
Anticipated acquisition by Altana AG of certain assets of Wolstenholme Group Ltd

The OFT's decision on reference under section 33(1) given on 16 August 2007. Full text of decision published 22 August 2007.

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

PARTIES

1. **Altana AG** (Altana) is a German based management holding company which, through a number of subsidiaries, manufactures specialty chemicals, including metal effect pigments, for ink and coatings manufacturers, coatings and plastic processors and the electronics industry. Altana also holds minority stakes in competing suppliers Carl Schlenck AG, Aldoro Ltd and Metapol SA. In this case, it has not been necessary to conclude whether these suppliers should be considered as independent from Altana for the purposes of this assessment as it does not materially change the analysis.
2. **Wolstenholme Group Ltd** (Wolstenholme) is a UK based company which manufactures a range of metallic pigments in various forms and metallic effect pigment inks. Wolstenholme's latest annual report showed a UK turnover of [less than £70 million] in 2006.

TRANSACTION

3. Altana proposes to acquire the metallic pigments and metallic effect pigment inks business of Wolstenholme by way of an asset purchase.¹
4. The parties submitted a satisfactory submission to the OFT on 22 June 2007. The extended administrative deadline is 20 August 2007.

¹ The transaction does not include Wolstenholme's carbon black dispersions business, its businesses carried out under the brand name 'Ronald Britton' and the business selling and distributing aluminium products manufactured by Metaflake Limited.

JURISDICTION

5. As a result of this transaction Altana and the Wolstenholme assets being acquired will cease to be distinct. The parties overlap in the supply of metallic effect pigments and metallic effect pigment inks. The parties estimated that they have a combined share of the metallic effect pigments market in the UK in excess of 25 per cent (increment of [0-10] per cent). As a result the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met.
6. 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 scope

Metallic effect pigments

Demand side substitution

7. Metallic effect pigments are used for a wide variety of purposes – coatings, paints, inks, cosmetics and for their technical properties in the production of construction materials.
8. While the parties submitted that the three categories of effect pigments – metallic effect pigments, pearlescent effect pigments and other effect pigments – form part of the same product market,² third party views were mixed. Most third parties said that a price rise of five to ten per cent would not be sufficient to prompt a switch away from metallic effect pigments or that a switch would not be possible due to differences in effect.

Supply side substitution

9. The parties noted that the majority of firms in the industry already supply a range of effect pigments which are produced in the same manner, irrespective of their ultimate application.³ As such, the parties believed that there is potential for significant supply side substitution as it would be easy

² Effect pigments are supplied in a number of forms – powders, pastes and pellets. The parties submit that it is the pigment that determines customer demand, irrespective of the form in which it is sold. No third parties have disputed this and therefore for the purposes of this competitive assessment we have not considered different forms of pigment as separate products.

³ With the exception of those pigments used for cosmetic products which are required to go through a clean room.

for producers of other effect pigments to switch production of metallic effect pigments.

10. Third parties did not agree citing differences in the manufacturing processes. One respondent stated that a brand new plant allowing for a controlled inert environment would be required due to risk of explosion. Two other third parties indicated that the complexities of design and manufacture involved would require a start up time of up to 24 months, with one estimating costs in excess of €5 million.

Conclusion

11. The parties maintained that due to both demand and supply side considerations all effect pigments should be considered within the same product frame of reference. However third party comments consistently indicated that substitution would be limited, difficult and costly. For the purposes of the assessment the OFT has adopted a cautious approach and considered metallic effect pigments as a separate market.

Metallic effect pigment inks

Demand side

12. Metallic effect pigment inks are a downstream product of metallic effect pigments. They are used by printing companies as required by designers for a variety of purposes, such as labelling or graphic design.
13. The parties submitted that end users of metallic effect pigment inks would switch to other types of ink (such as pearlescent effect inks) or to other solutions such as foil stamping in response to a rise in price. However, no evidence was provided in relation to the costs of switching or the extent to which it would be possible to find a substitute product for all applications.
14. A few third parties suggested that if the price of metallic effect pigment inks rose 'substantially', in the long run designers would consider the use of such inks as no longer cost effective and adjust their designs to use other effects. One also agreed with the parties that pearlescent and metallic effect inks could be substitutes.
15. However, most third parties considered that metallic effect pigment inks and other inks are not substitutable or only in a limited number of cases due to differences in effect and the significant work needed to change designs.

Supply side

16. The parties submitted that the manufacture of metallic effect pigment inks is a simple process and that it would be straightforward and low cost for both ink manufacturers and producers of effect pigments to manufacture metallic inks (the parties are themselves examples of the latter). The parties suggested suitable equipment could be sourced for between £[...] and £[...], and that no specific technical knowledge or patents are required that would prevent entry.
17. Third party comments did not support the parties' view. The vast majority of third parties considered that supply side substitution would be difficult. The manufacturing process for metallic effect pigment inks was seen as more technically demanding and hazardous compared with other inks, requiring a more controlled environment, and was consequently more expensive with one third party suggesting set-up time could be upwards of 24 months. Given that metallic effect pigment inks account for only a small proportion of their overall sales (typically five per cent), many believed it would not be worth the time and costs incurred.

