

Completed acquisition by Edmundson Electrical Limited of Electric Center

ME/5161/11

The OFT's decision on reference under section 22 given on 11 May 2012. Full text of decision published 23 July 2012.

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

PARTIES

1. Edmundson Electrical Limited ('EEL') distributes electrical products through 249 branches across the UK.¹ EEL is owned by Marlowe Holdings Limited ('Marlowe'). Marlowe also owns Ryness, an entity which engages in electrical wholesale and retail in the London area. Marlowe is, in turn, a subsidiary of Blackfriars Corporation ('Blackfriars'),² which is registered in the United States. Blackfriars is a private company.³ EEL's turnover for the year ended 31 December 2010 was £852 million.
2. Electric Center ('EC' or 'the Target') distributes electrical products through 83 branches across the UK.⁴ The target was previously part of William Wilson Limited, belonging to the Wolseley Group of companies. The Target's turnover was £130 million in 2010.

TRANSACTION

¹ EEL also has branches in Jersey and Guernsey and two branches on the Isle of Man.

² [EEL has a link, through a degree of indirect common ownership, with Deta Electrical Co. Limited, Stearn Electric Co. Limited, UK Electric Limited, UK Cables Limited and Decco Limited.]

³ Blackfriars owns Consolidated Electrical Distributors ("CED"), an electrical wholesaler exclusively active in the US. Marlowe owns a number of dormant entities described as electrical wholesalers, but not carrying on any business activities.

⁴ The Target also has one branch in Guernsey.

3. EEL acquired the Target on 31 July 2011, for a consideration of £[].
4. The extended administrative and statutory deadlines are 24 April 2012 and 21 May 2012 respectively.

JURISDICTION

5. As a result of this transaction EEL and EC have ceased to be distinct. The UK turnover of the target businesses exceeds £70 million, so 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 a relevant merger situation has been created.

RATIONALE FOR THE MERGER

6. EEL submit that the transaction gives it the possibility to test a different business model (lower head count at the branches and partially centralised distribution). EEL also submits that as it does not have its own brand of electrical products, the transaction allows it to test the Target's own Acel brand and to increase its sales to small and medium sized contractors.

COUNTERFACTUAL

7. The parties submit that the Vendor of the EC business instructed a Corporate Finance house to run an auction process and an Information Memorandum was prepared. EEL was informed by the Corporate Finance house that there were other serious bidders. Had it not been sold to EEL, the OFT considers that it is likely that the EC business would have been sold to another buyer.
8. Therefore, the appropriate counterfactual is the prevailing market conditions at the time of the merger, that is, EC would have remained an independent competitor to EEL.
9. During the course of the OFT's investigation, the Rexel Group⁵ acquired 59 branches of Wilts Wholesale Electrical (Wilts),⁶ a regional electrical wholesaler based in the South West on 1 March 2012. Given that this merger has completed, in line with the approach set out in the OFT's

⁵ The Rexel Group comprises the Newey & Eyre, Senate, Denmans and WF Electrical wholesaler brands and is the largest electrical wholesaler in the UK by turnover.

⁶ Wilts operated 59 branches located in England and three branches located in Wales.

guidance,⁷ the relevant question for the OFT is whether, given the acquisition by Rexel of Wilts, the acquisition by EEL of EC creates a realistic prospect of a substantial lessening of competition. The OFT has therefore treated Wilts as part of the Rexel Group for the purposes of its competitive assessment.

MARKET DEFINITION

Introduction

10. The OFT has not previously assessed a merger in the electrical product wholesale market. However, the European Commission has done so on two occasions.
11. In 2000, the Commission assessed the merger between Hagemeyer NV ('Hagemeyer') and WF Electrical and in 2008, it assessed the merger between Rexel SA ('Rexel') and Hagemeyer.⁸ In both cases, the Commission considered the relevant product market to be the wholesale supply of electrical products and reviewed the mergers on a national basis. However, in the Rexel/Hagemeyer case, the Commission left open the possibility of a regional and local geographic frame.
12. The UK market for the distribution of electrical products⁹ has an estimated value of £11 billion.¹⁰ There are a wide range of manufacturers producing branded electrical products and some wholesalers, including EC, also stock own-branded products.
13. The supply chain for these products is illustrated in Figure 1 below.

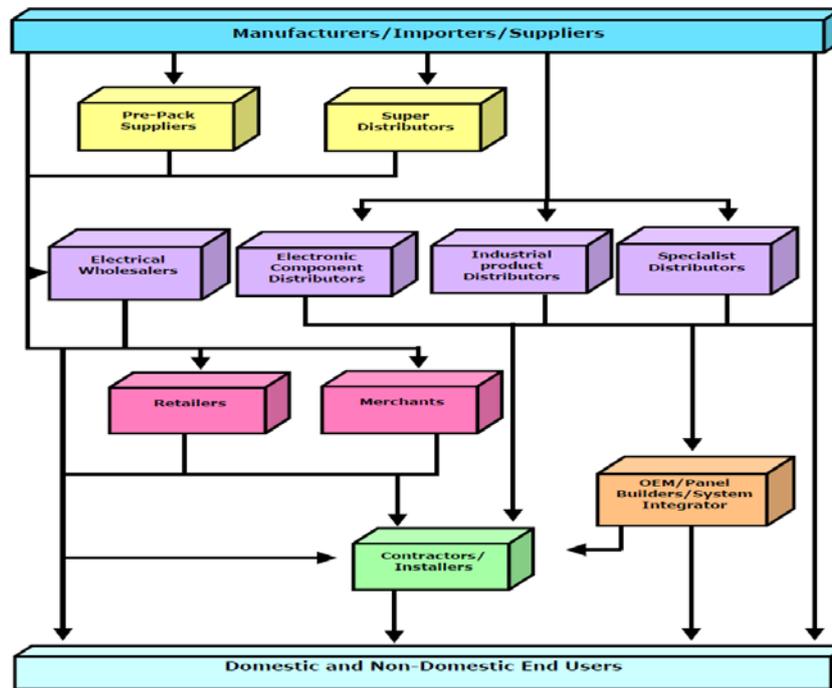
⁷ See OFT/CC *Merger Assessment Guidelines*, September 2010 (OFT1254) (the '*Merger Assessment Guidelines*'), paragraph 4.3.25 and 4.3.26.

