

Anticipated acquisition by Nike, Inc of Umbro plc

ME/3419/07

The OFT's decision on reference under section 33(1) given on 16 January 2008. Full text of decision published 6 February 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. **Nike, Inc** (Nike), headquartered in the US and listed on the New York Stock Exchange, is a multi-national supplier of sports/leisure apparel and sports equipment.
2. **Umbro plc** (Umbro), headquartered in the UK and listed on the London Stock Exchange, is also a multi-national supplier of sports/leisure apparel and sports equipment. Umbro's worldwide turnover during the financial year ended December 2006 amounted to approximately £150 million, of which £121 million was achieved in the UK.

TRANSACTION

3. The proposed transaction was announced on 23 October 2007 and comprises the acquisition by Nike of the entire issued share capital of Umbro. Nike filed an informal submission with the OFT on 21 November 2007. The administrative target date for the OFT's decision is 16 January 2008.

JURISDICTION

4. The EC Merger Regulation (Regulation 139/04; ECMR) does not apply because Umbro's EC turnover does not reach the relevant turnover thresholds in Article 1 ECMR.
5. As a result of this transaction, Nike and Umbro will cease to be distinct. Umbro's UK turnover exceeds £70 million, consequently 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.

HORIZONTAL ISSUES

6. The OFT considers that six principal areas in which the parties overlap are valid candidate frames of reference for the purposes of this merger analysis. These comprise the supply of:
- (1) sponsorship of football clubs in order to acquire rights to produce and supply replica football kit ('kit deals')
 - (2) replica football kit
 - (3) branded athletic apparel (excluding replica football kit)
 - (4) cleated football boots
 - (5) athletic footwear (excluding cleated football boots), and
 - (6) sports equipment.

Kits deals

Product scope

7. The parties overlap in the business activity of bidding for rights to provide financial sponsorship to clubs and national teams in return for the exclusive rights to produce and supply approved replica football kit. In general, kit deals are secured for a specified period - typically a number of years.
8. The sports apparel supplier seeks not only to maximise revenues from sales of replica football kit, but also values the brand exposure derived from the association with a particular team. To this end, in the tender and bid process, each football team is evaluated on its own merits in terms of its successes on the field, its profile nationally and internationally, and the size of its fan base. A sports apparel supplier will be chosen by a football team on the basis of the amount of and the terms and conditions on which sponsorship monies and other financial support (for example, royalties on product sales, performance-related bonuses etc) are proposed.
9. In principle, each individual replica kit deal could be considered to constitute its own distinct market, given the bespoke nature of the requirements of an individual football club or national team, and the likely absence of any uniform price for such deals.
10. However, the OFT also believes that distinct tendering and bidding processes may be rendered indistinct by virtue of supply-side substitution

- provided that there is a range of competitors that can bid within all of them.

11. In this regard, the parties submitted that competitors for kit deals comprise a large number of suppliers including Adidas/Reebok, Puma, Le Coq Sportif, Diadora, Errea, Canterbury, Lonsdale, Lotto, Uhlsport, Admiral, Kappa, Under Armour and Hummel.
12. The OFT's analysis of tenders for the kit deals most recently put out by eight leading football clubs in the UK indicates that substantially the same competitors bid for different clubs' kit deal. Specifically, 14 athletic branded apparel suppliers submitted 24 bids in eight tenders. On this basis, the OFT considers that, by virtue of supply side substitution, the supply of football kit deals is a relevant frame of reference for the purposes of this merger assessment.

Geographic scope

13. Nike submits that kit deals are contested by multi-national suppliers at a pan-European if not global level. However, in the absence of reliable share of supply data on a total EU basis, it provided information against the top football divisions in the 'Big Five' footballing nations in Europe (Great Britain, Spain, Italy, France and Germany). These data showed the major apparel manufacturers supply kits to teams across a number of the Big Five countries. For example, Nike, Adidas/Reebok and Puma have kit deals in all five countries while Umbro and Kappa have deals in four of the five countries.
14. Nike proposes that it would be inappropriate for the OFT to examine the impact of the merger on kit deals on a narrower geographic basis - for example by considering the more expensive kit deals for 'top tier' clubs and teams separately from mid/low tier and lower division clubs and less popular or successful national teams.
15. The OFT received some conflicting evidence on the geographic boundaries of the supply of football kit deals. In particular, suppliers' shares of kit deals appeared to vary across countries, with some suppliers strongest in their 'home' countries. This could indicate separate national geographic markets. Conversely, the majority of football clubs who responded to its survey - three of whom had previously negotiated such deals with suppliers in continental Europe - indicated that they would consider switching their replica kit deal to a supplier outside the UK.
16. On balance, therefore, the OFT considers that it is appropriate to consider the impact of this merger on the basis that the geographic scope for the supply of kit deals is at least as wide as the Big Five footballing nations in Europe.

