
Anticipated acquisition by Taylor Woodrow plc of George Wimpey plc

The OFT's decision on reference under section 33(1) given on 17 May 2007. Full text of decision published 24 May 2007.

Please note that square brackets indicate text or figures which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Taylor Woodrow plc** (Taylor Woodrow) is primarily active in the building of new residential houses in the UK and selected locations in Spain, Gibraltar and North America. Having substantially exited the commercial property sector¹ from 2004, Taylor Woodrow is, however, still active in the construction sector.²
2. **George Wimpey plc** (George Wimpey) is a residential house building business operating in the UK and the USA. In the year ended December 2006, George Wimpey's turnover in the UK amounted to approximately £2,400 million.

TRANSACTION

3. Taylor Woodrow is proposing to acquire the entire issued share capital of George Wimpey. The anticipated transaction was notified to the OFT on 4 April 2007. The extended statutory period for the OFT to reach a decision on reference expires on 17 May 2007.

JURISDICTION

4. As a result of the proposed transaction, Taylor Woodrow and George Wimpey will cease to be distinct. George Wimpey's UK turnover exceeds £70 million. The turnover test in section 23(1)(b) of the Enterprise Act

¹ Commercial property development refers to the acquisition and development of sites for commercial use. This encompasses acquisition of land, application for planning consent, construction and ultimately the sale or rental of units on site.

² Construction relates to the physical construction of properties such as office blocks, schools etc undertaken under contract for third party commercial property developers.

2002 (the Act) is consequently 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.

FRAME OF REFERENCE

Product scope

5. The parties' business activities overlap in the construction of new residential housing ('new housing'). Taylor Woodrow – but not George Wimpey – also undertakes construction projects. Neither party is active in the building of commercial property (Taylor Woodrow having exited the business as of 2004) except on a very occasional basis.

Construction of new housing

6. The available evidence indicates that the commercial initiative to build new housing is usually taken on the basis of a unilateral decision by a house builder. A typical business model consists in procuring land, obtaining planning permission, converting the land for construction, building the houses and then selling them as private developments or as social housing.
7. Consistent with the approach taken in three previous cases in the housing construction sector,³ the OFT considers that older housing exerts some competitive constraint on newly constructed housing. Whilst a relatively small number of house buyers have a preference for either a newly constructed or for an older house, the vast majority are willing to switch between these two types of housing. However, given that the supply of older housing is to a large extent fixed, the OFT considers that there are some limitations to its scope for constraining the prices of newly constructed housing.
8. On the supply side, the available evidence from customers and competitors indicates that the majority of house builders are capable of meeting with most design specifications that impact on the size, structure and price of any type of finished house.
9. Since no competition concerns arise on any reasonable market categorisation, there is no need to conclude on the exact product scope. However, for the purpose of its analysis in this case, the OFT has taken a cautiously narrow view of the impact of the merger specifically on the supply of new housing.

³ Anticipated acquisition by Taylor Woodrow plc of Wilson Connolly Holdings plc – 2003
Anticipated acquisition by Persimmon plc of Westbury plc – 2005
Anticipated acquisition by Barratt Developments plc of Wilson Bowden plc – 2007

Geographic scope

10. The parties submit that the relevant geographic scope for the supply of new housing is national. They point in particular to supply-side substitution on the part of major house builders active over a number of regions who face very few barriers to entry or expansion into regions where they currently have no particular focus.
11. Evidence before the OFT indicates that on the demand side, house buyers have a strong preference for a particular geographic location and would not be prepared to switch locations on the basis of a 5 - 10 per cent price advantage. This is supported by the fact that there are substantial differentials in house prices across various parts of the UK.
12. Since no competition concerns arise on any reasonable market categorisation, there is no need to draw any conclusions as to the exact geographic frame of reference. However, for the purpose of its analysis in this case, the OFT has taken a cautious view and the supply of new housing is considered in this analysis at both a national and a regional level.