⁸ Comp/M.4963 Rexel/Hagemeyer 22 February 2008.

⁹ Electrical products include: low voltage (defined as below 1000 volts) cable systems, wiring accessories, low voltage switchgear and circuit protection, lighting products, electrical heating products, ventilation and air conditioning, tools, work wear and test equipment, security and fire products, automation and control products, data networking equipment, built-in domestic appliances, electric water heating products, renewable energy products.

¹⁰ Source: AMA 2009.

Figure 1: Electrical product market



Source: The Parties/AMA Research

14. EEL and EC are active in the wholesale distribution of electrical products, primarily serving downstream electrical and mechanical contractors and facilities management companies.

PRODUCT SCOPE

15. The OFT considers the product scope serves only to provide a framework for which the competitive effects of the merger can be assessed and the following discussion therefore serves to examine the appropriate frame of reference for the competitive assessment. The OFT's approach is to consider if narrow candidate product frames can be widened through substitution on the demand-side in each of the product categories in the first instance, and then, if appropriate, to consider if substitution on the supply-side allows the frame to be widened or aggregated.¹¹

¹¹ This approach is in line with the *Merger Assessment Guidelines*, paragraphs 5.2.6 to 5.2.19.

16. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market.¹²

SEGMENTATION BY PRODUCT CATEGORY

17. The parties submit that the relevant product market should not be delineated by product category¹³ but should include all electrical products.
18. The OFT considered whether it was appropriate to narrow the product market in terms of different types of electrical product. Third party enquiries provided limited evidence to support delineating the market by product type. Customers do not tend to favour purchasing electrical products from a single supplier or splitting orders by product category or by manufacturer. Some customers purchase specific products from specialist distributors, for example lighting or electrical cables. However, the OFT understands that such purchasing tends either to be by exception, because electrical wholesalers may not stock certain specialist products, or because the customer requires sufficient volumes that dealing with a specialist distributor allows them to obtain a better price than via a wholesaler.¹⁴
19. The OFT also notes that manufacturers and specialist distributors may have a more concentrated product focus, and that other types of distributor – for example a ‘super-distributor’ – may focus on specific groups of products including ‘white goods’ which are generally not stocked by electrical wholesalers.
20. In the Rexel/Hagemeyer decision,¹⁵ the Commission did not delineate downstream markets by product type. It found that wholesalers have to be able to supply a broad range of products to customers covering several stages of the electrical installation process.
21. Electrical products are generally complementary rather than substitutable in use. For example, as a result of their different prices, characteristics and intended uses, electrical cables cannot be substituted for electrical switchgear. It seems likely, therefore that the ‘hypothetical monopolist

¹² *Merger Assessment Guidelines*, paragraph 5.2.2

¹³ Paragraph 6.24, Parties’ Response to a request for information by the OFT, 14 October 2011.

¹⁴ However, large contractors may lack sufficient storage facilities to make this a viable option. Therefore, even where some customers could purchase from specialist distributors directly, they may prefer to do so via a wholesaler for logistical reasons.

¹⁵ Comp/M.4963 Rexel/Hagemeyer 22 February 2008.

test' would show different electrical products to constitute different product markets, because customers would not respond to a price rise for a specific product (for example cable) by switching to another product (for example switchgear) to such an extent that a price increase by the hypothetical monopolist would not be profitable. Therefore, from a demand side perspective, separate markets for each individual electrical product could exist.

22. Notwithstanding the above, in this case there are a number of reasons why it may not be considered appropriate to define markets with reference to individual product types, including that:
- a) customers will often purchase a bundle of products in a single transaction, so products will be in joint demand
 - b) electrical wholesalers typically stock a similar range of products to meet their customers' requirements
 - c) electrical wholesalers' products are often homogeneous, although there is some brand differentiation; and
 - d) the OFT's market investigation has not indicated that there is a key product in the market which drives searching or switching behaviour.
23. Although there is little scope for demand side substitution between different electrical products, the reasons given above suggest that it is neither appropriate nor necessary for the purpose of evaluation of this merger (between electrical wholesalers stocking a broad range of electrical products) to delineate the market with reference to these different products but to consider wholesaling of electrical products.

SEGMENTATION BY PRODUCT SALES CHANNEL

24. The parties submit that a wide range of distribution channels serve electrical contractors and that the difficult trading climate in recent years has intensified competition between the different channels. As a result, the parties submit that electrical wholesalers increasingly compete with manufacturers, importers, specialist distributors, internet wholesalers, and trade counters in builders' merchants and retailers. Further, the parties do not accept a segmentation between industrial and commercial/domestic wholesalers on the basis that all wholesalers offer a core range of electrical

products and that any specialist offering is in addition to that of the electrical wholesale business.