Assessment

17. The merger would increase Nike's share of the supply of kit deals in the Big Five European countries to around [20-30] per cent, an increment of around [5-15] per cent - twice that of the next largest competitor, Adidas/Reebok.
18. The OFT considers that the parties' combined share of European kit deals could be high enough to raise initial concerns for unilateral effects, specifically:
 - participation effects, which arise when a change in bidding behaviour makes competition less vigorous, or when the bid-taker simply has fewer bidders from whom to choose, and
 - information effects, which arise when bidders share data relating to the underlying value of a particular tender, thereby resulting in lower bids being made overall.

Participation effects

19. Nike submits (and responses from football club have confirmed) that the financial support proposed by apparel manufacturers in the context of a kit deal includes one or more of the following:
 - a sponsorship fee
 - royalties on product sales
 - performance-related bonuses (successes within tournaments)
 - marketing commitment (for example, to support 'grass roots' football schemes within the community)
 - product support (for example, the provision of kit and other apparel for a club's senior and junior teams).
20. Having collected bidding data from football clubs, the OFT's analysis indicates that a reduction in the number of bidders does not systematically result in clubs getting worse deals. According to the available evidence, clubs lever the above components in the overall package of financial support in order to obtain favourable deals.
21. Nike submitted details of a total of [15-25] previous kit deals tendered from within various European countries for which the parties had bid over the last 10 years. The OFT's analysis of this data indicates, on the one hand, [that Nike bid against certain other kit suppliers either as often as against Umbro or more often than against Umbro]. On the other hand, the available information indicates that Umbro bid against [the other major kit suppliers] either as often as against Nike or more often than against Nike.

22. Moreover, Nike submitted analysis of the profitability of some of its current kit deals with various football clubs and national associations - as well as the forecast profitability of some clubs and associations targeted by Nike for potential kit deals - which demonstrates that kit deals are often loss-making when the indirect costs of servicing them are taken into account.
23. Football clubs' responses to the OFT's survey (supported by documentary evidence supplied by the parties) indicates that most would switch or consider switching their kit deal to a new supplier in the event of a 5 per cent decrease in the level of financial support in their kit deal, or an equivalent worsening of non-financial terms.
24. Finally, there is support in responses from third parties for Nike's further submission that football teams have the ability to self-supply replica kit.
25. Consequently, the OFT considers that there does not appear to be a realistic prospect of the merger leading to anticompetitive unilateral participation effects in kit deals in the Big Five.

Information effects

26. The more that each football club secures its kit deal via a formal procurement auction, the greater the likelihood of information effects.¹
27. In this regard, Nike submits (and responses from football clubs have confirmed) that kit deal negotiations are not formal tender and bid processes.
28. The OFT therefore considers that there is no realistic prospect of the merger leading to anticompetitive unilateral information effects in kit deals in the Big Five.
29. Overall, the OFT considers that there is not a realistic prospect of the merger resulting in any anticompetitive unilateral effects in relation to the supply of kit deals. In any event, the available information indicates that football clubs have significant power in negotiating kit deals (in terms of the scale and scope of financial support they are able to negotiate, see paragraph 19 above), such that the loss of one bidder raises no significant competition issues. The UK football clubs that commented to the OFT on this aspect of the merger were unconcerned - as was The Football Association.
30. Given the lumpiness and the general irreversibility of kit deals, the fact that the merger increases asymmetry between market participants (thereby reducing incentives to coordinate), and in the absence of any evidence received during the course of its investigation to the contrary,

¹ OFT economics discussion paper OFT923 'Markets with bidding processes' - May 2007

the OFT also does not consider that there is a realistic prospect of the merger raising concerns for coordination between the remaining competitors in the supply of kit deals.

Replica football kit

Product scope

31. Replica football kit consists of authentic reproductions of the kit (typically although not exclusively the shirts) worn by players of a particular football team during a match. Replica kit is produced by or on behalf of most professional football clubs in adult, junior and infant sizes and is worn during tournaments by many football spectators in show of support for a particular club or team.
32. On 1 August 2003, the OFT published a decision on the price-fixing of the replica kits of four league clubs (Celtic, Chelsea, Manchester United and Nottingham Forest) and the England national team.² That decision found that a number of parties including various sportswear retailers (Allsports, Blacks, JJB Sports, Sports Soccer, the John David Group, Florence Clothiers and Sportsretail), Manchester United plc, the Football Association Ltd and Umbro Holdings Ltd and infringed the Chapter I prohibition in section 2 of the Competition Act 1998 (CA98) by entering into price fixing agreements (the CA98 decision).
33. The CA98 decision found that the relevant product market, for the purpose of deciding on the Chapter I infringement, was each individual team's replica kit. This was principally on the basis of a lack of demand-side substitution by fans between different football clubs' replica kit, and consequently an absence of price constraint between one football club's replica kit and any other's. Moreover, the decision concluded that the England team replica kit was complementary to and not substitutable for that of any league club to which a football fan was loyal.
34. On this basis, Nike submits that the supply of replica football kit is in a separate market from the supply of other branded apparel and that each football replica kit is in a distinct relevant market.
35. The arguments put forward by the parties - and those in the CA98 decision - essentially rely on patterns of consumer behaviour among sports retailers with respect to replica kit.³ However, Nike and Umbro are manufacturers of replica kit, so the substitution patterns of interest for market definition are at the wholesale level (i.e. between the retailer and

