OFFICE OF FAIR TRADING

Anticipated joint venture by JPMorgan plc and Cazenove group

The OFT's decision on reference under section 33(1) given on 13 January 2005

Please note square brackets indicate information excised at the parties' request.

PARTIES

1. **JPMorgan Plc** (JPMorgan) is a financial holding company with publicly traded shares that are widely dispersed. Both the bank and non-bank subsidiaries of JPMorgan operate in the USA as well as through overseas branches and subsidiaries, representative offices and affiliated banks. In 2003, JPMorgan's UK turnover was £3,356 million. In the year ending 30 April 2004, the turnover of the JPMorgan businesses to be contributed to the joint venture was [].

2. **Cazenove Group** (Cazenove) is an independent investment bank which primarily operates in the UK. It is active in corporate finance, capital markets and equities and also has fund management and private equity businesses. Approximately 48 per cent of its shares are owned by its current employees and nine per cent are held in employee benefit trusts. Cazenove changed from a partnership to corporate status in 2001. It is not listed on any stock exchange. For the year ending 30 April 2004, Cazenove's total turnover generated by UK clients was £206 million.

TRANSACTION

3. JPMorgan and Cazenove propose to form a 50:50 joint venture in the UK which they will jointly control. It will be active in M&A advisory services, equity underwriting services, debt underwriting services, and corporate broking services.

4. The parties notified the transaction on 1 December 2004 and the statutory deadline for consideration is 14 January 2005.

JURISDICTION

5. As a result of this transaction, JPMorgan and Cazenove will cease to be distinct. The turnover generated by UK clients to be transferred to the joint venture is [in excess of £70 million] and [in excess of £70 million] for JPMorgan and Cazenove

respectively so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. 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.

RELEVANT MARKET

Product market

6. The parties overlap in the provision of investment banking services, specifically:

- **M&A advisory services.** This involves the provision of corporate advice on acquisitions and disposals by trade purchases/sales, public bids, privatisation, corporate restructuring, corporate rescues and advice on de-mergers;
- **Equities and debt underwriting services.** This involves an investment bank insuring (underwriting) the risk of adverse market price fluctuations. This is managed by buying the securities or otherwise undertaking to buy any unsubscribed shares from the issuing corporation at the agreed issue price and then selling the securities to the public. The profit is earned on the spread between the buying and selling price; and
- **Corporate broking services**. Corporate brokers act as intermediaries between corporate clients and investors, giving advice on strategy, deals and market intelligence about a firm's share price.

7. In the supply of each of M&A advisory activities, equities and debt underwriting services and corporate broking services, substitution on the demand side would appear limited, since each sector is designed to meet specific client requirements.

8. On the supply side, it may be possible for companies active in the provision of one type of investment banking service to move into other areas with relative ease. In particular, corporate broking work tends to be linked to other investment banking activities and most providers of other such services also provide corporate broking. One third party stated that corporate broking services are 'tacked on to' other services and hence switching into this activity is not especially difficult.

9. It has not been necessary in this case to reach a final view on the appropriate frame of reference since no competition issues arise howsoever it is defined. For the purpose of assessment in this case, the OFT has considered the competitive effects of the transaction on the supply of M&A advisory services, equities underwriting services, debt underwriting services and corporate broking services.

Geographic market

10. Investment banks are generally global in nature with operations in more than one jurisdiction and leading players compete on a national level and have operations in

the main financial centres throughout the world. With regard to equities and debt underwriting services, the European Commission has concluded that these markets appear to be global since major players are competing for major issues all over the world.[1]

11. Conversely, with respect to M&A services, the need for detailed knowledge of corporate law and business structures, accounting rules, regulatory regimes and market prices may require a physical presence in the country where the clients are situated or transacting. For these reasons, the European Commission has taken the view that the market for the supply of M&A services is national in scope.[2] Cazenove's operations are primarily located in the UK and its M&A services focus on UK to UK transactions whereas JPMorgan commonly advises on cross border transactions involving UK companies as well as purely domestic transactions. Similarly, the corporate broking services of Cazenove concentrate on UK transactions whereas the broking services supplied by JPMorgan are both cross border and domestic.

12. Although no definitive conclusion has been reached on the exact delimitation of the relevant geographic frame of reference, for the purpose of assessment, the OFT has taken a cautious view and assessed the competitive effects of the transaction at a national level.

HORIZONTAL ISSUES

Market shares

13. Share data from 2003 provided by the parties indicates that post-merger, their combined share of supply of M&A advisory, equity underwriting services, and debt underwriting services respectively will in no case exceed 12 per cent and in each case the increment is less than six per cent with a number of alternative suppliers remaining. The data also show that between 2001 and 2003 the parties' shares of supply, as well as that of their competitors, fluctuated considerably. This is evidence of a high degree of switching between service providers, suggesting a dynamic marketplace and not one in which the merger may be expected to reduce competition materially below current levels.