25. The parties undertook two surveys for the purposes of the investigation; the first represented a survey of 14 local areas ('the branch survey'); the second survey was of electrical and mechanical and electrical contractors that spend in the region of £500,000 to £3 million on electrical products per annum ('the regional survey'). The parties also provided EEL branch profiles produced in 2010 and 2011 by each branch manager that included a list of five local competitors; the parties also provided results of a 'Branch Evidence Survey' (BES) that provided examples of the competitive interaction in its local area for example, quotes lost to other wholesalers. The parties have relied on this evidence to support their view that a wide range of distribution channels serve electrical contractors.
26. However, the decisional practice of the Commission suggests that wholesale distribution to professionals is distinct from other forms of distribution, including retail distribution by DIY stores. In the Rexel/Hagemeyer decision,¹⁶ the Commission found that retail distributors were not used by the vast majority of professional customers except in emergency situations, and that retail outlets differed in their service offering. The Commission also did not consider direct sales by manufacturers to be in the same market as electrical wholesalers, despite some evidence of manufacturers supplying directly to contractors. The Commission found that minimum order volumes and inflexible delivery options were key reasons why contractors dealt with wholesalers rather than manufacturers direct.
27. The parties' view was not supported by the OFT's third party enquiries in this case. Evidence from customers suggested that use of manufacturers, importers, and specialist distributors account for a small proportion of total spend on electrical products. Similarly, trade counters in builders' merchants, internet/catalogue sellers and retail outlets tend to be used by customers for distressed purchasing. Electric Fix, which has a large number of trade counters, was not cited by customers as being a credible supplier for their needs. While some contractors did make use of direct supply from manufacturers or specialist distributors, these distribution channels were generally seen as a complement to purchases via branch-based electrical wholesalers, rather than a substitute for them. Some customers told the

¹⁶ Comp/M.4963 Rexel/Hagemeyer 22 February 2008.

OFT they did not have the volumes to purchase from the manufacturer direct.

28. The OFT's investigation in this case has indicated that, as the Commission found, there are a number of reasons why electrical wholesalers might be preferred to these distribution channels. For example, electrical wholesalers do not have minimum order limits, they can provide regular deliveries to project sites, they also offer availability of credit, competitive per unit prices and additional rebate support to customers. On this basis, the OFT considers that electrical wholesaling should be considered separately from other product supply channels.
29. The OFT's investigation also suggested that it is not appropriate to treat all electrical wholesalers as synonymous in terms of their product offering and customer profile. Whilst the OFT notes the parties' comments regarding a core range of products that all wholesalers will offer, evidence indicates that industrial wholesalers can be considered as being distinct from commercial/domestic electrical wholesalers, specifically;
 - a) the OFT was informed by a key competitor that industrial wholesalers served a different group of customers to that of commercial / domestic electrical wholesalers, citing Lockwell and Routeco as key suppliers to industrial customers. On the basis of its third party enquiries, the OFT considers that wholesalers serving industrial customers constrain only to a limited extent domestic/commercial electrical wholesalers and vice versa
 - b) the OFT was also informed by a specialist distributor that it does not directly compete with the parties.
30. Similarly, customers of the parties responding as part of the OFT's investigation did not cite Lockwell and Routeco – wholesalers which the OFT understands are more focused on industrial customers – as alternative credible suppliers for their needs.
31. The OFT also considered the results of the two surveys that the parties provided in support of their arguments. Due to differences in the design of the two surveys¹⁷ and differences in sample sizes, the OFT has tended to

¹⁷ The parties discussed the design of their surveys, particularly the local branch survey, with the OFT at the outset. See CC/OFT joint guidance *'Good practice in the design and presentation*

place less weight on the results from the regional survey than those of the local branch survey, but has considered the results from both surveys alongside other evidence, such as the branch profiles and BES to assess the level of constraint other suppliers place on the parties.

32. The OFT was not persuaded by the parties' evidence that wholesalers primarily serving industrial customers provide a significant competitive constraint on the parties. In the local branch survey, Lockwell was named as a potential competitor in only two areas – Trowbridge where the diversion was low and Winsford. Although there appears to be a high diversion from EC to Lockwell in Winsford, due to the small sample of only [] respondents, the result may be being driven by a single customer. In the regional survey only one customer was able to name, unprompted, an industrial wholesaler as a potential competitor to the parties. Although industrial wholesalers are named on occasion as competitors by branch managers, the evidence provided by the parties does not indicate that any are considered to be strong competitors to the parties. As considered at paragraph 18 above, whilst industrial and specialist wholesalers may be used by customers for particular requirements, they are not considered to provide a strong competitive constraint on the parties.
33. On the basis of the evidence available, the OFT does not consider that there is sufficient evidence to justify widening the product scope beyond electrical wholesalers. However, the constraint from other supply channels, in specific regional or local markets, will be considered in the competitive assessment. Within electrical wholesalers, the OFT considers that it is appropriate to adopt a cautious approach in its competitive assessment and to treat suppliers focusing on industrial wholesalers as being distinct from commercial/domestic electrical wholesalers.

SEGMENTATION BY CUSTOMER TYPE

34. The OFT/CC Merger Assessment Guidelines outlines in paragraphs 5.2.28 to 5.2.30 the circumstances in which the OFT may consider it appropriate to define relevant markets for separate customer groups. Specifically, it identifies that such segmentation may be necessary where suppliers can target higher prices at customers willing to pay more, or when competition for customers differs significantly between different customer groups. The

of consumer survey evidence in merger inquiries' March 2011 for further information on the design of consumer surveys.

guidance states that in determining whether there are separate customer groups 'the key question is whether some customers could get better terms for the same requirements' and notes a number of conditions that must hold for customer segmentation to be relevant.¹⁸ The OFT has taken account of these factors in its analysis below.

35. In relation to potential segmentation by customer type or customer size, the parties submit that all customers are served out of local branches but accept that there is evidence for a market segment for national/key account customers which has a supra-local dimension. They do not, however, accept this for multi-local or regionally-based customers. Further, the parties point to the fact that the AMA has not identified or commented upon a segment based on size or type of customer. []. The parties do not consider that electrical contractors can be differentiated from other types of customer such as FM contractors, industrial customers, public sector authorities or Housing Associations. The parties argue that regionally-based electrical and mechanical and electrical contractors have similar purchasing requirements to all other types of customer in terms of price, customer service, stock availability and logistics.
36. Nevertheless, evidence received by the OFT during the course of its investigation, in particular from third parties, indicates that there may be separate markets on the demand side depending on the type of customer, leading to a narrower product definition. There are two ways in which the product market could be segmented by customer type: (a) with respect to the size of customer; and (b) with respect to the nature of the customer's business. Each of these is discussed below.