² CA98/06/2003 - Price-Fixing of Replica Football Kit.

³ Given the price-fixing identified by the OFT was by retailers to consumers, this was entirely appropriate in that case.

the kit manufacturer) and not at the retail level (i.e. not between the football fan and the retailer).

36. The relevant question as regards market definition in the present case therefore is not whether football fans see different teams' replica kits as substitutable ways of showing support but whether retailers see different replica kits as substitutes for the same 'shelf space'. Certainly retailers' preferences may largely be determined by the preferences of football fans, their customers, but they will not in general be entirely synonymous with them.
37. In particular, retailers' demand is likely to be more elastic to changes in the wholesale price than is fans' demand to changes in the retail price because a retailer's demand is granular (i.e. how many of a particular replica kit to stock) whereas a fan's demand is likely to be unitary (i.e. whether to buy a replica kit or not).⁴
38. In addition, the parties and third parties told the OFT that from any one supplier prices are typically the same for replica kits regardless of the team or club which the kit represents.
39. The OFT therefore considers that the appropriate frame of reference is the wholesale supply of replica football kit.

Geographic scope

40. Nike submits that the relevant geographic scope for the supply of replica football kit is likely to be wider than national in the case of most clubs that have an international profile - given the worldwide demand for brands such as Real Madrid, AC Milan, Manchester United and Brazil. In the case of all other replica football kit, Nike proposes that the relevant geographic scope is at least national given that many clubs have supporters located throughout the UK and that the major retailers of replica kit are national chains.
41. In the CA98 decision, the OFT considered that the relevant geographic market for each club's or national team's replica kit was at least as wide as the UK. The relevant price-fixing agreement took effect nationally. In the OFT's view, this could not have been a profitable strategy if the geographic scope were wider than national - not least given that the agreement fixed the prices of the replica kit of at least three clubs with international profiles: Celtic, Chelsea and Manchester United. The OFT has not been presented with any evidence in this case to suggest that the relevant geographic market is sub-national.

⁴ How much more price-elastic is retailers' demand than fans' depends inter alia on the elasticity of the retail price to changes in the wholesale price.

42. Therefore, taking a cautious approach, the OFT sees no reason to depart from the approach taken in the CA98 decision and considers that the impact of this merger on the supply of replica football kit should be assessed on the basis of the geographic scope being no wider than the UK.

Assessment

Unilateral effects

43. At the national level, the merger would bring together the largest (Umbro with [20-30] per cent) and third largest (Nike with [20-30] per cent) suppliers of replica football kit resulting in a combined share of [40-60] per cent - twice that of the next largest competitor, Adidas/Reebok ([20-30] per cent). There would remain a fringe of suppliers consisting of Puma, Diadora, Kappa and others, all with shares of below five per cent.
44. The parties' combined market shares are high enough to give cause for concern over unilateral effects. However, the parties' submitted (and GB football clubs' responses to the OFT's questionnaire appeared to confirm) that athletic branded apparel suppliers' success or failure in securing kit deals (and the size of the fan base of the team for which it wins the kit deal) determines their respective shares of the supply of replica kit.⁵ OFT analysis of shares of replica kit sales combined with switching data of kit deals with football teams corroborates this. Not surprisingly, the biggest impact on shares of replica kit sales coincided with incidences of Britain's largest football teams switching their kit supplier. For example:
- Celtic's move from Umbro to Nike in June 2005 coincided with a steep fall in Umbro's market share and a steep increase in Nike's,
 - Tottenham Hotspur's move from Kappa to Puma coincided with a noticeable fall in Kappa's market share and a noticeable increase in Puma's, and
 - Chelsea's move from Umbro to Adidas in the summer of 2006 coincided with a noticeable fall in Umbro's market share and a noticeable increase in Adidas'.
45. Replica kit sales and shares of supply are also a function of the performance of any particular football team and of its successes or failures in national and/or international arenas.

