

## Anticipated acquisition by Persimmon plc of Westbury plc

The OFT's decision on reference under section 33(1) given on 23 December 2005. Full text of decision published on 16 January 2006.

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### **PARTIES**

1. **Persimmon plc** (Persimmon) is one of the UK's largest house building groups. It currently operates around 400 developments across Great Britain, each of which is managed from one of 33 regional offices.
2. **Westbury plc** (Westbury), headquartered in Cheltenham, is also a house building group comprising nine regionally based operations and a manufacturing plant. Westbury's UK turnover in its last financial year was £893 million.

### **TRANSACTION**

3. Persimmon is proposing the acquisition of the entire issued and to be issued share capital of Westbury by means of a cash offer. It notified this anticipated transaction to the OFT as a formal merger notice on 24 November 2005. The extended statutory deadline is 10 January 2006.

### **JURISDICTION**

4. As a result of this transaction Persimmon and Westbury will cease to be distinct. Westbury'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.

## **RELEVANT MARKET**

### **Product scope**

5. The parties are both commercially active in the construction of new housing.
6. The available evidence suggests that, on the demand side, new housing and older housing exert reciprocal competitive price constraint. This is consistent with the approach taken by the OFT in a previous case concerning the supply of newly constructed housing.<sup>1</sup> Whilst a relatively small number of customers have a preference for either a new or an older house, the vast majority are willing to switch between these two types of housing. Competitors have confirmed that there is usually little difference in the price trends of new and older houses as the market as a whole moves in response to overall changes in demand and supply.
7. On the supply side, both customers and competitors have proposed that it is possible for the majority of house builders to meet with any reasonable design specifications.
8. Since no competition concerns arise on any reasonable market categorisation, there is no need to draw any conclusion as to the scope of the product market. However, for the purposes of this decision, a cautious view will be taken and the supply of new housing will be considered separately.

### **Geographic scope**

9. Persimmon and Westbury - and a number of other major house builders - are active throughout the majority of counties in England and Wales. Persimmon also operates in Scotland. Competitors have submitted that it is possible for any house builder whose activities are focused at any particular regional level to compete within other localities. Housing associations have also stated that they are able to obtain quotes from house builders whose operations are focused outside the area of the construction project in question.
10. On the demand side, all third parties submit that 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 differential. This assertion is supported by the fact that there are substantial differentials in house prices across various parts of the United Kingdom.

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<sup>1</sup> ME/1354/03: Anticipated acquisition by Taylor Woodrow plc of Wilson Connolly Holdings plc.

11. The approach taken in basing a competition assessment on both a national and more cautious regional basis, demonstrates that there is no need to conclude on the precise scope of the geographic market, since, on the basis of a cautiously narrow product and geographic frame of reference (the supply of new housing at regional level) the proposed acquisition raises no competition concerns.

## HORIZONTAL ISSUES

### Shares of supply

#### UK

12. The parties submit that there is no single source of reliable data regarding the UK housing market. The figures in table 1 are therefore based on information from the National House Building Council (NHBC)<sup>2</sup> which accounts for most new home construction - with the exception of those construction projects covered by competing warranty schemes (which the parties say are *de minimis* in terms of volume).

**Table 1:** Share of the supply of new housing units in the UK in 2004

House builder	Share ( per cent)
Persimmon	10.3
Westbury	3.7
<i>Combined</i>	<i>14.0</i>
Barratt	11.7
Wimpey	10.2
Bryant	7.6
Bellway	5.5
Wilson Bowden	4.7
Berkeley	4.1
Redrow	3.6
Bovis	2.3
Other	36.3
<i>HHI (post-merger)</i>	<i>582.1</i>
<i>Increment</i>	<i>76.2</i>

Source: *Parties' estimates based on NHBC data*

13. The parties' estimate of their market shares is substantiated by data compiled separately in the Private Housebuilding Annual 2005<sup>3</sup> - which also indicate that there has been only slight variation in shares of supply over the past three years.

<sup>2</sup> The NHBC promotes standards and best practice in the house-building industry and is the leading warranty and insurance provider for new and newly converted homes in the UK.

<sup>3</sup> An independent market analysis of the house construction industry.

14. As the share of supply data in table 1 indicates, the sector is highly fragmented. However, post merger, a significant number of competitors with appreciable shares of supply in the UK remains. Third parties have also suggested that smaller regional and local house builders (a number totalling over 6,000) also pose effective competitive constraint.
15. Competitors propose that branding is not an important consideration and that all competent builders are capable of competing in the offer of new housing projects on an equal basis. Competitors also submitted that the majority of such projects are speculative and are undertaken by house builders independently (the remaining projects being commissioned by bodies such as local government, housing associations etc).

#### Regional

16. The parties submit that, although they have no accurate figures pertaining to shares of supply by region, they do not believe that there are any areas in which their combined share of the supply of newly built houses would exceed 25 per cent. Due account is also taken of the fact that one-off large developments in a particular region could distort and overstate estimates of market share in that region.
17. Third parties had mixed views on Persimmon's and Westbury's shares of supply at the regional level. One competitor and one customer proposed that neither Persimmon nor Westbury were particularly strong in any region, whereas another competitor and customer each suggested that Persimmon was stronger in the North of England and that Westbury had greater presence in the South.
18. The parties note that, specifically within Wales, their combined shares of the supply of new housing construction could be as high as 18.3 per cent (based on NHBC data). No third party has raised this as an issue or a concern and the available evidence and information indicates that a number of competitors will continue to pose competitive constraint on the merged entity in Wales.
19. To the extent that the parties have any material combined strengths in any localised areas within the UK, third parties have stated consistently that there are no entry barriers at the regional level.

## **BARRIERS TO ENTRY AND EXPANSION**

20. The parties and their competitors propose that entry barriers are low, the principal requirements being capital and building experience. Competitors submit that these are achievable on the basis of the necessary expertise.
21. Surmountable regulatory barriers exist in that new house building projects must conform to The Building Regulations 2000 framework developed by the Department of Energy, Transport and the Regions. These regulations stipulate performance requirements pertaining to structure, sound-proofing, ventilation, condensation, drainage, glazing disabled access etc.
22. Land must also be acquired, and competition for small scale land acquisition appears to be open - although the acquisition of a large landbank may be problematic for a new entrant.
23. Competitors also propose that expansion is achievable on the basis of increased labour and capital. Although the achievement of operations on a national scale would call for very significant amounts of time and investment.

## **BUYER POWER**

24. The majority of new houses are bought by individual purchasers. Such customers are not likely to possess countervailing buyer power.

## **VERTICAL ISSUES**

25. No vertical issues arise as a result of this merger.

## **THIRD PARTY VIEWS**

26. The parties' top five competitors were contacted. In addition, six housing associations were approached in an attempt to gauge customer views. Three competitors and four customers responded. No third party raised any concerns.

## **ASSESSMENT**

27. The parties overlap in the construction of new housing in the UK.
28. The available evidence and information indicates that new houses and older houses exercise competitive constraint on each another. 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 product and

geographic frame of reference (the supply of new housing at regional level) the proposed acquisition raises no competition concerns.

29. Shares of supply are moderate, constraint is posed by a considerable number of alternative suppliers, entry barriers are low and no third party has made any adverse comment.
30. 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.

## **DECISION**

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