SIZE OF CUSTOMER

37. Third party enquiries suggest that purchasing decisions by customers will be affected by a number of factors, the importance of which varies depending on the type of customer.
38. The OFT also notes that the AMA Research segments contractors into 'small', 'medium' and 'large' contractors, noting that the 'market is highly

¹⁸ The requirements listed are: customers who pay a low price cannot resell to those who would otherwise pay a high price; suppliers can identify those with a high willingness to pay, or those in a weak bargaining position, and therefore can adopt a different negotiating stance towards them; and customers have different preferences, or have access to different sets of suppliers (*Merger Assessment Guidelines*, paragraph 5.2.30).

fragmented with most businesses being small contractors operating on a regional or local basis'. AMA Research also identifies a number of factors affecting electrical contractors' choice of wholesaler, corroborating what customers told the OFT.¹⁹

39. The OFT therefore considers that there is a basis for segmenting the market by size of customer and therefore it is appropriate for the purposes of the competitive assessment to define separate markets to take account of the specific requirements of different types of customers distinguished by size. The OFT's market investigation has identified the following distinct types of customers reflecting in particular, differences in purchasing arrangements, price and service requirements:

- a) **Large/national.** These customers will typically purchase electrical products centrally via framework agreements or project tenders and are likely to have professional buying teams. Electrical product spend will only generally occur with approved suppliers, except in emergencies or for specialist products. For contractors, electrical products will almost always be delivered to project sites on a 'just-in-time' basis. The OFT's market testing in this case found that such customers are likely to be highly price and quality sensitive, and will expect high service levels and good branch coverage for example requiring deliveries the same day or at specific times within a day rather than the more standard next day delivery option. They are likely to use a limited number of suppliers and will generally require sophisticated management information from suppliers. Such customers are generally likely to spend several million pounds per annum on electrical products.
- b) **Multi-local/regional.** These customers are unlikely to have centrally negotiated pricing agreements with wholesalers. Their relationships tend to be with one branch of a wholesaler, typically located near to the headquarters of the business, although orders could be fulfilled by branches close to a project site (depending on the way in which the electrical wholesaler is internally managed).²⁰ Reflecting their size,

¹⁹ These factors are: product prices; availability of specialist supply; product range; speed and reliability of delivery; location of branch; level of product technical knowledge of staff; and, availability of services including credit facilities (source: AMA Research, 2011, pages 79-80).

²⁰ The parties stated that, because of the way EEL was internally structured, EEL would generally fulfil orders placed by such customers from the EEL store at which the order had been placed, rather than from the nearest EEL store to the delivery site.

these customers operate businesses that have a wider geographic coverage than smaller, local purchasers (discussed below), potentially operating across a county or a wider region. As with large/national customers, contractors will almost always have products delivered to project sites on a 'just-in-time' basis requiring deliveries at specific times or within the same day. The OFT's market testing in this case found that such customers are likely to be price and quality sensitive, often specifying branded products. In general, such customers will require larger credit limits but are unlikely to obtain as generous terms as large/national customers. While the OFT has identified that such customers are likely to spend in the range of £500,000 to £3 million per annum on electrical products.

- c) **Small/local** (for example, small enterprises, 'one-man-bands' and DIY enthusiasts). These customers operate in much more local markets or at a single site. Electrical products are more likely to be collected at branches by the customer compared to the other segments and deliveries tend to be next day. The OFT's market testing in this case found that such customers are likely to be less price sensitive than the other two groups and are more likely to purchase own-branded products. They will, in general, consider a broad range of potential suppliers due to having less rigorous demands regarding service and delivery. In general, such customers will have low credit limits or will make cash purchases. The OFT considers that such customers are likely to spend below £500,000 per annum on electrical products.

- 40. The OFT's investigation indicated that, for the reasons set out above, competition for customers differs significantly between these different customer groups, as not all wholesalers will be able to serve or offer a full-service to all customer segments. Indeed, the OFT considers that as the scale of a business increases, the range of effective competitive suppliers is likely to reduce to the point where large national customers may consider there to be only a few viable suppliers (see the discussion in paragraphs 73 to 79 below).

NATURE OF CUSTOMERS' BUSINESS

- 41. As well as distinguishing different customer categories based on size of customer, the OFT also considered whether it is appropriate to differentiate

between customers based on the nature of their business. In this respect, third party enquiries support differentiation by customer type based on differences in their product requirements and the way they purchase. The types identified are as follows.

- a) Electrical and mechanical and electrical ('M&E') contractors who install electrical products as part of new build projects or refurbishments. They tend to serve commercial and domestic end-customers²¹ (hereafter referred to as 'contractors').
 - b) Original equipment manufacturers (OEMs) use electrical products in the manufacturing process of other products.
 - c) Industrial customers who use electrical products in the servicing of industrial facilities.
 - d) Facilities management customers who generally maintain domestic and commercial property.
 - e) End-user customers who will tend to be in-house maintenance staff.
42. The OFT's market testing indicated that there are differences in the way contractors operate, compared with other types of customer, and hence the range of wholesalers they can effectively source products from, suggesting a narrower market segment. Contractors are more likely to work across a variety of project sites and be more demanding in their delivery requirements than other types of customers, for example requiring multiple deliveries on specified days and times of day. Contractors stressed to the OFT the importance of stock availability and that their customers will specify a brand of product as part of the project specification. These requirements point to the need for a wholesaler to be of a certain size, perhaps with a branch network in order to be able to supply this type of customer.
43. Finally, the OFT notes that whilst no specific analysis has been undertaken by either of the parties or the AMA on individual customer segments, the parties provided an internal document that did segment customers by type of work being undertaken – for example, 'SME Industrial', 'SME

²¹ Electrical and M&E contractors tend to account for an estimated [] per cent of the parties' sales.

