Completed acquisition by Wolseley UK Limited of William Wilson Holdings Limited

The OFT's decision on reference under section 22(1) given on 12 January 2006. Full text of decision published on 20 January 2006.

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

PARTIES

1. **Wolseley UK Limited** (Wolseley) is part of the Wolseley group of companies, which distribute heating, plumbing and building products in Europe and North America.

2. **William Wilson Holdings Limited** (William Wilson) is an independent supplier of electrical, plumbing, heating and building supplies, and is present mainly in Scotland and North England. William Wilson's UK turnover was £95.2 million for the year ended 31 March 2004.

TRANSACTION

3. Wolseley acquired the entire issued share capital of William Wilson on 31 October 2005. The OFT received an informal submission from the parties on 21 November 2005. Therefore, the administrative deadline is 19 January 2006 and the statutory deadline is 27 February 2006.

JURISDICTION

4. As a result of this transaction Wolseley and William Wilson have ceased to be distinct. The UK turnover of William Wilson exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. In addition, the share of supply test in section 23 of the Act is met in relation to the supply of heating products, as the parties' combined UK share of supply of these products is [25 per cent to 35 per cent] (with an increment of [0 per cent to 5 per

cent]). The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

RELEVANT MARKET

5. The European Commission has previously considered the market for builders' merchants, i.e. the supply of a range of building and plumbing materials to trade customers, which it considered may include other routes to market such as DIY out-of-town warehouse outlets.[1] The Commission noted that the builders' merchant market could be segmented further by type of building products and also by customer type.

6. In relation to the geographic market, the Commission has noted that the builders' merchant market has a local dimension, corresponding to the merchant's catchment area (typically at most 15 miles).[2]

7. The OFT considered the market for the supply of repair, maintenance and improvement products in its decision of 4 February 2005 on the anticipated acquisition by Travis Perkins plc of Wickes Ltd.

8. Both Wolseley and William Wilson are builders' merchants that distribute plumbing, heating, building and electrical products. The parties submit that these products form part of a wider construction market in the UK. Nevertheless, they acknowledge that there may be arguments for segmenting the market according to these product categories. This is explored in more detail below.

Product focus

Distribution of building and electrical products

9. Wolseley does not have any branches that specialise in the supply of electrical products. The parties' combined UK share of supply for electrical products is insignificant, amounting to [0 per cent to 10 per cent], with an increment of [0 per cent to 5 per cent] (in value terms).

10. In relation to building products, the parties overlap in only two local areas - Elgin and Aberdeen. The parties' combined UK share of supply for building products is [0 per cent to 10 per cent], with an increment of [0 per cent to 5 per cent] (in value terms).

---

[1] Case No IV/M.1308 - Wolseley/Hall.
[2] Case No IV/M.1308 - Wolseley/Hall.

11. There were no third party concerns in relation to the supply of these products. 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 in the supply of building or electrical products. Therefore the supply of these products will not be considered any further.

Distribution of plumbing and heating products

12. On the demand side, different construction products are not close substitutes. This may suggest that the distribution of plumbing products and the distribution of heating products should be considered as separate frames of reference. However, most distributors of plumbing products also supply heating products.

13. Plumbing and heating products can be supplied through different distribution channels, including builders' merchants, DIY retail stores, DIY specialists and specialist distributors.

14. In this case it was not considered necessary to segment the market by distribution channel, however the OFT considers DIY stores to be a weaker constraint on the merged entity than other builders' merchants and specialist distributors. Consequently, competition between two builders' merchants in the same local area can be expected to be more intense than competition between a builders' merchant and a DIY store in the same local area. This is primarily because trade customers and retail customers may not view the different distribution channels as close substitutes. For example, trade customers tend to use builders' merchants because of the services they are offered (e.g. free delivery, credit facilities and after sales support), whereas retail customers tend to use DIY outlets.

15. The OFT also considers that independent builders' merchants and specialist distributors are weaker constraints on the merged entity than the larger UK-wide distributors because they may not benefit from economies of scale, and therefore may be less able to compete on prices. In addition, larger customers such as certain local authorities claimed they prefer to purchase from larger national distributors because smaller independent distributors may not be of sufficient scale to service their requirements.

