
Anticipated acquisition by Brakes Bros Limited of Woodward
Foodservice Limited

ME/3727/08

The OFT's decision on reference under section 33(1) given on 19 August 2008.
Full text of decision published 22 August 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. **Brakes Bros Limited (Brakes)** is active in the supply of food and related products to the catering industry in the UK and France. It provides delivered wholesale and contract distribution and it also supplies food products to the retail sector. Brakes was acquired in 2007 by Cucina Acquisition (UK) Limited, a company controlled by certain funds of Bain Capital.
2. **Woodward Foodservice Limited (Woodward)**, ultimately controlled by **WF Group Holdings Limited (WF Group)**, is also active in the supply of food and related products to caterers in Great Britain. It provides delivered wholesale and provided contract distribution and it also supplies food products to the retail sector. In its last reported financial year (year ending 31 March 2007) the UK turnover of Woodward was £187 million.

TRANSACTION

3. The proposed transaction involves the acquisition of sole control of Woodward by Brakes. In 2006 the WF Group acquired another UK foodservice operator which trades under the name of DBC. The proposed

transaction does not involve DBC's foodservice business, which will continue to operate as an independent entity.

4. The parties notified the transaction to the Office of Fair Trading (OFT) on 27 June 2008. The administrative deadline for the OFT to decide whether to refer the merger to the Competition Commission (CC) is 22 August 2008.

JURISDICTION

5. As a result of this transaction Brakes and Woodward will cease to be distinct. The UK turnover of Woodward exceeds £70 million, 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.

MARKET DEFINITION

6. The parties overlap in the wholesale supply of foodservices to caterers. The parties also overlap in the supply of food products to the retail sector. However, given the negligible sales and the fact that no third parties raised any concerns about it, this latter overlap is not going to be considered further.

Product scope

7. The foodservice supply industry can be segmented according to several criteria:
 - by temperature range, that is frozen, chilled/fresh and ambient
 - by mode of supply, that is delivered wholesale, contract distribution, cash and carry, retail, individual supply companies, and
 - by type and size of customer, that is national accounts (large customers with outlets across the country) and independent customers (individual businesses, small chains, local councils, generally located in a particular region).

8. Both parties supply all temperature ranges to independent as well as national customers. However, while Brakes is active in supplies both via delivered wholesale and contract distribution, Woodward carries out only delivered wholesale.

Segmentation by temperature range

9. From a demand perspective there is at least a degree of substitutability between the different temperature ranges. Most of the parties' competitors and customers told the OFT that substitution between different temperature categories was in principle possible. However, they also said that switching could be complicated in practice, as it would require storage and cooking adjustments, changes to menus and training of staff.
10. On the supply side, the parties maintain that since the storage and transportation of chilled and ambient products are similar, these two categories are substitutable as they can be transported in the same vehicle. Switching to the supply of frozen food is more costly in view of the additional equipment required to keep food at very low temperatures. However, switching to frozen has occurred in the past and a number of suppliers now use multi-temperature vehicles which can supply all temperature ranges simultaneously.
11. On the basis of the reviewed evidence, there is some scope for demand and supply-side substitution between all temperature ranges, but it is not clear whether it is sufficient to consider all temperature ranges in the same relevant market. For the purpose of this case the OFT has considered each range separately as well as all combined, and concluded that no competition concerns arise even on the narrowest market definition.

Segmentation by mode of supply

12. With regard to the mode of supply, as noted above, the parties only overlap in delivered wholesale. Delivered wholesalers source, stock, market and deliver a range of food products to caterers. Companies operating in this segment provide customers with a range of product choices, often including own-brand products, and may provide other services such as menu planning and recipe ideas. Customer relationships are governed by long-term contracts (for large corporate customers) or driven by daily trading activities (for independent customers).