Commercial' and 'FM Contractors'.²² The parties submit that this document was prepared in connection with the sale of EC for the purposes of presentations to potential purchasers. Nevertheless, the OFT sees no reason why this document would have artificially identified such customer segments if it did not at some level reflect underlying business reality, and considers this document to be probative that it is possible for wholesalers to segment the market by customer type. The OFT also notes that AMA Research identifies a number of different types of customer including 'M&E contracting companies' and 'facilities management companies'.

CONCLUSION ON PRODUCT SCOPE

44. The OFT considers that the relevant product scope should be electrical wholesaling primarily focused on serving commercial/domestic customers. The OFT also believes that the wholesale distribution of electrical products may be further segmented with regard to the size and nature of a customers' business and therefore the OFT has considered the impact of this transaction on each of national, multi-local/regional (where its focus has been on contractors where specific concerns were raised) and local customers separately.
45. However, given that the merger does not raise competition concerns in relation to national or multi-local/regional customers, it has not been necessary to conclude on the precise product scope in relation to these customer segments.

GEOGRAPHIC SCOPE

46. The OFT considers that the appropriate geographic scope for assessment of this case may differ for each of the customer segments it has identified above.

NATIONAL DIMENSION

47. The parties submit that there is a national market for national/key account customers which has a supra-local dimension.
48. As reflected in the discussion of customer segmentation above, third party enquiries indicated that for the national/key account customers, competition does occur at a national level. Some of the parties' largest

²² 'Saturn: Management Presentation' June 2011. Parties' submission Annex 10.

customers told the OFT that they have centrally negotiated national price/framework agreements in place with the large electrical wholesalers and that regional independents and small local independent wholesalers are unable to provide either the price or the quality of service which they require, even where they are members of buying groups. Large customers also stated that they value good geographic coverage when choosing an electrical wholesaler.

49. The OFT considers there is evidence to support a national dimension of competition and has therefore examined the impact of the transaction on national/key account customers on a national basis.

REGIONAL DIMENSION

50. The parties do not support a regional geographic frame.
51. However, both customers and competitors did support the view that there was a regional dimension to competition as described at paragraph 39(b). In addition, some regional contractors expressed concern about post-merger levels of competition amongst electrical wholesalers.
52. The OFT understands that a number of the parties' more significant customers are contractors that operate across a number of local areas (typically regionally) and may require multiple branches of a wholesaler to fully support their operations. In addition, there are a number of electrical wholesalers that could be considered as regional given the geographic coverage of their branch network, which might imply varying patterns of competition in different regions of the UK – for example, Wilts (prior to its acquisition by Rexel) operated largely in the South and South West of the UK.²³
53. The OFT considers there is evidence to support a regional dimension of competition and has therefore examined the transaction on a regional basis.

LOCAL DIMENSION

Parties' arguments and evidence on local dimension

²³ Similarly, Eyre & Elliston operates mainly across the Midlands; Medlock has operations in the South East, London and the East of England; and Holland House has branches in Scotland and the North West of England.

54. The parties submit that the relevant geographic scope in the assessment of this merger is local, as all competition is between wholesalers and wholesaler branches in local markets. The parties argue that 'local' markets cannot be rigidly defined given
- a) high branch density – the parties estimate that there are 2,462 branches of electrical wholesalers in the UK,²⁴ and
 - b) the fact that electricians and electrical contractors provide their services over wide areas.
55. The parties also cite the high proportion of goods that are delivered, often at zero or low cost, multi-sourcing by customers and the fact that contractors are mobile as being additional reasons why competition occurs over large geographic distances. The parties point to the local survey results in support of their argument of a wider geographic market as the results indicate that the vast majority of customers can or do receive deliveries. The parties also state that they typically provide quotations by phone, email or fax demonstrating low search costs and that there is no difference in the customer experience between local and non-local purchasing.
56. The parties supplied a range of additional evidence in support of their contention that local markets are broad geographically, including EEL branch profiles which are produced as part of the annual budgeting process and include an estimate of the area over which they consider their main area of operation to be (as well as including a list of their five main competitors). The parties also provided evidence (discussed at paragraph 59 below) to show that wholesalers based outside a local area compete to supply customers within it.
57. In cases with multiple local areas, the use of catchment areas can act as a filter to identify local overlap areas of potential concern. Catchment areas are generally defined so as to include the area in which the great majority (for example 80 per cent) of a store's custom is located; however this is not a firm rule and the OFT will take a suitably cautious approach to ensure that all areas in which competition concerns may arise are identified.²⁵

²⁴ This excludes Guernsey, Jersey and Isle of Man.

²⁵ Paragraph 2.19, OFT and CC Joint Commentary on Retail Mergers.

58. The parties have provided analysis of the catchment areas within which 80 per cent of EC's customers' invoice addresses are located for each of its branches, and also for deliveries. The average distance based on invoice address is 14.5 miles and, for deliveries, 22.5 miles.
59. The parties highlight the fact that delivery areas in sparsely populated regions can be significantly larger than the average and, as a consequence, catchment areas based on 80 per cent of deliveries often overlap and encapsulate more than one town. The parties therefore argue that there is no clear basis for identifying a single correct geographic market. The evidence provided by the parties in support of their views included screenshots from the websites of over 100 electrical wholesalers offering free or low cost UK-wide deliveries and an analysis of sales into nine local markets from branches outside that area.
60. The parties undertook an analysis of local markets centred on the target branch using radials of five miles, 10 miles, 20 miles and the 80 per cent catchment area by delivery address. The parties then grouped those local areas based on the post-merger fascia reduction within a 10-mile radius, using the Travis Perkins/BSS case as precedent.²⁶ They highlighted that this was more cautious than using the 80 per cent catchment area as a filter. The parties submit that a 10-mile radial is overly cautious when referenced to the OFT's own guidance and approach in retail mergers and fails to take into account the nature of competition within the market.²⁷

THIRD PARTY VIEWS ON LOCAL DIMENSION

61. In order to assess the appropriateness of the 80 per cent catchment area, which the parties submit should be regarded as a good proxy in this case, the OFT has looked at other sources of information including third party views.
62. Third party competitors generally agreed that competition occurs on a local level, although evidence was mixed on the most appropriate local catchment area. A number of competitors submitted that the local market was either a five-mile radius or 12 minutes driving time. Other competitors suggested a range of between 10 and 20 miles. A buying group representing independent electrical wholesalers argued that the relevant local market was usually the same city.