⁵ The parties further submitted that if a club buys or sells a major player, this in itself also can have a significant impact on replica kit sales. For example, the parties estimated that Real Madrid sold in excess of 1 million additional replica shirts following the signing of David Beckham in June 2003.

46. Umbro's leading position is largely attributable to its having obtained the rights to sell the England team's replica kit, whereas Nike's and Adidas/Reebok's market positions are a result of sales of the replica kit of the individual clubs in the football leagues and divisions. As discussed in paragraph 33, these two types of replica football kit are complements rather than substitutes. Consequently, Umbro's market share appears to overstate its competitive strength in respect of replica club kit sales. The OFT considers that this is consistent with evidence before it that Nike and Umbro do not appear to have been particularly close competitors in making bids to football teams in order to win the exclusive rights to supply replica kit (see paragraph 21 above).
47. Accordingly, the OFT does not consider that there is a realistic prospect of anticompetitive unilateral effects arising in the supply of replica football kit in the UK as a result of the merger.

Coordinated effects

48. Coordination may arise when a market meets certain conditions (see for example the OFT's *Mergers Substantive Assessment Guidance*, paragraphs 4.11 to 4.16, and the OFT decisions of 12 December 2007 regarding the anticipated merger between First Milk Limited and Milk Link Limited, and 11 December 2006 regarding the anticipated acquisition by Wienerberger Finance Service BV of Baggeridge Brick plc). The relevant question in a merger control context is not whether a market is susceptible to coordination in general, but whether the merger may be expected to increase the probability that post-merger, firms in the same market will tacitly or explicitly coordinate their behaviour to raise prices, reduce quality or curtail output.
49. The OFT has considered whether the merger increases the probability that firms will collude (tacitly or explicitly) by reducing competition in the supply of replica football kits. In particular, the OFT has regard to the explicitly coordinated behaviour involving Umbro (as well as several other parties) that was the subject of the CA98 decision.
50. The OFT, however, has not obtained any evidence during the course of its review of the merger that the supply of replica football kits is currently the subject of tacit or explicit coordination.
51. Moreover, there is no evidence presently available to support a theory that the merger raises concerns by creating a material risk that the merger will 'tip' the market towards coordination.
52. In reaching this conclusion the OFT has taken into account that, on the evidence before it, (i) the merger does not create a structural forum for contact between potential members of a collusive oligopoly that did not previously exist; (ii) Umbro does not currently act as a 'maverick' in the sense of acting as a binding constraint on coordination due to incentives

contrary to those of other major firms in the market; (iii) the merger increases asymmetry between market participants which, together with the fact that there is a degree of product differentiation between football kits, reduces incentives to coordinate.

53. With regard to the specific facts of the CA98 decision, the OFT notes that the price fixing arrangements in question occurred a number of years ago, that the arrangements played out vertically at the wholesaler/retailer level (whereas the structural impact of the merger is taking place at the horizontal level between wholesalers), and that Nike was not a party to the arrangements. Moreover, in the absence of any evidence, the OFT considers that it would be too speculative to assume that Nike would prompt Umbro into recidivism, that is further explicit coordination.
54. Accordingly, the OFT does not consider that there is a realistic prospect of the merger resulting in tacit or explicit coordination in the supply of replica football kits.

Branded athletic apparel (excluding replica football kit)

Product scope

55. Branded athletic apparel encompasses badged products within a variety of ranges including performance gear and training kit. Recent decades have seen traditional 'sports' apparel enter into the mainstream of general leisure clothing.
56. Nine football clubs (that sold replica football kit and other branded athletic apparel in their club shops) and two sports retailers informed the OFT that they did not consider replica kit and branded athletic apparel to be substitutable.
57. Intuitively, if other branded athletic apparel is not substitutable by retailers for replica kit, then other branded apparel⁶ is still less likely to be.
58. Moreover, the parties submitted that [65-75] per cent of the value of Nike's sales of branded apparel excluding replica kit was through [less than five] sports retailers⁷, and that [65-75] per cent of the value of Umbro's sales of branded apparel excluding replica kit was through [less than five] sports retailers (being [] of the [less than five] that sold most Nike branded apparel).⁸ The [less than five] sports retailers who account for the majority of Nike and Umbro sales of branded athletic apparel do not sell other 'lifestyle' branded apparel. Adidas and Puma also told us that they sold branded athletic apparel only through sports retailers.

⁶ Branded apparel mentioned by the parties included Ben Sherman, Bench, Diesel, FCUK, Ralph Lauren and Ted Baker.

⁷ Source: parties' submission, Annex 34.

⁸ Source: parties' submission.

59. The OFT therefore, taking a cautious approach, considers that the relevant frame of reference is the supply of branded athletic apparel, excluding replica football kit.

