

Completed acquisition by Fishers Services Limited of assets of the Sunlight Service Group Limited

ME/3633/08

The OFT's decision on reference under section 22(1) given on 13 June 2008. Full text of decision published 23 June 2008.

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## **PARTIES**

1. **Fishers Services Limited** (Fishers) is a textile services company which offers linen rental, work wear hire, washroom hygiene services and laundry services from four plants in Scotland to the whole of Scotland and the north of England.
2. **Sunlight Service Group Limited** (Sunlight) is part of the Davis Service Group plc, a leading provider of textile and related services across Europe. The assets Fishers acquired from Sunlight in Scotland were used for textile services. The annual turnover of the acquired assets for 2008 is estimated at less than [ ] million.

## **TRANSACTION**

3. The assets acquired by Fishers (Acquired Assets) include:
  - Sunlight's interest in the leasehold of a storage depot in Inverness, where linen products that have been or are due to be laundered are stored
  - rights under the contracts with Sunlight customers based in the north of Scotland, together with associated customer records, and
  - 12 employees transferred by virtue of the Transfer of Undertakings (Protection of Employment) Regulations from Sunlight to Fishers. Five were subsequently made redundant by Fishers following a consultation exercise.
4. The OFT examined this merger as a result of an unsolicited complaint. The deal completed on 3 March 2008. The extended statutory deadline expires on 8 July 2008.

## **JURISDICTION**

5. As a result of this transaction Fishers and the Acquired Assets – which the OFT considers to form an enterprise for the purposes of section 23(1) of the Enterprise Act 2002 (the Act) - have ceased to be distinct. The parties overlap in the supply of linen rental services and the share of supply test in section 23 of the Act is met in Scotland, which is a substantial part of the UK. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## **MARKET DEFINITION**

6. Fishers is active in the supply of linen and garment rental and laundry services, in particular to the leisure and hospitality sector (for example hotels and restaurants) as well as the healthcare sector (for example hospitals and care homes) in the north of England and Scotland. The Acquired Assets were all used in the provision of linen rental and laundry services in the north of Scotland. The parties therefore overlap in the supply of linen rental and laundry services in Scotland, and the north of Scotland in particular.

### **Product scope**

7. Textile maintenance services, of which linen rental services is part, can broadly be divided into three segments:
  - rental – where textiles are provided (and, where necessary replaced) by and serviced (collected, laundered and delivered) by the textile maintenance company
  - contract – where the textiles are owned by the customer but serviced by the service provider, and
  - total linen management – where the service provider not only supplies, launders and delivers the linen, but also runs the linen room and the distribution of the linen throughout the organisation, such as a hotel or care home.
8. Fishers submitted that the relevant product scope is as wide as all textile maintenance services. This view is supported by the high degree of both supply and demand side substitution that is available in this market.
9. Customers also have the option to self service their laundry requirements should they be dissatisfied with the price or service levels offered by the service provider - this is known in the industry as on premise laundry (OPL). Such customers can purchase the necessary textiles direct from the manufacturers and launder it in-house, using a range of small commercial equipment, such as smaller commercial washing, drying and ironing machines.

10. The parties have submitted that OPL is a realistic option for their customers and provided details of customers that had taken their laundry requirements in-house. Third parties supported this view.
11. On the basis of the evidence provided, the OFT considers the appropriate product scope to be the supply of textile maintenance services as outlined in paragraph 6 above but has taken a cautious approach and excluded OPL which is considered under the Buyer Power section below.

### **Geographic scope**

12. The available evidence indicates that, from the demand side perspective, the smallest geographic market is the area previously served by the acquired depot in Inverness. Fishers call this area the 'north of Scotland' and it consists of all the Inverness and Kirkwall postcodes and the northern parts of the Paisley and Perth postcodes.
13. From a supply side perspective, the OFT considers that the geographic scope can be widened to include all of Scotland – as there are several suppliers who provide these services across Scotland. The OFT does not discount the possibility of the geographic scope being wider still as some of the contracts with large hotel chains are tendered nationally.
14. Based on the information provided by the parties and third parties, the OFT considers that it is most appropriate to consider the geographic scope as being the north of Scotland. However, for completeness, the OFT has also looked at the market in Scotland as a whole.

## **HORIZONTAL ISSUES**

### **The counterfactual**

15. Fishers submits that absent its acquisition of the assets, the depot would have closed and the employees made redundant, resulting in a loss of service for Sunlight's customers. [ ]
16. The OFT takes a cautious approach where it is claimed, absent the merger, that the target would have exited the market or that the target assets would have transferred to another acquirer. The OFT generally relies on pre-merger conditions as the appropriate proxy for the counterfactual and will consider the competitive impact of any transaction against such a standard before considering whether another counterfactual should be substituted.
17. However, where, as in this case, the merger raises no concerns relative to pre-merger conditions, as nothing will turn on the OFT's adoption of its

default counterfactual of pre-merger conditions there is no need to consider the detailed factual questions that may arise under other substitute counterfactuals.

