other in the operation and rental of amusement and gaming machines to all other sectors.

Product Scope

11. In the Gamestec/Rank decision the OFT noted that, while in theory it may be possible to segment the market by reference to the type of machine or type of retail customer, it ultimately considered that the appropriate frame of reference was the supply of gaming and amusement machines to retail customers generally. Danoptra has submitted that there is no reason to depart from this conclusion. Danoptra also noted that the European Commission in the Candover/Cinven/Gala decision did not define the market more narrowly than the supply of amusement and gaming machines to all customers.
12. There are four main types of machine, Amusement with Prizes (AWP), for example, fruit or slot machines, Skills with Prizes (SWP), SBG Platforms - server based gaming platforms that permit the easy introduction of new

² OFT decision of 5 January 2008 on the anticipated acquisition by Gamestec Leisure Limited of Rank Leisure Machine Services Limited (the Gamestec / Rank decision). See at - www.offt.gov.uk/advice_and_resources/resource_base/Mergers_home/2004/gamestec

³ EC decision of 14 March 2003 on case no Comp /M.3109 Candover/Cinven/Gala (the Candover / Cinven / Gala decision). See at - http://ec.europa.eu/comm/competition/mergers/cases/decisions/m3109_en.pdf

gaming content to consumers, and Fixed Odds Betting Terminal (FOBT) used mainly in licensed betting offices.

13. Danoptra submits that all of these machines are supplied by the majority of operators and therefore should be part of the same market. Danoptra also submits that demand by retail customers for gaming machines is based on the revenues that they create and as such they are usually supplied with a mix of different types of machines as they seek to maximise profits. One third party competitor agreed that retail customers are usually supplied with a range of different types of machines unless they specifically request one type of machine.
14. In the *Gamestec / Rank* decision⁴, the OFT found that, in general, competitors operate, supply and maintain all machine types. All third party retail customers that responded to our enquiries in the current case agreed that suppliers can supply them with a mix of the different types of machines. Third parties also confirmed that suppliers of gaming machines also maintained and repaired them.
15. Danoptra provided information regarding the regulatory regime surrounding the operation of gaming machines in the UK. Gaming falls under section 6 of the Gaming Act 2005. It is necessary to obtain a licence in order to become a gaming machine operator, that is, to make, sell, install, adapt, maintain or repair gaming machines, and customers also have to obtain a licence to have gaming machines located on their premises. The gaming licence covers all the different types of gaming machines.
16. In the previous OFT decision third parties commented that there were 'not significant differences in supplying different types of customer and that operators generally supply the same machines on very similar terms to all types of customer'.⁵ Third party competitors have told us that all retail customers are generally supplied on the same terms. A third party went on to say that although customers will negotiate on an individual basis, the terms and how the customer is supplied are generally the same for all.

⁴ See footnote 2 above.

⁵ See footnote 2 above, paragraph 10.

Conclusion on Product Scope

17. The OFT has found no evidence to depart from its analysis in the earlier case. Therefore, in light of all of the information provided by Danoptra, third parties and the past OFT and European Commission precedents, this transaction will be assessed on the basis of the supply of all types of gaming machines to all retail customers.

Geographic Scope

18. The previous OFT decision found that the geographic frame of reference was the UK. This was because it was noted there was no regional areas within the UK that could be considered as operating in a different way to other regions and there is no legal, economic or other impediment that prevents an operator in one local area developing or expanding business in another part of the UK. The European Commission, in the Candover/Cinven/Gala decision, concluded that the geographic scope was national because gaming machines are spread over sites covering the whole of the UK.
19. Danoptra agrees with these conclusions and submits that the correct geographic scope for the current case is the UK. Danoptra notes that although the regulatory regime surrounding gaming machines has changed, this has not had any impact on the scope of the relevant geographic market. The Gambling Act 2005 applies equally to all operators of gaming and amusement machines wherever they are located in the UK.
20. Third parties have agreed that their suppliers are both national and regional, with many pub chains being supplied nationally by a mixture of national and regional suppliers. One third party commented that the suppliers' location was not critical.
21. Danoptra also stated that the location of suppliers is becoming even less important due to the increase in the use of SBG platforms, which, once the actual machine is delivered, can be serviced, repaired and updated remotely without visiting the customer's premises.