²⁶ ME/4609/10, Anticipated acquisition by Travis Perkins plc of the BSS Group plc.

²⁷ The Parties' 'Commentary on the OFT's filter analysis', 18 January 2012.

63. Customers also suggested that competition occurs at a local level, although provided mixed evidence on how local markets might be defined. Some customers suggested that distance was not an issue for them, either due to the fact they relied on delivery or because they were willing to travel large distances to obtain the best price. However, some customers said they would obtain quotes from the four or five closest electrical wholesalers only. A number of customers suggested 10 to 20 miles as being an appropriate radial. Although the OFT's market testing identified a range of distances over which customers would consider purchasing from a wholesaler, the OFT notes that the results of the parties' own branch survey identified wholesalers that were mostly located within 10 miles of the target branch.²⁸

OFT ANALYSIS OF EVIDENCE ON LOCAL DIMENSION

64. The OFT considers that the balance of evidence supports a much narrower geographic frame than that suggested by the parties. In reaching this conclusion, the OFT notes the general aversion customers have to incurring significant search costs for products and the service elements which customers of all size have consistently stated are important to them, such as relationships with specific branch managers (and therefore an understanding of the customers' needs and purchasing), and the ability to resolve problems with orders at short notice. In addition, the OFT has not found evidence that customers of electrical wholesalers repeatedly shop around when placing orders, instead preferring to develop relationships with a smaller number of suppliers.

65. The OFT notes that there is wide variance in the estimates of branch managers stating the geographic area over which they compete and that, in most cases, the named competitors included in the same document tend to be other branch-based wholesalers in the same town. The OFT notes that the evidence provided by the parties in relation to sales from branches outside the local area is limited.

66. The OFT considers that the mix of delivery and collection further complicates the definition of a catchment area and potentially leads the 80 per cent catchment area to overstate the area over which local competition for small/local customers exists. This is due to the fact that the catchment

²⁸ The diversion question included in the local branch survey identified those wholesalers that customers would switch their spend to and respondents, in general, identified branch-based wholesalers located within 10 miles of the target branch.

area is based on delivery addresses for all customers by value and hence the inclusion of large and regional contractors that have a wider catchment area and are generally higher spending is likely to result in a wider catchment area than that needed to service solely local customers.

67. The purpose of determining the extent of the geographic dimension to local competition is to enable the OFT to apply a preliminary filter to analysing the effect of the merger at local level. In this respect, the purpose of a filter is not to conclude definitively on any competition concerns. Rather, filtering is a tool to focus substantive analysis on local areas most likely to give rise to competition concerns. Once candidate local markets are identified, the substantive analysis will relate to evidence of closeness of competition, which may involve – inter alia – competitors located outside the radial used for the purposes of filtering where there is evidence to support this.
68. In coming to a view, the OFT notes that third parties have identified a range of distances, some indicating up to 20 miles, over which they would obtain quotes from branch-based wholesalers and also that EC's 80 per cent delivery catchment area is 22.5 miles. However, the OFT is also mindful that the local branch survey results, which represents evidence from a large number of customers, indicates that customers tend to use branch-based wholesalers within 10 miles. Further, the OFT considers that the 80 per cent catchment area is likely to over state the area over which competition for small/local customers exists due to the inclusion of larger contractors that operate on a regional or national basis.
69. The OFT therefore considers, based on the evidence available to it, that an initial filter using 10-mile radials is suitably cautious.

CONCLUSION ON GEOGRAPHIC SCOPE

70. The OFT considers it appropriate to assess the competitive effects of the merger on a national, regional and local basis. However, given that the merger does not raise competition concerns on either a national or regional basis, it has not been necessary to conclude on the precise geographic scope in relation to these customer segments.
71. In assessing the local aspects of competition, the OFT has used a suitably cautious initial filter of 10 miles.

HORIZONTAL ISSUES: UNILATERAL EFFECTS

72. The OFT examined the possibility that the merged entity could unilaterally impose prices above the pre-merger level or deteriorate their competitive offering and considered the evidence of the parties' shares of supply and closeness of competition on large/national customers, regional/multi-local customers and small/local customers.

COMPETITION ASSESSMENT FOR LARGE/NATIONAL CUSTOMERS

73. The parties claim that there is no competition between electrical wholesalers at a national level (given that sales take place locally) but that, in any event, the transaction should not give rise to unilateral effects largely due to the lack of particular closeness of competition between the parties in respect of their key/national accounts.
74. [].²⁹
75. It is difficult to establish precise market shares in relation to this customer segment. However, the OFT considers that, due to the price, quality and service requirements of such customers, the effective range of competitors is likely to be more limited than the broad range of suppliers the parties argue compete in the market.

CLOSENESS OF COMPETITION AND CONSTRAINTS FROM EXISTING COMPETITORS

76. Third party enquiries suggested that, for the largest customers, Rexel and EEL are considered the main electrical wholesalers for a number of reasons, including: credit availability, reliability and logistical capability, price and stock availability.
77. Large/national customers told the OFT they spend limited amounts with EC and City Electrical Factors (CEF) – the only other wholesalers with a national branch footprint. Both CEF and EC were generally considered to be targeting the smaller electrical contractors or trade-counter sales, rather than larger firms. The OFT notes that the parties' internal documents state that 'national building services/M&E' customers are a weak area for EC and cite Rexel and EEL as the 'next most likely competitors'. The document³⁰

²⁹ Source: OFT analysis based on data supplied by the parties.

