



COMPETITION AND MARKETS AUTHORITY

ACQUISITION BY WOLSELEY UK LIMITED (WOLSELEY) OF FUSION PROVIDA HOLDCO LIMITED (FUSION)

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that Wolseley and Fusion have ceased to be distinct
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (UK)
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference, and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Wolseley and Wolseley plc (Order).

Title, commencement, application and scope

1. The title of this Order is Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 in relation to the acquisition by Wolseley UK Limited of Fusion Provida Holdco Limited.
2. This Order commences on the commencement date: 1 April 2014.
3. This Order applies to Wolseley and Wolseley plc.
4. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Wolseley or Wolseley plc to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

Management of the Wolseley and Fusion businesses until determination of proceedings

5. Except with the prior written consent of the CMA, Wolseley and Wolseley plc shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the Fusion business with the Wolseley business
 - (b) transfer the ownership or control of the Wolseley business or the Fusion business or any of its subsidiaries, or
 - (c) otherwise impair the ability of the Fusion business or the Wolseley business to compete independently in any of the markets affected by the transaction.
6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 4, Wolseley and Wolseley plc shall at all times during the specified period procure that, except with the prior written consent of the CMA:

- (a) the Fusion business is carried on separately from the Wolseley business and Fusion's separate sales or brand identity is maintained
- (b) the Fusion business and the Wolseley business are maintained as a going concern and sufficient resources are made available for the development of the Fusion business and the Wolseley business, on the basis of their respective pre-merger business plans
- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Fusion business or the Wolseley business
- (d) the nature, description, range and quality of goods and services supplied in the UK by each of the two businesses are maintained and preserved
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the Fusion business and the Wolseley business are maintained and preserved, including facilities and goodwill
 - (ii) none of the assets of the Fusion business or the Wolseley business are disposed of, and
 - (iii) no interest in the assets of the Fusion business or the Wolseley business is created or disposed of
- (f) there is no integration of the information technology of the Fusion or Wolseley businesses, and the software and hardware platforms of the Fusion business shall remain essentially unchanged, except for routine changes and maintenance
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Fusion business will be carried out by the Fusion business alone and for the avoidance of doubt Wolseley will not negotiate on behalf of Fusion (and vice versa) or enter into any joint agreements with Fusion (and vice versa)
- (h) all existing contracts of the Fusion business and the Wolseley business continue to be serviced by the business to which they were awarded

- (i) no changes are made to key staff of the Fusion business or Wolseley business
- (j) no key staff are transferred between Fusion business and Wolseley business
- (k) all reasonable steps are taken to encourage all key staff to remain with the Fusion business and the Wolseley business, and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from Fusion (or any of its employees, directors, agents or affiliates) to Wolseley (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example, where required for compliance with external regulatory and/or accounting obligations) and on the basis that, should the merger be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

Compliance

- 7. Wolseley and Wolseley plc shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 8. Wolseley and Wolseley plc shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Wolseley and Wolseley plc and their subsidiaries with this Order. In particular, on 15 April 2014 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Wolseley and Wolseley plc or other persons of Wolseley and Wolseley plc as agreed with the CMA shall, on behalf of Wolseley and Wolseley plc, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
- 9. At all times, Wolseley and Wolseley plc shall, or shall procure that Fusion shall, actively keep the CMA informed of any material developments relating to the Fusion business or the Wolseley business, which includes but is not limited to:

- (a) details of staff who leave or join the Fusion business or the Wolseley business
 - (b) any interruption of the Fusion or Wolseley business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Fusion or Wolseley business including any substantial changes in customers' demand, and
 - (d) substantial changes in the Fusion or Wolseley businesses' contractual arrangements or relationships with key suppliers.
10. If Wolseley or Wolseley plc have any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that Wolseley or Wolseley plc may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. Wolseley and Wolseley plc shall comply in so far as it is able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:
- 'the Act'** means the Enterprise Act 2002

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act

'business' has the meaning given by section 129(1) and (3) of the Act

'commencement date' means 1 April 2014

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business

'Fusion' means Fusion Provida Holdco Limited

'the Fusion business' means the business of Fusion and its subsidiaries carried on as at 31 March 2014

'the ordinary course of business' means matters connected to the day-to-day supply of goods and services by Fusion or Wolseley and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Fusion and Wolseley

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006

'the transaction' means the transaction by which Wolseley and Fusion have ceased to be distinct within the meaning of section 23 of the Act

'the two businesses' means the Wolseley business and the Fusion business

'Wolseley' means Wolseley UK Limited, and

'the Wolseley business' means the business of Wolseley UK Limited and its subsidiaries carried on as at 31 March 2014

unless the context requires otherwise, the singular shall include the plural and vice versa.