Geographic scope

60. Given that [...], Nike submits that the relevant geographic scope for the supply of branded leisure apparel is likely to be Europe.
61. From data supplied by the parties, however, the OFT observes that competing manufacturers' shares of the supply of branded athletic apparel vary considerably between Great Britain on the one hand and the other European countries in the Big Five on the other, which may suggest that the geographic market is national in scope.
62. The OFT has therefore taken a cautious approach and, without prejudice to the possibility of the geographic scope being wider, has assessed the impact of this merger on the supply of branded athletic apparel within the UK.

Assessment

63. The merger would bring together the largest (Nike) and third largest (Umbro) suppliers of branded athletic apparel in the UK with a combined share of supply of around [25-35] per cent (increment [5-15] per cent).⁹ The market is relatively unconcentrated and the merger does not significantly increase concentration.¹⁰ The second largest competitor would be Adidas/Reebok with a share of supply of around [20-30] per cent. There remains in the UK a fringe of suppliers with high profile brands including, amongst others, Lonsdale, Lacoste, Berghaus and Timberland - shares of supply varying between around [less than 10] per cent and [less than 10] per cent - with a long tail of 'other' suppliers with total share of supply amounting to over [20-30] per cent.
64. The OFT did not receive any evidence to suggest that Nike and Umbro were closer competitors in the supply of other branded athletic apparel than their market shares might suggest.
65. In light of the above, the OFT does not consider that the post-merger shares of supply of branded athletic apparel of the parties or of their competitors raise concerns for unilateral or coordinated anticompetitive effects.

⁹ The parties' data was for GB but is used as a reasonable proxy for the UK.

¹⁰ The HHI (Herfindahl-Hirschman Index) is 1,100 pre-merger with a delta of 300.

Athletic footwear

Cleated football boots

66. In keeping with the submission made by the merging parties to the European Commission in *Adidas/Reebok*¹¹, Nike proposes that the narrowest possible relevant product market affected by the proposed transaction is the supply of athletic footwear. In *Adidas/Reebok*, the parties took the view that a significant proportion of consumers commonly purchase athletic footwear for leisure use and substitute across all types of athletic shoes when making their purchases for both sport and leisure. Nike submits that these observations accord with its own experiences and estimates that approximately [over 50] per cent of athletic footwear is now purchased for non sports uses.
67. Nike submits that football can be played on AstroTurf and on indoor surfaces using footwear that, not having cleats or studs on the soles, is also worn for leisure purposes. Nike also refers to the decision in *Adidas/Reebok* in which the European Commission, without reaching a firm conclusion, indicated that cleated football boots (used for playing on outdoor turf) may constitute a separate market, as it is the only sport category where the footwear appears to be used overwhelmingly for sport.
68. For the purposes of this assessment, the OFT has taken a cautious view and has examined the impact of the merger on the supply of cleated football boots.
69. The merger's impact on the supply of other athletic footwear is discussed in paragraphs 77 and 78.

Geographic scope

70. Based on the same factors that it outlined in relation to branded athletic apparel, Nike submits that the geographic scope for the supply of all segments of athletic footwear, including cleated football boots, is likely to be Europe-wide.
71. From data supplied by the parties, however, the OFT observes that competing manufacturers' shares of supply vary between the Great Britain on the one hand and the other countries in the Big Five on the other.
72. The OFT has therefore taken a cautious approach and has assessed the impact of this merger on the supply of cleated football boots in the UK.

¹¹ Case No COMP/M.3942 Adidas/Reebok - 21/01/06.

Assessment

73. The merger brings together the second (Nike) and the fourth (Umbro) largest suppliers in the UK with a combined market share of around [40-50] per cent (increment [less than 10] per cent).¹² The OFT considers that the increment to Nike's share of the supply of cleated football boots is not large enough to raise concerns for adverse unilateral effects, in particular as Umbro's share has been declining for the past two years.
74. Post-merger, the market for cleated football boots will effectively be a duopoly (with the next largest competitor, Adidas/Reebok having a market share of approximately [40-50] per cent), which could give cause for concern over coordinated effects.
75. The parties submitted that the potential for coordinated effects in the supply of cleated football boots is undermined by the nature of the products in question and the competitiveness of the market. In particular, the parties informed the OFT that Nike and Adidas/Reebok invest heavily in product innovation and advertising campaigns, launch approximately 30 new styles of football boot each year, and compete aggressively to gain endorsements from top sportsmen and sportswomen.
76. The turbulence in monthly market shares provided by the parties appears consistent with these arguments. Further, the market was almost a duopoly pre-merger - with there being no evidence of prior coordination. In addition, Umbro's share of the supply of cleated football boots has been declining and there is no evidence to suggest that it is or has been a maverick player in this segment.