HORIZONTAL ISSUES

Market shares

13. The supply of new housing in the UK is highly fragmented. Data provided by the parties for the number of new housing completions in 2006 indicates that the ten largest house builders had a share of supply of less than 40 per cent.
14. There is no single body of reliable market information on the construction of new housing at the national level. The parties have, therefore, estimated shares of the supply of newly completed housing on the basis of their own figures and figures contained in their competitors' annual reports as a proportion of a total figure provided in Department for Communities and Local Government data. Based on these estimates, the parties' combined shares during 2006 amounted to [between 5 and 15] per cent (an increment of [less than five] per cent) making the merged entity the largest supplier of new housing in the UK.
15. However, post-merger competitive constraint will continue to be posed by other house builders, including majors such as Barratt/Wilson Bowden, Persimmon, Bellway, Redrow and Bovis as well as a very considerable number (the available evidence points to a figure in excess of 6000) of smaller operators in the housing construction sector.

16. At the regional level, the parties have also submitted estimates of market shares on the basis of new house completions - using actual numbers of completions by Taylor Woodrow and George Wimpey set against the totals compiled by the Department for Communities and Local Government.⁴ According to these estimates, the merged entity's share of total completions would not exceed [between 15 and 25] per cent in any of the regions considered.
17. Given the shares of supply at both regional and national levels, the fragmented nature of the market and the very substantial number of alternative house builders, the OFT does not consider that competition concerns arise in relation to the supply of new housing.

Land for house building

18. Land is a critical factor in house building and house builders typically ensure that they have adequate supplies to meet with their requirements looking a number of years ahead. Land set aside for house building may be bought and sold either with or without planning approval having already been obtained. Land that has received planning consent ('consented land holdings') constitutes a house builder's core landbank. However, land can also be reserved for purchase through option agreements which provide for the right, but not the obligation, to purchase land from the seller. Option agreements allow house builders to secure potential sites ('strategic land holdings') at relatively low cost pending planning approval.
19. Land holdings can be measured by the number of years it would take a house builder to exhaust its land holdings if it built at its current rate without acquiring new land on the one hand, and its strategic land holdings (that is, land held under option to purchase) on the other. This gives an expression of the size of the two types of land holding in terms of the number of years of potential house building activity.
20. The evidence available to the OFT indicates that, based on figures for 2006, the merged entity would have consented land holdings amounting to fewer years of future build than almost all of its largest competitors.
21. As far as strategic land holdings are concerned, not all house builders have such holdings. Of those that do, they will be successful at various points in time over the coming months and years in obtaining planning permission for only a proportion of that total land. Based on 2003 estimates⁵, the merged entity would have the third largest total strategic land holding at the national level in terms of future years of build.

⁴ The specific regions referred to are: North East, North West, Yorkshire & Humberside, East Midlands, East Anglia, West Midlands, South East, South West, Scotland, Wales, Northern Ireland and London

⁵ Source: Fred Welling's Private Housebuilding Annual 2003

22. On the basis of the available evidence and given the lack of substantiated third party concerns, the OFT does not consider that the merged entity's consented or strategic land holdings give rise to a substantial lessening of competition in the upstream market for the supply of land for house building.

THIRD PARTY VIEWS

23. The majority of third parties responded with no concerns. The OFT does not consider that the few concerns that were raised formed any sound basis for a theory of harm.

ASSESSMENT

24. The parties overlap in the construction of new housing.
25. The available evidence indicates that some competitive constraint is exerted between new and older housing. However, there is no need to reach any conclusion as to the precise scope of the product and geographic market since, on the basis of a cautiously narrow frame of reference (the supply of new housing at the regional level) the proposed merger raises no competition concerns. Shares of supply are moderate, constraint is posed by a considerable number of alternative house builders and third parties were generally unconcerned.
26. The parties are also active in the upstream market for the acquisition of land for house building. However the extent of their combined existing landbanks does not raise concerns for any adverse impact on competition.
27. 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.
28. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.