
Anticipated acquisition by Linpac Materials Handling Limited of the Allibert Buckhorn Group

The OFT's decision on reference under section 33(1) given on 17 January 2007. Full text of decision published 25 January 2007.

PARTIES

1. **Linpac Materials Handling Limited (Linpac)** is a wholly-owned subsidiary of Linpac Group Limited, the parent company of the Linpac Group. The Linpac Group operates globally and produces a wide range of plastic-based products, principally packaging and related products. Linpac specialises in the production of plastic returnable transit packaging (RTP).
2. **Allibert Buckhorn (Allibert)** is owned by Myers Industries Inc. (Myers), a US-based international manufacturer of plastic products for industrial storage, handling and distribution. Allibert produces a range of RTP, as well as a number of other containers and storage products. Its main production facilities are in France and Spain; in the UK it has limited production and warehouse facilities. Allibert comprises two distinct business units, Allibert Buckhorn and Raaco, a Danish company. Its UK turnover for the year ended in 31 December 2005 was around £[] million.

TRANSACTION

3. Linpac entered into a share purchase agreement with Myers on 20 October 2006 to acquire Allibert. Completion is conditional on the parties receiving merger clearance in the UK, Germany, Ireland and Spain.
4. The OFT's administrative deadline for deciding whether to refer the merger to the Competition Commission (CC) is 17 January 2007.

JURISDICTION

5. As a result of this transaction Linpac and Allibert will cease to be distinct. The parties' combined UK share of supply is above 25 per cent in two categories of plastic RTP, namely maxi-nests and bakery trays. Consequently, the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. 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. The parties principally overlap in the supply of plastic RTP. There are also some minimal overlaps in the supply of small parts storage and metal racking and shelving, as well as storage tanks and bulk containers, but due to the limited degree of overlap and the absence of third party concerns, small parts storage, metal racking, shelving, storage tanks and bulk containers are not considered further.

Product scope

Plastic RTP

7. Plastic RTP are transport containers which 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. Plastic RTP is not only more durable, but is also considered to be more hygienic than RTP made of other materials, and is capable of being integrated into automated production processes.
8. In the Linpac / Paxton¹ report, the CC concluded that, due to its particular characteristics, plastic RTP cannot be substituted by other materials, and therefore it considered that the product market definition was not wider than plastic RTP. All third parties that responded to the OFT in the current case agreed. The OFT therefore concludes that the relevant frame of reference is no wider than plastic RTP.

¹ Competition Commission *LHM Group Limited and McKenzie Paxton Holdings Limited: A report on the merger* May 2002, paragraph 5.52.

Further segmentation of plastic RTP

9. Due to limited demand and supply side substitutability, the CC in Linpac / Paxton further segmented the plastic RTP market into different categories.²
10. On demand-side substitution between different categories of plastic RTP, two customers told the OFT that they would not switch between different categories of plastic RTP in the event of a 5-10 per cent price increase in one category of container. In relation to maxi-nest containers³ in particular, it seems that their design in some cases is integrated into the other pieces of the customers' equipment (for example, washing machines) which makes demand-side substitution between types of plastic RTP more difficult.
11. All competitors who responded to the OFT said that they would not switch production to another category of plastic RTP in the event of a 5-10 per cent price increase in the price of that category, even though the cost and time it would take to switch is not very significant. The categories of relevance to the current case are:
 - maxi-nest containers⁴
 - stack-nest containers in general
 - stackable containers
 - bakery trays
 - attached lid containers
 - foldable containers
 - large size folding containers
 - large rigid containers
12. Since the outcome of the competition assessment is the same regardless of the frame of reference adopted, the OFT took a cautious approach and considered the competitive effects of the merger in relation to each plastic RTP category separately.

² CC, 2002, paragraph 5.71. The categories were plastic deep-nesting stack nest containers, plastic bakery trays, plastic securable stack-nest containers, general plastic stack-nest containers, and plastic stacking containers.

³ A plastic RTP category, see below.

⁴ Maxi-nests containers are also known as deep-nesting containers. '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. In this decision the term maxi-nest has been used to designate any type of deep-nesting RTP.

Geographic scope

13. In Linpac / Paxton the CC concluded that the geographic scope varies with the category of plastic RTP. For example, it found the relevant geographic market for deep-nesting stack-nest (maxi-nest) containers and bakery trays was the UK, whereas for the other categories (that is, securable stack-nest containers, stack-nest containers in general and stacking containers) the relevant market was considered to be at least as wide as Europe.
14. Linpac submits that it competes across Europe, even though a substantial proportion of its output is supplied to UK customers. All customers that responded to the OFT's investigation said that they would (and indeed most already do) source plastic RTP from a supplier based elsewhere in Europe or further afield. In addition, most competitors that responded to the OFT do not manufacture plastic RTP in the UK, but subcontract the manufacturing to UK companies not directly active in this market segment. The parties submit that they are increasingly constrained by producers from emerging markets, and this submission is supported by Linpac's internal documents.
15. For the purposes of the present case the OFT has not found it necessary to conclude on the geographic scope as the outcome of the competition assessment is the same regardless of whether a UK wide or European wide scope is employed. For those categories of plastic RTP where the parties' combined UK share exceeds 25 per cent, UK shares of supply have also been considered, namely maxi-nest containers and bakery trays.