14. Furthermore, third parties have confirmed that the parties' operations are largely complementary: JPMorgan is mostly active in equities and bond trading and debt underwriting, sectors in which Cazenove is either non-existent or very small. In relation to M&A advisory services, Cazenove focuses primarily on domestic

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[1] See, for example, Case IV/M.597 *Swiss Bank Corporation/SG Warburg* [1995].

[2] See, for example, Case COMP/M.2158 *Credit Suisse Group/Donaldson, Lufkin and Jenrette* [2000] and Case IV/M.597 *Swiss Bank Corporation/SG Warburg* [1995].

transactions, whereas JPMorgan is active mainly in cross-border transactions. Moreover, M&A and equities underwriting services are generally provided on a transaction-by-transaction basis, so with each new transaction, a client can switch supplier at no cost and is not bound by previous choices.

Corporate broking

15. The parties state that they do not charge[3] a retainer for corporate broking services[4] and that the payment received for such activities tends to be linked to other investment banking activities for which they are paid. Thus, there is no readily identifiable separate revenue stream for the provision of corporate broking services. In order to assess the relative positions of the parties in this sector, information has been provided on the number of formal broking relationships that each of the parties has with FTSE 100 and FTSE 250 companies.

16. Cazenove has a formal broking relationship with 43 FTSE 100 companies and 90 FTSE 250 companies in the UK. In contrast, JPMorgan has formal relationships with only three FTSE 100 companies and three FTSE 250 companies in the UK. Cazenove is by far the largest supplier, with the second largest supplier (ABN Amro) having 25 FTSE 100 brokerships.

17. Despite the strong position of Cazenove, the joint venture is not considered to raise competition concerns for the following principal reasons. First, the parties are not each other's closest competitor: JPMorgan is only the 11th largest supplier of corporate broking services and bid data submitted by it indicates that in many cases Cazenove did not bid against it. Even where both parties did bid, a number of other credible suppliers also competed. Second, most FTSE companies have at least two brokers which compete with each other so that if a conflict of interest arises involving one, the other can act. As a result, only six of Cazenove's FTSE 100 customers do not have an alternative provider listed.

18. One competitor raised a concern that the joint venture enhanced the prevalence of integrated houses. It is suggested that these houses are able to cross-subsidise their operations and give away (or at least sell at a loss) advisory services to the detriment of other competitors. Given that both Cazenove and JPMorgan already supply a range of services, it does not appear that the joint venture would materially enhance the possibility of any such behaviour. Moreover, most of the other suppliers in this area are similarly integrated.

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[3] The parties have requested that this point be clarified in that generally it is unusual for a retainer to be charged for corporate broking services.

[4] The aim of offering corporate broking services is to develop a relationship with the client to ensure the bank is better placed than any of its competitors to pitch for transactional work.

Barriers to entry and expansion

19. The main barrier to entry in the supply of all of the overlapping services is the need to establish a reputation for providing good impartial advice. This may be overcome by established and experienced advisers starting up their own companies or by new entities recruiting experienced individuals or teams. One third party indicated that it takes around six months to become regulated and estimated that costs would amount to £1 million. There are at least five examples of entry in the past three years.

Buyer power

20. There are a large number of well informed customers in all of these investment banking sectors. There are no fixed contracts or significant barriers to switching between service providers, although the importance of a close relationship between provider and client and a broker's knowledge and experience of the customer may create a degree of inertia among customers. The parties have supplied many examples of customers won or lost over a year demonstrating a high degree of switching.

VERTICAL ISSUES

21. This transaction raises no vertical concerns.

THIRD PARTY VIEWS

22. The majority of customers were unconcerned about this transaction. Only one customer expressed concern with respect to M&A advisory services and equity and debt underwriting services given the high level of fees charged. However, given the low shares of supply and small increments it is not considered by third parties that the joint venture will materially affect competition in these sectors. One competitor raised a concern that the joint venture would increase the prevalence of integrated houses. This is addressed at paragraph 18 above.

ASSESSMENT

23. The parties overlap in the provision of investment banking services, specifically M&A advisory services, equities and debt underwriting services and corporate broking services. In the supply of each of M&A advisory services and equities and debt underwriting services, the parties' combined share of supply will amount to no more than 12 per cent. The evidence received in this case, including that showing significant fluctuations in shares of supply in these sectors, suggests a dynamic marketplace with regular switching between suppliers and it is not considered that the joint venture (given, *inter alia*, the small share increments involved) will reduce competition in these sectors materially below current levels.

24. In the supply of corporate broking services Cazenove is the leading player in the UK but no concerns arise as JPMorgan has only a limited presence in this sector resulting in a minimal share increment, and there will remain a number of alternative suppliers post merger.

25. 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 for goods or services.

DECISION

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