13. Brakes also provides foodservice supplies through contract distribution, which involves specialist companies providing transport for large catering chain operators which negotiate food purchases directly with food manufactures and wholesalers. Customers are normally large corporate customers.
14. In addition to other delivered wholesale suppliers, the parties contend that they are also constrained by cash and carry, supermarkets and individual distributors. The OFT's investigation indicated that the degree of constraint posed by each of these modes on delivered wholesalers varies according to the type of customer being served.
15. Third parties responses received by the OFT show that national customers considered delivered wholesale and contract distribution as adequate substitutes, but independent customers stated that they could not use the contract distribution mode of supply.
16. Some customers told the OFT that they do not consider cash and carries and supermarkets as an option because of the need to arrange delivery involving additional costs, the degree of security of supply and because of the limited range of frozen food they provide. However, there is evidence that customers are already using cash and carries for a number of purchases, and that some cash and carry operators and supermarkets have a fleet of delivery vehicles, including multi-temperature trucks, able to deliver all temperature ranges.
17. On the basis of the above evidence, there is some demand and supply-side substitution between all modes of supply. It is not clear whether all modes of supply can be considered part of the same market, as the parties argue. Therefore for the purpose of this case the OFT has considered supply of food products by delivered wholesale and concluded that no competition concerns arise even on this narrowest market definition.

Segmentation by type of customer

18. The parties suggested that foodservice customers could be divided between national accounts and independent customers, although the distinction between them is somewhat blurred.
19. National accounts generally represent high value customers with national presence. Independent customers are characterised by their larger numbers and smaller contract value, and they tend to be regional or one-site operators. It might be the case that independent customers have a wider range of potential suppliers given that they will more likely source from regional suppliers and use alternative suppliers like cash and carries and supermarkets. It is worth noting that many independent customers are members of purchasing consortia, which often include a variety of members and negotiate deals and agreements for their members. These customers when grouped under a purchasing consortium might therefore be more similar to national accounts in terms of purchasing patterns and buyer power.
20. The OFT considered the impact of the merger both separately for each type of customer and for both types as a whole. However, given that the merger does not cause competition concerns even on a narrow basis, it is not necessary to conclude on the issue of whether the market should be segmented according to customer type.

Geographic scope

21. Both parties are active in Great Britain. National accounts tend to use suppliers with national or at least multi-regional reach. It seems that national accounts also use smaller regional and local suppliers to a limited extent. However, these regional/local suppliers are unlikely to provide a good substitute for national or multi-regional suppliers due to their inability to attend to a national customer's needs across the country and therefore do not constitute a sufficient constraint on the national and multi-regional players to be considered as part of the same relevant market.
22. Independent customers use national, multi-regional, regional or local suppliers. The number of alternatives available to independent customers will depend on the number of national players as well as regional and local players serving their region. The OFT therefore considered whether the

merger would significantly reduce choice for independent customers within certain areas of the country.

HORIZONTAL ISSUES

Market shares

23. The parties overlap in the delivered wholesale of all food temperature ranges to both national accounts and independent customers.
24. On a wide market definition including all temperature ranges, types of customers and modes of supply, the parties' combined share of supply is [10-20] per cent with an increment of one per cent. There is another competitor at the same position with a market share of [10–20] per cent. The next competitor has a market share of around nine per cent.¹

Impact on national accounts

25. According to the data provided by the parties, Brakes' share of the markets for the delivered wholesale of frozen, chilled and ambient food to national customers is [45-55] per cent, [50-55] per cent and [30-35] per cent respectively. Given the minimal presence of Woodward in the national accounts market, the increments are small at less than one per cent for all temperature ranges.
26. In addition, as discussed above, the evidence before the OFT indicates that national customers considered delivered wholesale and contract distribution as adequate substitutes, and therefore a more appropriate frame of reference is one which includes contract distribution as well as delivered wholesale. In this wider market, the combined market shares are [30-40] per cent for frozen food and [10-15] per cent or less for chilled and ambient food, with increments of less than one per cent. None of the large national customers were concerned about the merger.
27. In view of the above, the OFT does not believe that the merger raises competition concerns in the supply of food products to national customers.