16. In relation to supply side substitutability, third party evidence has confirmed that this is relatively easy, i.e. builders' merchants can readily begin to supply new construction products.

17. The OFT has therefore considered the distribution of plumbing and heating products by builders' merchants, specialist distributors and DIY stores as the

relevant product frame of reference. Since the merger does not result in any competition concerns on this relatively narrow frame of reference, it is not necessary to reach a definitive conclusion on the precise product market definition.

Geographic focus

18. The parties submitted that there is competition between suppliers of products used in the construction industry at a national level, but that there are also elements of regional and local competition due to the buying practices of customers and the existence of regional and local suppliers who compete with the national chains. Third parties have confirmed that ultimately, prices charged depend on local competitive conditions.

19. The parties noted that in their experience, customers are prepared to travel up to 20 miles in rural areas to obtain products and up to 10 miles in urban areas.

20. The OFT assessed the anticipated acquisition by Travis Perkins plc of Wickes Ltd by considering a 10 mile radius centred on Wickes stores. This catchment area was considered suitable in that case because a large proportion of Travis Perkins' revenue was generated within a 10 mile radius.

21. The OFT has considered the effects of this merger at the national level, in Scotland and at the local level. At the local level, the OFT has considered a catchment area of 10 miles in urban areas and catchment areas of 15 and 20 miles in rural areas from the relevant William Wilson branch. Since the merger does not result in any competition concerns on any of these geographic frames of reference, it is not necessary to reach a definitive conclusion on the precise geographic market definition.

HORIZONTAL ISSUES

Market shares

National Issues

22. As a result of the merger the parties' combined UK share of supply of plumbing products is [20 per cent to 30 per cent], with an increment of [0 per cent to 5 per cent] (in value terms). The parties' combined UK share of supply of heating products is [25 per cent to 35 per cent], with an increment of [0 per cent to 5 per cent] (in value terms). The parties' combined UK share of supply of both plumbing and heating products is [25 per cent to 35 per cent], with an increment of [0 per cent to 5 per cent] (in value terms).

23. Wolseley estimated that in relation to plumbing and heating products, its three main competitors, PTS Plumb, Grafton and Jewsons have a UK share of supply of [10 per cent to 20 per cent], [10 per cent to 20 per cent] and [20 per cent to 30 per cent] respectively.

24. Based on this evidence, Wolseley will slightly strengthen its position as the leading supplier of plumbing and heating products in the UK as a result of the merger. However, the parties overlap in very few areas (fifteen out of over one thousand locations where Wolseley has a branch) and there will remain at least three strong competitors with a UK-wide presence (i.e. national builders' merchant chains with specialist plumbing and heating stores). Moreover, third parties raised no concerns at the national level.

Scottish Issues

25. William Wilson is present mainly in Scotland and it is therefore possible that its share of supply may be higher in this region than at a national level. A number of competitors commented that the merger may reduce competition in Scotland, although none thought this would be substantial. One third party estimated that William Wilson's share of supply of plumbing and heating products in Scotland is approximately [5 per cent to 15 per cent], compared to [0 per cent to 10 per cent] nationally.

26. However, the OFT notes that post-merger, there will remain in Scotland at least three other UK-wide distributors of (mainly) plumbing and heating materials, two generalist builders' merchants, one DIY retailer with a strong focus on trade customers and numerous independent builders' merchants.

Local Issues

27. At the local level, the OFT has considered the eight urban areas and seven rural areas where the parties' stores overlap. When assessing the effect of the merger on competition in these areas, Wolseley, William Wilson and other UK-wide builders' merchants and/or specialist chains were considered to be equally close competitors, followed by independent builders' merchants and DIY stores, which were considered to be weaker competitors.

28. In all of these areas except one, there remain a sufficient number of UK-wide distributors as well as independent builders' merchants and/or a DIY store to indicate it is unrealistic that this merger has or will lessen competition substantially. In Thurso, however, Wolseley is the only national chain present post-merger.