Conclusion

18. Given the limited evidence provided by the parties and that the majority of third party responses consider both supply and demand side substitution to be limited, the OFT has adopted a cautious approach and considered metallic effect pigment inks as a separate product market for the purposes of this assessment. However, it has not been necessary to conclude on the appropriate frame of reference as the merger does not give rise to competition concerns on any measure.⁴

Geographic market

Metallic effect pigments

19. It was generally agreed by the parties and third parties that the market is global in scope with no appreciable barriers to trade, low transport costs and no legal or technical constraints. Altana itself does not produce pigments in the UK but supplies metallic effect pigments to customers in Europe (including the UK), Australasia, Asia, South America and Africa from plants in the US and Germany.
20. Several suppliers thought UK customers may prefer to source from a company with a UK distribution organisation to provide sales and technical

⁴ A few third parties mentioned two different types of metallic effect pigment ink-water and solvent based. While the production method differed, the end products can be used interchangeably. No third parties considered that there would be any constraints on demand side substitution; therefore we have not considered this distinction further.

support, but did not consider that sufficient to warrant a narrower market. All customers stated that they sourced or would be prepared to source supplies on a global basis, stating that EU suppliers have been increasingly losing business to low price Chinese competitors.

21. It is not necessary to conclude on the geographic scope as the competitive assessment would not materially change on a UK or global basis. However, for the purposes of this assessment we consider the geographic frame of reference to be global.

Metallic effect pigment inks

22. The parties submitted that the market is global in scope, with no barriers to entering overseas markets and competitors located globally. The parties identified two companies located in the Far East and companies in the US which they believed supplied metallic effect pigment inks on a global basis.
23. This view was broadly supported by customer comments in that, although all were currently supplied by companies in the EU, the majority would consider suppliers on a global basis in the event of a five to ten per cent increase in prices.
24. It has not been necessary to come to a conclusion on the geographic market as the competitive assessment does not materially change on an EU or global basis.

HORIZONTAL ISSUES

Shares of supply

Metallic effect pigments

25. The parties estimate that their combined share of the global supply of metallic effect pigments is [20-30] per cent, with an increment of [0-10] per cent.⁵ The parties estimate that there are over 25 other global suppliers of metallic effect pigments, two of which each have an estimated share of supply over 10 per cent.

Metallic effect pigment inks

26. Shares of supply have been difficult to obtain due to conflicting evidence on the extent of in-house production of metallic effect pigment inks by ink manufacturers. The parties estimated that up to 80 per cent of metallic effect pigment inks are produced in-house by ink manufacturers. However,

⁵ If one includes the three competitors that Altana has minority shareholdings in, the parties have a combined share of approximately [30-40] per cent, with the increment remaining [0-10] per cent.

this was not corroborated by the OFT's own investigation, with third parties suggesting that the majority of ink manufacturers no longer manufacture metallic effect pigment inks. Four of the five largest ink manufacturers however indicated that they did manufacture some metallic effect pigment inks but that the majority of the metallic effect pigment ink they supplied to their customers was bought in from the parties.

27. Third party responses were such that the OFT could not get a clear picture of market power and the OFT could not draw any conclusions from shares of supply.

Non co-ordinated effects

Metallic effect pigments

28. The parties contended the market was competitive and provided evidence of contracts lost to a number of competitors in 2006/7. Third party customers between them listed ten alternative suppliers (this was consistent with independent industry reports), although several indicated that they may not switch in light of a five to ten per cent increase due to the costs of reformulation. Few customers however expressed any concerns about the merger. One competitor expressed concerns, in relation to a reduction from five to four suppliers of copper and bronze pigments in the EU, although there would still be around ten suppliers worldwide. Other competitors indicated that the market would remain competitive post-merger.
29. On the basis of Wolstenholme's small share of supply pre-merger and the number of alternative suppliers, there is no evidence that the merger will result in a substantial lessening of competition in relation to metallic effect pigments in the UK. Metallic effect pigments are not therefore considered further.

Metallic effect pigment inks

30. Third parties considered the parties to be the main suppliers of metallic effect pigment inks but only two third parties raised serious concerns. Comments suggested that as metallic effect pigment inks account for only a small proportion of sales by ink manufacturers (less than five per cent) this limited concerns about the impact of price rises or lack of choice.
31. A small number of third parties suggested that any price rises would be difficult to pass on to end users and that, in the long run, designers would stop using metallic effect pigment inks in designs if prices increased. The OFT was not however able to independently verify this with end users.

32. The parties suggested that they would face continued competition from ink manufacturers that produce metallic effect pigment inks in-house. As noted above, the OFT had difficulty in ascertaining the extent which ink manufacturers produce metallic effect pigment inks in-house. However, it is clear that at least four of the largest ink manufacturers produce metallic effect pigment inks, and the OFT believes, based on the responses it has received, that at least some of them could be expected to increase production in the event of an increase in prices. They will therefore continue to provide some competitive constraint post-merger.