³⁰ 'Saturn: Management Presentation' June 2011. Parties' submission Annex 10.

cites network scale and product availability as key reasons why Rexel and EEL are the most likely competitors. The OFT considers that EC's branch network scale – 83 branches compared to EEL's 255 branches, Rexel's 394 branches and CEF's 393 branches – is a key reason why it is not considered a strong supplier to this customer segment.

78. Almost all large customers were unconcerned about the merger. While two large customers told the OFT that they considered EC to be increasingly competitive for their needs, there was little other evidence to support any characterisation of EC as an emerging credible third supplier alongside EEL and Rexel.

CONCLUSION

79. On the basis of the evidence available, the OFT does not consider the parties to be particularly close competitors for large customers with a national scope or for any readily identifiable subset of those customers. In particular, EEL and Rexel are considered to be the two key suppliers to large, national customers. At the time of the merger, EC was not considered to be a strong competitor for this type of customer. Therefore, for the reasons given above, the transaction does not create competition concerns in relation to large customers with a national scope.

COMPETITION ASSESSMENT FOR MULTI-LOCAL/REGIONAL CUSTOMERS

80. The OFT sets out below its competition assessment for multi-local/regional customers. During the investigation, the OFT received a number of concerns regarding the merger from contractors that have a multi-local/regional presence. Given that no other types of customer that could be described as multi-local/regional were concerned by the merger, the OFT's assessment concentrates in particular on the effect of the merger on contractors requiring multi-local/regional coverage. To the extent that concerns can be ruled out in relation to the effect of the merger on this group of customers, the OFT believes that there is no reason to consider that other groups of multi-local/regional customers would be adversely effected.³¹

³¹ Specifically, the OFT considers that other types of customer – for example, facilities management customers or large end-users – are unlikely to have the same set of service requirements, as their locations are generally fixed and their purchasing may be more reactive.

PARTIES' ARGUMENTS

81. The parties submit that, notwithstanding their arguments that it is not possible to discriminate against such a customer segment, the transaction will not result in an SLC in this customer segment for a number of reasons:
- a) EC has a small number of such customers and estimates its share of supply to be small; hence, the increment resulting from the merger is not sufficient structurally to change the market
 - b) such customers can and do buy from a range of other suppliers; and
 - c) EEL and EC (as well as Rexel) are not uniquely placed to service the requirements of such customers.
82. The parties regional survey was a telephone survey of regional/multi-local contractors located across the UK. The parties identified such customers on the basis of an indicative spend of £500,000 to £3 million and also sought to boost the sample of their own customers by seeking to contact those contractors identified by the Electrical Contractors' Association that had a similar spend on electrical products. The parties' findings are therefore based on a sample size of [more than 100] customers [].
83. The parties supplemented the results of this survey with those from the local area branch survey where a further [] customers were identified that could be categorised as multi-local/regional contractors based on their expenditure.
84. As noted at paragraph 31, the OFT has not been able to place significant weight on the regional survey results in this case, in part due to the limited number of EC customers that were surveyed and the fact that the sample size is particularly small in some areas. Nevertheless, the OFT considers that the regional survey has provided some useful information in its competitive assessment, in particular, in providing an indication of the electrical wholesale suppliers who can supply this type of customer.

SHARES OF SUPPLY

85. As with large/national customers, it is difficult to establish precise shares of supply in relation to this customer segment.

86. The parties submit that EC is a weak competitor of EEL's and that its share of supply in relation to this customer segment is low; the parties estimate the combined share of supply to be [less than 30 per cent] , with an increment of [less than five per cent]. The OFT has not been able to substantiate the parties' estimates of their shares of supply but the OFT's market testing indicates that the parties' shares may be higher than those estimated by the parties. However, even if the parties estimates are considered robust, there is sufficient concentration of suppliers in this customer segment for the OFT to consider whether the parties are particularly close competitors and this is discussed below.

CLOSENESS OF COMPETITION

87. The parties point to their internal documents as evidence that EC was not considered a strong competitor in this segment as it was described as an 'improving' area for EC; national wholesalers, and larger sized regional wholesalers were listed as the 'next most likely' competitors for this customer segment.
88. Further, the parties submit that its regional survey of contractors shows that EC accounts for a smaller share of EEL's customers' purchases than other wholesalers such as CEF, Medlock, Moss Electrical, Wilts, Eyre and Elliston, AA Jones, and ERF Electrical. The parties also submit that these wholesalers, many of which are regionally-based, were named by customers more often than EC as being capable of meeting their requirements.
89. The OFT considers that the results of the regional survey do point to the fact that there are alternative suppliers for this type of customer, but is also mindful that the results do not provide an indication of the competitive strength these competitors place on the parties (this is considered in further detail below at paragraphs 97-102).
90. The OFT spoke to a significant number of customers in this category and a proportion of these customers expressed some concern with the merger. These customers generally considered EC to be an effective competitive constraint on both EEL and Rexel and that, in general, these three firms account for the significant majority of their spend.
91. The OFT considers the evidence to be mixed but on balance, considers that EC was not a strong constraint on EEL in supplying this type and size of

customer. In coming to this view, the OFT has had regard to the range of evidence provided by the parties including internal documents that identify, in addition to national wholesalers, larger sized regional wholesalers as suppliers to this category of customer and this is supported by the parties' survey results. The OFT notes the concerns raised by some customers in this category but considers Rexel to provide the most significant constraint on EEL. Nonetheless, the OFT considers that EC provided some constraint on EEL.

92. The OFT has therefore considered whether other competitors such as CEF and large regionally-based wholesalers would be an effective constraint on the merged entity.