Other athletic footwear

77. As far as other types of athletic footwear are concerned, and for similar reasons as those which apply to cleated football boots, the OFT has taken a similar cautious approach to the geographic scope and focused on effects within the UK.
78. The merger brings together the largest (Nike) and ninth largest (Umbro) suppliers. However their combined share of the UK supply amount to less than [20-30] per cent with a very small increment ([less than 10] per cent). The OFT does not consider that such market shares (both Nike's share and the increment) are high enough to raise any concerns for anti-competitive effects, in particular as a result of the number of remaining suppliers post-merger.¹³

¹² The parties' data was for GB but is used as a reasonable proxy of the UK.

¹³ These market shares are upper bounds because they are for all athletic footwear, i.e. they include cleated football boots where the parties' market shares are much higher.

Sports equipment

Product scope

79. Nike told the OFT that there are no independent sources of market share information for the supply of sports equipment on either an EU or a UK basis. Nike submits, however, that the relevant product market is likely to be that for the supply of all sports equipment. This comprises a wide range of products that includes, amongst others, backpacks/bags, fitness products (weights, head/wrist bands, belts, gloves, towels, balls, ropes, yoga mats etc), shin guards, kneepads, golfing products, umbrellas, goggles, stop-watches, water bottles, scarves and gloves. According to Nike, many of these products are predominantly used for leisure purposes.
80. In the absence of any independent sources of information on the supply of sports equipment on an EU or UK basis, the OFT considers it appropriate to rely for market definition on an assessment of the characteristics and intended uses of sports equipment products.
81. In this regard, Nike submits that many sports equipment products are used predominantly for leisure purposes (e.g. backpacks, baseball caps, sunglasses, umbrellas, wallets, watches).
82. Of sports equipment used for sports purposes, self-evidently a rugby ball (for example) is not a demand-side substitute for a football. Neither, self-evidently, is a pair of football shin guards or a pair of football goalkeeping gloves a demand-side substitute for a football, or for each other.
83. On the supply-side, however, the parties submitted that the main suppliers of footballs other than themselves are Adidas, Mitre, Patrick and Puma. All these suppliers also supply rugby balls, as does Nike (Umbro does not). The other main suppliers of rugby balls (Gilbert, Centurion and KooGa) do not supply footballs, although they do supply other sports equipment for sports use (e.g. fitness equipment, protective equipment), as do the parties, Adidas, Mitre, Patrick and Puma.
84. Consequently, taking a cautious approach, the OFT considers the supply of sports equipment used for sports purposes (or, more narrowly, for the purposes of major team ball-sports like football and rugby) to be a plausible frame of reference, on the basis of supply-side substitution¹⁴,

¹⁴ Internet searches for market research reports on sports equipment consistently reveal that golf is the largest segment of the sports equipment market, followed by fitness products for the home, racket sports, ball sports and others (e.g. fishing, skiing). There appear to be few multi-sports companies that span more than one of these segments with the exceptions of Dunlop/Slazenger (owned by sports retailer Sports World International), Amer (owner of Wilson and Salomon) and Adidas, which may suggest separate markets for different types of sports equipment.

and separately a frame of reference for sports equipment used for leisure purposes.

Geographic scope

85. Geographic market definition is complicated by the absence of reliable market data. However, Nike submits that there are a wide range of sports equipment (and in particular football equipment) brands in Europe that are not major competitors to the parties in the UK, for example Diadora, Lotto, Reusch, Selsport and Uhlsport. Further, Umbro appears to have little or no presence in football equipment outside the UK.
86. Nike further submits that UK-only sports retailers such as JJB Sports and Sports World International (i.e. Sports Direct, owner of Dunlop/Slazenger) also produce their own sports equipment.
87. Consequently, given the apparent differences in the identities of the major suppliers of football equipment in the UK and in Europe, the geographic scope appears to be national for sports equipment for sports use (or, at least, for ball-sports use).¹⁵
88. Further, a recent market research review of the sports market suggests the geographic market is national.¹⁶
89. For sports equipment for leisure use, however, the geographic scope may be Europe-wide. In particular, in the October 2007 OFT assessment of the Luxottica Group/Oakley, Inc sunglasses and prescription glasses merger, the parties submitted the geographic market for the wholesale supply of sunglasses was Europe-wide. However, given the small combined shares of supply, the OFT did not conclude on the boundaries of the geographic market.
90. For similar reasons, the OFT considers in the present case that there is no need to reach any conclusion on the exact geographic scope for the supply of sports equipment.

Assessment

91. In the absence of specific market share information, the OFT makes the following observations:
 - in the supply of sports equipment for sports use in the UK, the parties' combined market share - based upon sales of balls for team

¹⁵ This finding is amplified when one considers that suppliers of sports equipment for rugby may be part of the same relevant product market (sports equipment for sports use) on the basis of supply-side substitution. Rugby union is a sport with narrower geographic appeal in Europe than football, being restricted essentially to the UK, Ireland, France and Italy. Rugby league essentially is an England-only sport in Europe.