Barriers to entry and expansion

33. The OFT considered the following in relation to metallic effect pigment inks:
- i) Barriers to new entry
 - ii) Barriers to entry by large ink manufacturers
 - iii) Barriers to entry/expansion into the EU by ink manufacturers from the US and Far East
 - iv) Barriers to expansion by existing European suppliers

Barriers to new entry

34. The parties submitted that barriers to new entry were low, with no technical barriers and low costs.⁶ One third party suggested that costs were low compared to metallic effect pigments and manufacture could be done on conventional equipment, while another suggested new manufacturing facilities costing upwards of £1 million would be needed and technical staff would be difficult to find.

Barriers to entry by large ink manufacturers

35. Several third party ink manufacturers stated that they would not consider manufacturing their own metallic effect pigment inks. The manufacturing process was considered more technical and costly compared to other types of ink (requiring for example a controlled environment to contain the reactive pigment) and the costs involved were not justified compared with the proportion of sales (typically five per cent) that metallic effect pigment inks accounted for.
36. Despite some third party comments, two ink manufacturers did however believe that it would be simple for ink manufacturers to move production in-house. Further, four of the largest ink manufacturers do manufacture

⁶ According to examples provided by the parties, a [...] tonne capacity plant in the EU would cost approximately £[...], while a [...] tonne capacity plant in China would cost approximately £[...].

some metallic effect pigment ink, which indicates that in-house production is cost effective in some cases.

Barriers to entry/expansion into the EU by ink manufacturers from the US and Far East

37. Third parties stated that they saw no reason why non-EU firms could not supply them and stated that they would be willing to look to source from non-EU firms if prices rose.
38. The parties stated that two companies from the Far East already supply a small number of EU customers, demonstrating distribution is possible. Further, third parties stated that EU manufacturers of metallic effect ink pigments had lost customers to new Chinese manufacturers and that it would be inevitable that Chinese manufacturers would move into the metallic effect pigment inks market. One US manufacturer noted that it saw the merger as an opportunity for potential entry into the EU.⁷

Barriers to expansion by existing European suppliers

39. The parties considered that barriers to expansion by existing European suppliers are low. This was largely supported by third parties. Third party suppliers stated that they either were expanding, or would be prepared to expand their business to supply new customers. Several third parties agreed that expansion of capacity by 20 per cent would be possible within 6 months, with one estimating the cost at £130,000. Whilst existing European suppliers are small, the evidence suggests that combined they would be able to replace the constraint that pre-merger Wolstenholme exerted on Altana.

Conclusion

40. Overall, the available evidence indicates that barriers to entry seem higher than barriers to expansion. Further, the available evidence indicates that a combination of expansion by EU suppliers and entry into the EU market would enable UK customers to threaten to switch to a range of EU suppliers and thereby deter or defeat any attempts by the merged entity to capitalise on the loss of rivalry brought about by the merger.

Buyer power

41. The parties submitted that they were dependent on sales of metallic effect pigment inks to a few large customers. However, few third party customers stated that they had any negotiating power. The OFT does not

⁷ [...]

consider, therefore, that buyer power, on its own, would be sufficient to mitigate any competition concerns.

VERTICAL ISSUES

42. The merger does not raise any vertical competition concerns.

THIRD PARTY VIEWS

43. The OFT received comments from a number of competitors and customers, which are discussed above. In summary, only three third parties raised concerns over the effect of the merger in the metallic effect pigment market. However, these concerns were inconsistent with other third parties and independent industry reports.

44. Third party comments regarding metallic effect pigment inks were more mixed. The majority of third parties indicated that the merging parties were the largest suppliers and that there could be a decrease in competition, but few said that they were concerned by the merger, mainly due to the small proportion of business for which metallic effect pigment inks account. On further questioning, some ink manufacturers were found to produce their own metallic effect pigment inks and many believed they could switch to smaller suppliers due to low barriers to expansion.

ASSESSMENT

45. The parties overlap in the supply of metallic effect pigments and metallic effect pigment inks.

Metallic effect pigments

46. The parties will be the largest supplier of metallic effect pigments post-merger holding a global share of supply of [20-30] per cent (with an increment of [0-10] per cent). A number of competing suppliers worldwide that have been identified by third parties will be expected to continue to provide a competitive constraint. On this basis, the OFT considers that there is no realistic prospect that the merger will result in a substantial lessening of competition in the supply of metallic effect pigments in the UK.

Metallic effect pigments inks

47. Third parties identified the parties as the main suppliers of metallic effect pigment inks. However existing EU manufacturers of metallic effect pigment inks, while smaller than the parties, have indicated that expansion would be easy and two have indicated that they see the merger as an opportunity to obtain more business. Further, suppliers from the Far East

and US can be expected to start or increase supply into the EU. On this basis, the OFT considers that there is no realistic prospect that the merger will result in a substantial lessening of competition in the supply of metallic effect pigment inks in the UK.

48. 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

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