Conclusion on Geographic Scope

22. The OFT has found no evidence to depart from its analysis in the earlier case. Therefore, in light of the OFT's and the European Commission's past conclusions and in the absence of any evidence to the contrary, this transaction will be considered on the basis of the supply of gaming and amusement machines to all customers in the UK.

HORIZONTAL ISSUES

23. Gaming and amusement machines are typically housed in a single cabinet located on the premises of another business, such as a pub, casino, bingo hall or licensed betting office.
24. As a result of this merger, Danoptra has a market share of [15-20] per cent (increment [5-10] per cent) of the supply of all types of gaming machines to all retail customers. Danoptra will continue to face competition from the remaining IGG business with the next largest market share of [5-10] per cent (although IGG has agreed, as part of the Acquisition, not to compete in the pub sector for a period of [] years from completion). There are a number of other, albeit smaller, competitors, including Sceptre with a market share of around [5-10] per cent and The Independent Operators Association (IOA) with a market share of around [5-10] per cent.⁶
25. Third party customers that responded to our enquiries have agreed that there are many viable alternatives to the merged entity in this market, and consider that there are a sufficient number to maintain sufficient competition. Third party retail customers were able to list several suppliers that they could use, with one customer naming 47 suppliers from whom they obtain machines from and another naming 28 suppliers that they would use and had invited to tender in the past. Although it would appear that the many alternative suppliers are small relative to the new entity and the remaining IGG business, the third party customers that responded to our questionnaire, including all large national pub chains, named many of the smaller suppliers including Global Draw, Claremont and Games Media

⁶ The IOA is a nationwide group of 21 owner-managed operating companies. These operators have come together through the IOA to enable them to jointly supply on a nationwide basis and therefore be able to compete effectively with national and regional players.

as viable alternatives to whom they would switch in the event of a 5-10 per cent price increase by their current supplier.

26. Third parties have stated that not only are there many alternative suppliers but it is relatively easy to switch suppliers. The time frame for switching ranges between 10 days and four weeks. All third parties commented that they would switch suppliers in the event of a 5-10 per cent price increase by their current suppliers. Anecdotal evidence from retail customers has shown that not only are customers prepared to switch supplier, but that they have actually done so.
27. Danoptra submitted that the combined market shares given above are not an accurate reflection of the market post-transaction. This is because IGG's pub customers have had the opportunity to renegotiate their contracts as a result of the transaction and can terminate their contracts if they wish. Danoptra have provided details of four large customers that have already decided to switch suppliers post-transaction. Danoptra submit that the market shares of the combined entity will actually be lower than [15-20] per cent.
28. Given the number of alternative suppliers, and customers' willingness and ease of switching, the OFT believes that the acquisition of IGG's pub sector gaming machines has not resulted, or may not be expected to result, in a substantial lessening of competition.

Coordinated Effects

29. The OFT has received no evidence during the course of its investigation suggesting that coordination (for example, on price, geographic territories or customers) is already present in the market. Given the remaining highly unconcentrated structure of the market (with a large number of competitors with varying levels of market share), the fact that amusement and gaming machines are differentiated, the lack of evidence of past coordination, and the possible existence of buyer power (at least for larger customers - see further below), the OFT does not believe that the merger has created or strengthened coordinated behaviour.