### **Unilateral effects**

18. Fishers and the Acquired Assets overlap in the supply of textile maintenance services in Scotland and in the north of Scotland in particular. On the basis of the evidence available, the acquisition creates a combined share of [31-36] per cent (increment [5-10] per cent) in the north of Scotland – with the second largest competitor having an estimated one fifth of the market, two competitors with between five and 10 per cent of the market and a significant tail of smaller competitors. In Scotland as a whole the transaction created a combined share of [45-50] per cent as a result of a tiny increment of [less than two] per cent. These estimates of market share have been corroborated by third parties.
19. Although Sunlight has disposed of its assets in the north of Scotland it maintains a presence in the rest of Scotland. Fishers submit that Sunlight is able to compete for contracts in the north of Scotland by sub-contracting services from Fishers or other smaller suppliers. This is evidenced by the fact that [ ].

### **Coordinated effects**

20. In this case, the OFT has seen no evidence of pre-merger coordination. Moreover, the OFT is not aware of any evidence that the merger will result in the market structure being more conducive to coordinated behaviour (either based on price or non-price factors such as quality or range of service), in particular given that the changes to the market are minimal.

### **Barriers to entry and expansion**

21. While Fishers has submitted that there is significant scope for new entry as well as expansion by existing competitors, it also submits that, at present there are a number of disincentives to new entry particularly in the north of Scotland. For example, due to the rural nature of the north of Scotland, the customer base is widely spread which leads to significant distribution and logistics costs. Fishers also considers that it may be difficult to find sufficiently skilled labour to set up and run an industrial laundry operation in the north of Scotland. Additionally, it submits that the general down turn in the economy may affect the leisure industry in Scotland leading to downward pressure on prices as well as customers exploring in-house supply options.
22. Notwithstanding the potential disincentives to entry highlighted by Fishers, the OFT considers that, overall, barriers to expansion within this market are

relatively low, and there are no reasons why expansion would not be possible. Capacity constraints do not appear to be problematic since the OFT has been told of a number of ex Sunlight customers switching to competing suppliers of textile maintenance services. Further, since contracts to supply textile maintenance services are generally awarded through a bidding process this would enable competitors looking to expand to recoup any upfront investment costs by winning a substantial contract.

### **Buyer power**

23. As mentioned above, the market for textile maintenance services is predominately a bidding market with, the OFT understands, contracts typically awarded for fixed periods of three years.
24. Customers of textile maintenance services may be sub divided into three main groups:
  - Large Groups – such as the large hotel groups for example, Whitbread, Accor, Hilton and Thistle
  - Small Groups and large independents – typically consisting of operators running two or three hotels, spending between £50,000 and £200,000 a year on textile maintenance services, and
  - Smaller customers – typically hotels with less than 20 rooms with an annual contract value of between £1,000 and £50,000.
25. The available evidence indicates that the large groups have significant buyer power as their contracts can be worth several hundred thousand pounds per annum. Invitations to tender typically cover a wide area of the UK, such as Scotland and the north of England and will attract bids from national suppliers. These larger customers are able to exercise their buyer power in negotiating competitive deals or by threatening to switch to alternative suppliers or to OPL.
26. Suppliers pitching for contracts from the small groups and large independents are normally a mixture of the larger and smaller suppliers. Sunlight continues to be active in Scotland and as explained above at paragraph 19, its exit from the north of Scotland does not affect its ability to compete for new business across the whole of Scotland. Fishers has also submitted that, due to the relative prominence of sunk costs in this business (for example, equipment purchase) as part of their cost base, small to medium sized suppliers will typically compete heavily on price in order to obtain a contract, which gives the customers a significant degree of buyer power
27. Fishers has stated that the smaller customers will generally be serviced by smaller local operators, which in the north of Scotland provide for some 30

per cent of the market. As well as the threat of switching supplier, customers, of various sizes, commented that the threat of switching to OPL exerted pressure on the prices that Fishers was able to charge. The available evidence suggests that customers have sufficient switching alternatives available, including switching to OPL, evidenced by the fact that, [ ] customers of the Acquired Assets took the opportunity to withdraw from their contract before its expiry date around the time of completion, presented by the need for Fishers to obtain customer consent to transfer the contract.

## **VERTICAL ISSUES**

28. There are no vertical issues.

## **THIRD PARTY VIEWS**

29. Although this transaction was brought to the attention of the OFT as a result of a third party complaint, other third parties contacted by the OFT did not raise any competition concerns [ ]. Any negative comments raised by customers were related to problems with the linen supplied, for example late deliveries or wet linen, and were not merger specific.
30. The OFT considers that concerns expressed by the complainant about a lack of competition resulting from the transaction have not been endorsed by comments received from third parties. One competitor confirmed that his business had won a considerable amount of business from Fishers and was of the opinion that his business would continue to grow.

## **ASSESSMENT**

31. The parties overlap in the supply of textile maintenance services in the north of Scotland. The transaction has resulted in a combined share of [31-36] per cent in the north of Scotland with an increment of [5-10] per cent. Substantial competition remains after the merger, and, despite the disincentives to entry identified by Fishers, the OFT considers that barriers to expansion are relatively low.
32. Apart from the original complainant that triggered the case [ ], customers were content with the level of competition in the market and considered that they were able to put pressure on prices by threatening to switch to other suppliers or by bringing textile maintenance services in house. Similarly, a competitor considered that it was able to compete with Fishers, and anticipated continuing to grow in the future. Any negative comments received related to matters which were not merger specific.
15. Consequently, taking account of all the evidence received, 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.

## **DECISION**

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