¹⁶ Source: Keynote, Market Review 2007, Sports Market, section 7.

sports as a proxy - is [15-25] per cent with an increment of [less than 10] per cent, which is not high enough to give cause for concern over anticompetitive effects. In this regard, the OFT did not receive any evidence that the parties' market shares were higher than these proxy estimates, nor that the competitive constraint imposed by the parties on each other was higher than that implied by the estimates. Further, the parties submitted that the rights to supply official match balls for sports such as rugby and football are keenly contested, and endorsements from players for particular items of sports equipment such as goalkeeping gloves and shin guards are achieved at considerable expense.

Consequently, and similar to replica football kit, sales of such sports equipment for football appear to be driven by sponsorship deals upstream, further reducing the scope for anticompetitive effects downstream resulting from any increase in market share, and

- in the supply of sports equipment for leisure use in the EU, the same suppliers sell athletic branded apparel (excluding replica kit) and branded backpacks, baseball caps, sunglasses, umbrellas, wallets, watches etc. Consequently, on the basis of sales of athletic branded apparel, the parties' combined market share of sports equipment for leisure use in the EU is [less than 10] per cent with an increment of [less than 10] per cent, which is not high enough to give cause for concern over anticompetitive effects. Equally, the parties' combined share of athletic branded apparel in the UK, although higher than on an EU-wide basis, is not high enough to give cause for concern, in particular given the number of other suppliers in the market place.

VERTICAL ISSUES

92. At present, sports retailer Sports Direct retains a 10 per cent stake in Umbro - Nike having acquired 19.9 per cent of Umbro from Sports Direct on 21 December 2007. Sports retailer JJB Sports owns a 10.12 per cent stake in Umbro. On this basis, a minority of third parties were concerned that, because Nike and Umbro together sponsored the three of the most important teams in England (the England national team, Arsenal and Manchester United), they could exclude other brands, leverage these 'must have' brands and secure additional store and shelf space for their products to the detriment of other suppliers.
93. In this regard, Puma submitted that, if a new UK account approached it for replica kit, then Puma would make supply of its replica kit conditional upon retailer support across other Puma product areas (i.e. conditional upon the retailer purchasing Puma's other sports apparel, branded apparel, sports footwear or other sports equipment).

94. However, retailers' responses to the OFT indicated that replica kit suppliers, including the parties, do not make the wholesale supply of replica kit conditional upon either the retailer also purchasing other branded athletic apparel that the replica kit supplier might supply - or the retailer not purchasing replica kit or other branded athletic apparel from the replica kit supplier's competitors.
95. Nike has submitted copies of Nike's and Umbro's terms of business with retailers, which do not include any such restrictions.¹⁷ (Umbro's terms of business specifically mention that retailers must give the brand at least [5-15] per cent of sales space but also explicitly permits retailers to stock a cross section of products from Umbro's mainstream competitors.)
96. Further, it appears to be the football club's or national association's crest that determines whether a replica shirt is 'must have' (e.g. Arsenal or England) and not the brand of its manufacturer (e.g. Nike, Umbro). Given the apparent ease with which football clubs can switch kit deals - and the apparent power they enjoy in negotiating such deals - it is not clear that (for instance) Arsenal would tolerate the risk of losing royalties from selling fewer replica shirts in order for (say) Nike to be able to sell more non-Arsenal branded sweatshirts.
97. On this basis, the OFT considers that there does not appear to be a realistic prospect of the merger leading to vertical anticompetitive effects.

THIRD PARTY COMMENTS

98. With the exception of the vertical issues discussed above, no substantial concerns were raised by third parties in relation to any of the various frames of reference.

ASSESSMENT

99. The parties horizontally overlap in:
- the supply of kit deals in the 'Big Five' European footballing nations
 - the supply of replica football kit in the UK
 - the supply of other branded athletic apparel in the UK
 - the supply of cleated football boots in the UK
 - the supply of other athletic footwear in the UK
 - the supply of sports equipment for sports use in the UK, and

¹⁷ Nike's terms of business were the subject of a letter dated 15 October 2003 from the OFT's Competition Enforcement Branch 6 stating they are 'transparent, objective and non-discriminatory'.

