

OFFICE OF FAIR TRADING

Completed acquisition by Balfour Beatty plc of Cowlin Group Limited

The OFT's decision on reference under section 22(1) given on 12 October 2007.
Full text of decision published 17 October 2007.

PARTIES

1. **Balfour Beatty plc** (Balfour Beatty) is a holding company for the Balfour Beatty group of companies. Its main areas of business are: civil and specialist engineering; building and building management; rail engineering; and investments and developments.¹ The parties to this merger overlap in new construction. The relevant Balfour Beatty companies active in this area are Balfour Beatty Construction Limited (BBCL) and Mansell plc (Mansell). BBCL undertakes large scale construction projects (usually contracts worth over £20 million) whereas Mansell's housing and general building work is focused on smaller contracts (worth less than £20 million).
2. **Cowlin Group Limited** (Cowlin) is a construction company active in the South East and South West of England as well as in Wales. It constructs buildings across a range of sectors including commercial, industrial, residential, education and health. It focuses on smaller value contracts (less than £20 million). Last year, Cowlin's UK turnover was around £186 million.²

TRANSACTION

3. On 29 August 2007, Balfour Beatty acquired a controlling interest in Cowlin.
4. The statutory deadline for the Office of Fair Trading (OFT) to announce a decision in this case is 28 December 2007 and the OFT's administrative target is 13 November 2007.

¹ Balfour Beatty invests in privately funded infrastructure projects.

² For the year ending 30 September 2006.

JURISDICTION

5. As a result of this transaction Balfour Beatty and Cowlin have ceased to be distinct. The UK turnover of Cowlin exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied.
6. The parties' turnover exceeds the levels set out in Article 1(2) of the EC Merger Regulation. However, since both parties achieve more than two thirds of their turnover in the UK the merger does not have a Community dimension.
7. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

8. The parties overlap in new construction, in particular in the South East and South West of England, and in Wales.

Product scope

9. The parties submitted that the relevant product scope is new construction work (including refurbishment work). This product scope would incorporate private housing, social housing and non-housing builds (for example, commercial building and schools).
10. In the most recent previous cases involving housing and non-housing construction, the OFT has not needed to conclude on the exact product scope but has undertaken its analysis on a variety of bases. These have included the supply of new residential housing (Taylor Woodrow / George Wimpey³), new residential housing and new commercial property construction separately (Barratt Developments / Wilson Bowden⁴), construction as a whole (Balfour Beatty / Birse⁵), construction segmented by non-residential construction and size of contract (Balfour Beatty / Birse), and construction segmented by housing, commercial, and by industry sectors (Carillion / Mowlem⁶).

³ Anticipated acquisition by Taylor Woodrow plc of George Wimpey plc, 24 May 2007.

⁴ Completed acquisition by Barratt Developments plc of Wilson Bowden plc, 13 April 2007.

⁵ Anticipated acquisition by Balfour Beatty plc of Birse Group plc, 1 September 2006.

⁶ Anticipated acquisition by Carillion plc of Mowlem plc, 24 January 2005.

11. In this case, other construction companies submitted to the OFT that in the main it is easy for construction companies to switch between different types of builds (private commercial building, public commercial building, private housing and public housing). However, there are some segments which require specialist skills for which it is much harder to switch on the supply side (for example, highly serviced clinical buildings, according to one third party). In such a case, supply side switching would not be particularly timely, taking a year or more.
12. The OFT has not found it necessary to conclude on the exact product scope in this case since the outcome of the competition assessment is unaffected by it. It has assessed this merger on the basis of new construction as a whole as well as segmented by private housing, social housing and non-housing construction. The OFT has also assessed the merger by size of contract (contract values above and below £20 million).

Geographic scope

13. The parties submitted that the appropriate geographic scope is national, especially for larger contracts. The parties considered that competition for smaller contracts may take place at a regional level although it was unclear what constituted a region of operation since it may depend on factors such as relationships with subcontractors and the differing geographic focus of different contractors.
14. Third party competitors told the OFT that they compete for contracts nationally, sometimes internationally.
15. Some customers told the OFT that they contract regional suppliers whereas other customers told the OFT that they source their construction work nationally or even across Europe.⁷
16. In the current case the OFT has not found it necessary to conclude on the geographic scope since the outcome of the competition assessment is the same regardless of whether a regional, national or international approach is adopted. The OFT has assessed the merger on a national basis and on the

⁷ The size of the contract in relation to European tendering regulations tended to be main driver of this.

basis of the three regions in which the parties are both active (South East of England, South West of England, and Wales).

HORIZONTAL ISSUES

17. For construction as a whole, the parties' combined share of supply is less than five per cent at the national level as well as in each of the three regions. When construction activity is segmented into private housing, social housing and non-housing builds, the parties' combined share of supply is again less than five per cent in all segments at the national level as well as in each of the three regions. The only exception is in social housing in South East England where the parties' combined share is around 12 per cent (increment less than one per cent).
18. For contract values above and below £20 million, the parties' share of supply is less than five per cent in each segment in the UK.
19. The parties and third parties told the OFT that the parties' main competitors (with similar shares of supply to the merged entity) at a national level are Bovis Lend Lease, Laing O'Rourke, Sir Robert McAlpine, HBG and Carillion. At a regional level the merged entity would also face competition from Morgan Sindall, Willmott Dixon, Kier Group and Rok.⁸
20. Evidence provided to the OFT indicates that the parties were not close competitors. Bidding data provided by the parties show that over the past three-and-a-half years there were no contracts for which both parties tendered in Wales. In South West England the parties bid for the same contracts in less than three per cent of cases, and in South East England in less than one per cent of cases.
21. No customers could recall an instance in which both parties tendered for one of their contracts.
22. Competitors told the OFT that they competed against one party but not the other.

⁸ Third parties also mentioned other suppliers.

VERTICAL ISSUES

23. No vertical concerns arise in this case. Sub-contracting is common in construction. In 2006, Balfour Beatty had sub-contract sales to Cowlin of only approximately £400,000. No sub-contract sales were made in the other direction.

THIRD PARTY VIEWS

24. Almost all third parties were unconcerned about the merger. One customer was concerned that the merger would lead to a culture change within Cowlin which may lead to a different relationship with the merged entity. Another was concerned that working with a much larger company would mean that it would face a change in its financial risks. Neither of these concerns raise competition issues.

ASSESSMENT

25. The merged entity has very low shares of supply in all segments on national and regional bases. It will continue to face competition from a number of well established construction companies at national and regional levels.
26. Almost all customers are unconcerned about the merger and no competition concerns were raised.
27. Consequently, 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

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