Impact on independent customers

28. Taking into account third parties' responses, the merging parties face competition in all temperature segments from competitors in the delivered wholesale market segment. As discussed above, many small independent customers also use cash and carries for some of their requirements although the constraint posed by cash and carries on the merging parties is likely to be weaker.
29. Independent customers do not have the same reach as national accounts and can therefore be served by both national and regional players as long as they supply the independent customer's local region. National market shares of the parties therefore will not be indicative of their relative competitive strength on the regional level.
30. The OFT received no complaints from independent customers about the impact of the merger on any particular local or regional area. Independent customers were able to name as alternative suppliers at least some of the national and sub-national suppliers mentioned by the merging parties as their competitors. These sub-national competitors themselves confirmed that they were competing with the merging parties for the custom of independent customers.
31. The merging parties as well as third parties were unable to provide the OFT with regional market share estimates. However, the OFT analysed carefully information about the spread of regional and multi-regional delivered wholesale operators which was provided by the parties but generated by an independent market research company (CACI). Although more competitors tend to be present in highly populated areas and fewer in remote rural areas (which is consistent with transport cost minimisation), the evidence before the OFT indicates that the merger does not raise competition concerns in the supply to independent customers in any region of Great Britain.

¹These market share data have been supplied by the parties. The parties' competitors provided similar data. The parties' data were collected by Horizon, which as the OFT understands is a trusted source of information by the foodservice industry, as well as AC Nielsen.

32. Some independent customers and one competitor expressed concerns about the lack of alternative suppliers. However, these concerns were not supported by evidence and were inconsistent with the OFT's findings about the availability of alternative suppliers. In addition, based on the detailed interviews that the OFT conducted with each of the concerned third parties, they appeared to be more unwilling to switch rather than unable to do so. This view was also expressed by some of the merging parties' competitors.
33. The OFT considered the extent to which this unwillingness to switch of some independent customers might allow the merging parties to increase prices or reduce quality post-merger. The OFT was told that some independent customers were disinclined to switch away from either Brakes or Woodward even when such a switch would have been possible and economically advantageous. Given that such customer loyalty is towards their current supplier (be it Brakes, Woodward or another supplier), the OFT does not consider that the merger itself enhances any market power the merged entity might have with regard to this particular category of customer.
34. The OFT singled out the area of Inverness as an area of potential concern because the map provided by the merging parties indicated that the number of wholesale distributors around Inverness will decrease from three to two. However, on further investigation the OFT found a number of alternative suppliers in the area capable of and willing to supply customers, and any attempt by the merged entity to increase prices or reduce quality would be unprofitable. Thus, the OFT concluded that no competition concerns arise in that particular area.

Barriers to entry and expansion

35. Given that no competition concerns arise from this merger, it is not necessary to conclude on the issue of barriers to entry.

THIRD PARTY VIEWS

36. The OFT received comments and views about the merger from a large number of third parties, including competitors and customers of the merging parties.

37. None of Brakes' national customers and competitors for the national customers expressed any concerns about the merger. None of the competitors identified by Woodward expressed concerns. The concerns expressed by third parties have been dealt with above, but they were largely unsubstantiated and/or not merger-specific.

ASSESSMENT

38. The parties overlap in the delivered wholesale of all food temperature ranges to both national accounts and independent customers. On a wide market definition including all temperature ranges, types of customers and modes of supply, the parties' combined share of supply is [10-20] per cent with an increment of one per cent.
39. There is not a realistic prospect that merger will substantially lessen competition in the market for national accounts given that there are a number of alternative suppliers to customers, notably under the contract distribution mode, and that the overlap between the parties in this segment is very small, as evidenced by the minimal market share increment (less than one per cent). No third party raised any concerns about the impact of the merger on this segment.
40. In the supply of food products to independent customers, the OFT considers that the parties are constrained by local or regional suppliers to different regions of Great Britain, and that the merger does not raise competition concerns in any particular region. In addition, the parties are to some extent constrained by other modes of supply such as cash and carries.
41. Some concerns were expressed by some independent customers who seem very unwilling to switch. However, the evidence before the OFT suggests that the current lack of switching is mainly caused by customers' conservatism rather than barriers to switching or lack of alternative suppliers, and that the merger will not increase the merging parties' ability to increase prices or decrease quality to these particular customers.
42. 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

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