- the supply of sports equipment for leisure use in an unspecified geographic market.
100. In the supply of kit deals, the merger will increase the market share of the leading player Nike to [20-30] per cent (increment [5-15] per cent) in the Big Five European footballing nations, twice that of the next largest competitor, Adidas/Reebok. However, Nike and Umbro do not appear to have been closer competitors in bidding for kit deals than their market shares suggest, and a reduction in the number of bidders does not appear to result in football clubs getting worse deals. Therefore, there is no realistic prospect of unilateral anticompetitive effects arising. In any event, football clubs appear to have significant negotiating strength in kit deals, such that the loss of one bidder appears to matter little. Further, the OFT has ruled out coordination concerns given that the lumpiness and irreversibility of kit deals together with the fact that the merger increases asymmetry between the market participants reduces incentives to coordinate. Football clubs also were sanguine about the merger, as was The Football Association.
101. In the supply of replica kit, the merger brings together the largest (Umbro) and third largest (Nike) supplier with a combined market share of [40-60] per cent in the UK, twice that of the next largest competitor, Adidas/Reebok. However, sales of replica kit are driven by success in winning kit deals (see above), the market for which appears to the OFT to be sufficiently competitive. Further, Umbro's leading position is as a result of its sales of replica England kit, whereas Nike's and Adidas/Reebok's positions derive from sales of replica club kit. Replica national team and club kits are complementary, not substitutable. For these reasons, there is no realistic prospect of unilateral anticompetitive effects in the supply of replica kit arising.
102. As regards the potential for coordinated effects in the supply of replica kit, the OFT has not received any evidence of actual tacit or explicit coordination nor any evidence that the merger will 'tip' the market towards coordination. On the basis of the evidence received, the merger does not create a structural forum for coordination, Umbro does not currently act as a 'maverick', and the merger increases asymmetry between market participants which, together with the degree of product differentiation between football kits, reduces incentives to coordinate. The merger can be distinguished from the CA98 decision in 2003 involving Umbro, in particular on the basis that the price fixing arrangements in question occurred a number of years ago, that those arrangements played out vertically at the wholesaler/retailer level (whereas the merger is between two wholesalers), and that Nike was not a party to the arrangements. In the absence of any evidence, it would be too speculative to assume that Nike would prompt Umbro into further explicit coordination.

103. In the supply of other branded sports apparel, the merger brings together the largest and third largest suppliers in the UK but the increment of Umbro to Nike's [20-30] per cent market share is just [5-15] per cent, which is not high enough to give cause for concern over unilateral or coordinated anticompetitive effects.
104. In the supply of cleated football boots, the merger brings together the second (Nike) and fourth (Umbro) largest suppliers in the UK with a combined market share of [40-50] per cent. The increment to Nike's market share ([less than 10] per cent) is not large enough to give cause for concern over unilateral effects but the market is almost a duopoly post-merger (with Adidas/Reebok), which may give cause for concern over coordinated effects. However, the likelihood of coordinated effects is undermined by the nature of the products and the frequency of new product launches, as evidenced by the monthly turbulence in market shares. Further, the market was almost a duopoly pre-merger and there is no evidence of coordination pre-merger. Also, Umbro's market share has been declining and there is no evidence that Umbro was a 'maverick'.
105. In the supply of other athletic footwear, the merger brings together the largest (Nike) and ninth largest (Umbro) suppliers in the UK but their combined market share of (no more than) [20-30] per cent and increment of (no more than) [less than 10] per cent are not high enough to give cause for concern over anticompetitive effects.¹⁸
106. There is no available data on shares of the supply of sports equipment. However:
- in the supply of sports equipment for sports use in the UK, the parties' combined market share - based upon sales of balls for team sports - is [15-25] per cent with an increment of [less than 10] per cent, which is not high enough to give cause for concern over anticompetitive effects, and
 - in the supply of sports equipment for leisure use in the EU, the same suppliers sell athletic branded apparel (excluding replica kit) and branded backpacks, baseball caps, sunglasses, umbrellas, wallets, watches etc. Consequently, on the basis of sales of athletic branded apparel, the parties' combined market share of sports equipment for leisure use in the EU is [less than 10] per cent with an increment of [less than 10] per cent, which is not high enough to give cause for concern over anticompetitive effects. Equally, the parties' combined share of athletic branded apparel in the UK, although higher than on an EU-wide basis, is not high enough to give cause for concern over anticompetitive effects.

¹⁸ These market shares are upper bounds because they are for all athletic footwear, i.e. they include performance athletic footwear where the parties' market shares are much higher.

107. The OFT considered whether Nike and Umbro could leverage their 'must stock' replica kits to force other athletic branded apparel (including other replica kits) off retailers' shelves (i.e. vertical effects). We received no evidence that athletic branded apparel suppliers made wholesale sales of replica kit conditional in this way. Further, given the apparent negotiating strength of football clubs in kit deals, it is not clear that they would tolerate the risk of receiving lower royalties from branded athletic apparel suppliers on sales of replica kit so that these same suppliers could sell more athletic branded apparel.
108. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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