HORIZONTAL ISSUES

Shares of supply

Maxi-nest containers

16. The parties' combined share of supply of maxi-nest containers in Europe is high at almost [65-75] per cent (about [80-90] per cent in the UK), but the increment is very low – less than [five] per cent on both measures.⁵

⁵ Europe is defined as being the EU.

17. Linpac submits that its share of supply of maxi-nests is a historical legacy as it developed the maxi-nest with Tesco in the mid-90s, and since then the maxi-nest design has been adopted by other supermarket chains, becoming somewhat a perceived design standard.
18. All suppliers of plastic RTP that responded to the OFT, including recent entrants, supply maxi-nest products. One also named two additional companies that are able to supply the UK market with maxi-nest trays. Competing suppliers SAS, Utz, Straights, Polymer and Mailbox are all larger than Allibert in the supply of maxi-nest containers in the UK.
19. Supermarkets and other customers regularly use open tendering, switch suppliers or multi-source. Analysis of the parties' bidding data for these tenders does not suggest that the merging parties are particularly close competitors in the supply of maxi-nest trays. Apart from comments made by the one customer with concerns that only the parties had a track record of investing in innovative products, the OFT did not receive any evidence that Allibert's maxi-nest containers are any way closer substitutes to Linpac's in comparison with those produced by alternative suppliers, or that Allibert is a 'maverick' or a particularly important competitive force. No other customer shared this concern.

Bakery trays

20. At an EU level, the parties' share of supply of bakery trays is around [5-15] per cent with an increment of less than one per cent. In the UK, the combined share of supply is about [70-80] per cent but, again, the increment is very low at less than [five] per cent.
21. The OFT did not receive any third party concerns in relation to the supply of bakery trays. The parties submit Ravensbourne is a significant player in this segment supplying more than 20 per cent of the UK market, and that Schoeller Arca's share of supply in the EU is about 15 per cent.

Other categories of plastic RTP

22. No third party raised concerns in relation to any of the other categories of plastic RTP. The parties' EU combined share of supply is not above 25 per cent in any of the other plastic RTP categories (that is, excluding maxi-nests and bakery trays), and in all of them Schoeller Arca is a sizeable

competitor. Further, a number of other suppliers (for example Utz, Schaefer, Polymer and DSS) are all active in some or all of these categories.

Barriers to entry and expansion

23. There has been recent entry in the supply of plastic RTP. Straight, Utz, Polymer and Impacta are all recent entrants and are larger than Allibert in maxi-nest containers in the UK.
24. The industry practice of subcontracting manufacture is an important element facilitating entry into the supply of plastic RTP. Intellectual property rights may increase the time required to design products but there is evidence that new designs can be brought out in the region of six to eighteen months. Furthermore, the CC in Linpac / Paxton⁶ concluded that they do not amount to an insuperable barrier to entry.

Coordinated effects

25. The merger is not expected to give rise to coordinated effects as market conditions do not seem to be conducive to tacit coordination. In particular, an independent report produced for Allibert states demand for plastic RTP is not stable but growing, customers can (and do) split bids between a number of suppliers, there is a fringe of smaller competitors in most categories and customers (such as the supermarkets) tend to have buyer power. These smaller competitors told us that customers had buyer power.
26. Two competitors were concerned that two key players (Linpac and Schoeller Arca) could foreclose smaller competitors through co-ordination in selling plastic RTPs and in the purchase of raw materials for their manufacture. In addition to the above points about co-ordination, it has not been shown how the acquisition of Allibert would substantially alter any such ability.

THIRD PARTY VIEWS

27. A minority of third parties were concerned. Only one customer was concerned, specifically that the merger would reduce its available suppliers

⁶ CC report, para 5.100-5.101.

of maxi-nest containers. Two competitors had general concerns that there will be only be two key players in plastic RTP.

ASSESSMENT

28. Allibert and Linpac overlap in the supply of a number of categories of plastic RTP. Share of supply is below 25 per cent and the parties face at least two competitors in all but bakery trays and maxi-nest containers.
29. In relation to bakery trays, the increment share of supply is negligible, sizeable suppliers remain and no third parties were concerned.
30. Concerns were only raised by third parties in relation to maxi-nest containers. However, the increment arising from the merger is less than [five] per cent. There are a number of alternative suppliers larger than Allibert, with no significant barriers to their expansion and recent examples of entry on that scale. There is no evidence to suggest that conditions conducive to co-ordination are present in this market.
31. 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

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