Barriers to Entry

30. In the previous OFT decision barriers to entry were considered to be low. This was because fees for gaming licences were relatively low and contracts came up regularly for tender.
31. Danoptra have submitted that the barriers to entry are still low. This is because, although the price of a gaming licence has increased, it is still relatively low. The cost of a licence fee depends on the annual value of gross sales, with a maximum application fee of £16,471 with annual fees of £33,171 for sales of £6 million or more, and a minimum fee of £988 with annual payments of £6,367 on sales of up to £500,000. As a proportion of gross sales, between 0.6 and 1.3 per cent, the fee for the licence under the Gaming Act 2005 therefore does not appear to be an insurmountable amount and would not act as a barrier to entry into this market.
32. It is also still the case that contracts come up for tender frequently with limited entry costs. Danoptra submitted that contracts are still frequently up for tender over 1-3 year periods. Third parties commented that contracts are up for tender every 2-3 years. The frequency of contracts being available for tender would make it easier for new firms to enter by bidding for these contracts.
33. Third party responses on the ease of entry have been mixed. One third party competitor stated that it is very difficult to enter this market because of the high costs involved. It estimated that it would cost around £30 million for some 17,000 machines and all the other components to run the business such as vans, employees for delivery, installation and repair of machines and office staff to enter and build up a market share of around 5 per cent and that there had been no new entry into this market in the past five years. Another third party competitor, however, considered that it was relatively easy to enter the market in terms of the licensing regime, but that it may be hard for a new entrant to gain contracts. This third party estimated that it would cost under £10 million to enter the market and gain a 5 per cent market share.
34. Danoptra has said that there has been some new entry in the past five years, which has been confirmed by third party customers. Both Danoptra

and third party customers point to the same company which currently has an estimated market share⁷ of less than 1 per cent.

35. Although the evidence regarding barriers to entry is mixed, it has not been necessary to reach a conclusion given that there is no realistic prospect of a substantial lessening of competition in this market.

Buyer Power

36. In the earlier decision, the OFT concluded that there appears to be considerable buyer power in the hands of larger customers such as pub groups. Danoptra has stated that large customers very rarely grant supplier exclusivity. This has been confirmed by third parties, with one third party customer stating that they are supplied by 26 different suppliers. Other third party customers confirmed that there were many alternative suppliers. The high number of suppliers and the ease of switching in this market also confer buyer power on the retail customer.
37. Third party customers who responded to our questionnaire all agreed that as large customers they have buyer power. One third party noted that they were able to secure appropriate terms through the tendering process and have recently improved their terms when extending their contracts for a further year with their current suppliers. Another third party stated that they do have buyer power because they are a large pub chain with 2,000 good pubs that suppliers want to supply.
38. It would appear from all of the information provided by Danoptra and third parties that large buyers do have buyer power in this market. However, the OFT did not receive evidence to be able to confirm whether or this would also be the case for smaller customers. In any event, it has not been necessary to conclude on buyer power as there is no realistic prospect of a substantial lessening of competition in this market.

VERTICAL ISSUES

39. No vertical issues arise in this case. Although Danoptra is involved in the upstream market of machine manufacture and design, Danoptra is only acquiring the part of the IGG business relating to the supply of gaming

⁷ Estimate provided by Danoptra.

machines to pub customers and therefore competition will continue to exist in the upstream market between Danoptra and IGG.

THIRD PARTY COMMENTS

40. Third parties comments have been discussed above. All third party customers who responded to our enquiries were unconcerned by the merger, citing the presence of a number of alternative suppliers.

ASSESSMENT

41. Danoptra and the Acquired Assets overlapped in the supply of gaming and amusement machines to the pub sector.
42. In line with its earlier decision in the Gamestec / Rank case⁸, the OFT has concluded that the relevant frame of reference should be the supply of all types of amusement and gaming machines to all retail customer sectors in the UK. In this frame of reference the merged entity has an estimated market share of [15-20] per cent, increment [5-10] per cent.
43. Danoptra will continue to face competition from IGG⁹ and there are a number of alternative suppliers to the market. Third party customers identified between seven and 47 alternative suppliers and buyer power amongst the large national players appears reasonably strong.
44. In the light of the above evidence of the number of alternative suppliers, and retail customers' willingness and ease of switching the OFT believes that the acquisition of IGG's pub sector gaming machines does not create a realistic prospect of a substantial lessening of competition.
45. 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.

⁸ See footnote 2 above.

⁹ Except in the pub sector where as part of the transaction IGG has an agreed [] year non compete clause.

DECISION

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