29. The parties submitted the results of a customer survey for Thurso (which was not prepared in connection with the OFT's investigation) to support their contention that nonetheless the merger does not raise competition concerns. This survey provided evidence that although most customers in that area view either the Wolseley store or the William Wilson store as their main supplier, they believe that they have other alternative suppliers. The customers interviewed purchase plumbing and heating products both in the areas where they live and also in the areas where they work. Over [ ] of the customers interviewed travel more than [ ] miles to work. Furthermore, a large proportion of customers purchase plumbing and heating materials from one or more of the other national chains and from internet suppliers.

30. The results of the survey therefore suggest that the relevant geographic market in this area is wider than the frame of reference defined above for assessing this merger. Moreover, there are two independent builders' merchants within a 15 mile radius (one of which already supplies plumbing and heating products) and a further independent builders' merchant which supplies plumbing and heating products within a 20 mile radius in this area.

Barriers to entry and expansion

31. Since our analysis has focused on the loss of competition at the local level, the OFT has considered the ease of entry at this level. Third party responses confirm that the costs of setting up a new builders' merchant at the local level are low, in particular for established national distributors. However, a couple of third party competitors noted that although these costs are not significant, existing players may be dissuaded from opening new branches due to the reputation and success of incumbent distributors in certain less populated rural areas. However, given there are sufficient post-merger competitive constraints in each local area, no conclusion need be drawn on barriers to entry.

Buyer power

32. The parties' main customer base consists of trade customers. It appears that these customers usually purchase in large volumes and can negotiate prices. As such, they may be able to exert a degree of buyer power and secure volume based discounts.

VERTICAL ISSUES

33. Neither Wolseley nor William Wilson are active in the manufacture or wholesale supply of plumbing and heating products. Moreover, the merged entity will not

have combined purchases of more than 25 per cent of total UK supplies of any product. Therefore, this merger does not raise any vertical issues.

THIRD PARTY VIEWS

34. None of the customers who were contacted by the OFT were concerned about this transaction; they believed they would have sufficient choice post merger from alternative suppliers. Some competitors commented that the merger may reduce competition in Scotland, although none thought this would be substantial. In addition, some competitors believed that the merger may reduce competition in certain less populated rural areas. Their concerns have been considered as part of the local analysis above.

ASSESSMENT

35. The OFT has considered the relevant product frame of reference to be the distribution of plumbing and heating products through builders' merchants, specialist distributors and DIY stores. DIY stores and independent builders' merchants have been considered to be weaker competitors to the merged entity than UK-wide builders' merchant chains and specialist distributors. For the purposes of this assessment, William Wilson has been considered to be a national builders' merchant, i.e. a close competitor to Wolseley.

36. The effects of the merger have been considered at the national level, in Scotland and at the local level.

37. The parties' combined UK share of supply of both plumbing and heating products is [25 per cent to 35 per cent], with an increment of [0 per cent to 5 per cent] (in value terms). Post merger, there remains at least three other strong competitors with a UK-wide presence (i.e. national builders' merchant chains with specialist plumbing and heating stores). In addition, William Wilson's shares of supply at the UK level are very low. Third parties raised no concerns at the national level.

38. Similarly, within Scotland, all the remaining UK-wide plumbing and heating distributors and numerous independent builders' merchants remain present post merger.

39. At the local level, there are eight urban areas and seven rural areas where the parties' branches overlap. In all but one of these areas, there are at least two other national builders' merchant chains present post merger (in over half of the overlap areas all the remaining national chains will be present post merger) and a number of independent plumbing and heating distributors. A DIY store is also present in thirteen of these areas.

40. Thurso (in Scotland) is the only area where the merger represents a reduction from two to one national builders' merchant chains. However, the parties supplied evidence that customers in Thurso also purchase plumbing and heating products from outside of the catchment area under consideration. This suggests that the actual geographic market in this area may be wider than the frames of reference used to assess this merger. Moreover, there are three independent builders' merchants in Thurso (within a 20 mile radius), two of which already supply plumbing and heating products, which will provide a degree of competitive constraint.

41. It also appears that some customers in this sector may have a degree of buyer power and that entry at the local level is possible, although some third parties questioned the likelihood of entry. However, it has not been necessary to reach a definitive view on these issues.

42. 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

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