CONSTRAINT POSED BY CEF

93. The parties submit that CEF is a strong competitor across the parties' entire customer base due to its level of turnover, its significant branch network and the extensive range of branded as well as own-label products it stocks.
94. The OFT notes that CEF is cited as a competitor on the majority of EEL's branch profiles that are produced for the purposes of budgeting and this is consistent with other internal documents. The OFT is also mindful that the local survey results indicate that CEF is at least as strong a competitor to EEL as EC.
95. Set against this is the results of the OFT's market testing, which indicated that CEF may not be a particularly strong supply option for some regionally-based contractors. The main reason cited by some contractors for not using them was their lack of price competitiveness and consider CEF to be more focused on supplying smaller customers. However, some of the contractors the OFT contacted confirmed that they did use CEF for a material amount of spend or considered them to be as effective as the other national wholesalers. In addition, the OFT notes that CEF has an extensive branch network and product range such that it has the capability to act as a strong competitive constraint on the parties post merger.
96. On the balance of evidence and noting the views of customers, the OFT considers that CEF is not a particularly strong competitor in supplying this type and size of customer. Nevertheless, it is considered to represent an equivalent constraint to that of EC.

CONSTRAINT POSED BY LARGE INDEPENDENTS

97. The parties submit that there are a number of large independents that can and do supply this customer segment. Considering the factors important to regionally-based contractors, they state that membership of buying groups allows large independents equivalent price competitiveness to the parties; that their branches are at least as large in size as EC's and, on average, better staffed; that such independents are able to deliver products to such customers, either via their own vans or using third party carriers; and, that the use of invoice factoring and credit insurance should allow such independents to provide credit facilities to such customers.
98. The OFT notes that the evidence provided by the parties in relation to the surveys and BES shows that regional independent wholesalers are actively competing with the parties and supplying this type of customer.
99. In relation to its own market testing however, the OFT found that while other branch-based wholesalers were named by customers, they were not typically used for the majority of purchases. Some of those customers that did use regional independents expressed doubts about their ability to service their requirements on larger projects, particularly due to the perceived relative price competitiveness between the larger national wholesalers and regional wholesalers.
100. The OFT spoke to a number of the large independents identified by the parties in an attempt to verify (a) the extent of their existing supply to this customer segment and (b) the extent of the constraint they likely pose on the parties. The evidence is mixed with some large regional wholesalers confirming that they did supply this type and size of customer but a number expressed a preference to serve a larger number of smaller customers where they are likely to achieve higher margins. With a broader base of customers, this business strategy would also place less risk on the wholesaler's business if some customers were lost to competitors.
101. The OFT notes that the parties themselves, as evidenced in their internal documents, consider that larger sized regional independents do compete, together with the national wholesalers, for regional based contractors. The OFT also notes that many of the regional independents for example, Holland House, T N Robinson, The Electrical Network that have sizeable branch networks with turnover in excess of £10 million tend to be part of a buying group and therefore have the capability to supply regional/multi-

local contractors. The importance of service in winning business was mentioned by several competitors and the OFT considers that regional independent wholesalers are well placed and sufficiently flexible to adapt to customers' specific requirements.

102. The OFT therefore considers that there is evidence that large regional independent wholesalers can and do supply regionally-based contractors, although their competitive constraint is likely to vary by region. The OFT therefore focused its analysis on specific regions where it considered the transaction has the highest likelihood of giving rise to anti-competitive unilateral effects for multi-local/regional contractors.

REGIONAL ANALYSIS

103. The OFT's analysis focused on three regions, namely the North West, Yorkshire and Humberside, and the South West.³² In each of these regions, EC appears to have a relatively stronger presence in terms of number of branches than in the other regions and competition from regionally based wholesalers appears to be more fragmented. The OFT notes that the majority of the complaints it received were from contractors based in these three regions. The OFT considered on this basis that to the extent that competition concerns might arise in the supply to multi-local/regional contractors, they would be most likely to do so in one or more of these three regions.
104. EEL, Rexel and CEF each have over twenty branches in the North West region. The OFT identified TN Robinson and Eyre and Ellison as independent wholesalers that have comparable branch networks to EC in the region. The parties' regional survey of contractors indicates that EC is not a particularly close competitor to EEL and that there are a number of strong independent wholesalers active in the region. This is supported by the OFT's own market testing that found that regional independent wholesalers in the North West do compete to supply regionally-based contractors. The OFT considers that in aggregate, these regional independents will continue to act as a competitive constraint on the merged party.
105. In Yorkshire and Humberside, EEL, Rexel and CEF again have the largest number of branches in the region. EC has a larger branch network to that of Eyre and Elliston and Bonus but has fewer than ten branches in the

³² UK administrative regions

region. The OFT notes that Bonus has a flagship branch at Hull and is considered to be a strong independent in the local area. Other independents named in the parties' survey of regional contractors include AA Jones and Bemco. The OFT considers that Bonus, due to its presence in the area, together with the other named independents including those identified in the parties' local branch survey such as The Electrical Network, A B Electrical and B Danby, are able to replace the competitive constraint lost by the merger.

106. In the South West region, EEL, Rexel and CEF have the largest branch networks. Prior to its acquisition by Rexel, Wilts was the largest independent wholesaler in the region. Following the acquisition of Wilts, EC has, with approximately ten branches, a larger network than any regional independent. However, the OFT notes that there are a number of well sized independents active in the region, namely Western Electrical and Devondale. The OFT sees no reason why these independents would not be a credible alternative to EC and therefore be able to replicate the competitive constraint lost as a result of the merger in the supply to regionally-based contractors in the South West region.

BARRIERS TO ENTRY AND EXPANSION

107. When assessing possible supply-side responses, including entry, expansion and repositioning, the OFT will consider whether the response would be (i) timely, (ii) likely, and (iii) sufficient.³³ In terms of timeliness, the guidance indicates that the OFT will look for entry to occur within two years.

108. The parties submit that there are a number of wholesalers such as CEF, Electric Fix and Eyre & Ellison who have the ability and incentive to increase their sales to regionally-based contractors. The parties also name Yesss Electrical³⁴ as a new entrant into the UK electrical wholesaling market with the potential to expand.

109. The key question for the OFT is whether a new entrant is, on a timely, likely and sufficient basis to be able to achieve the scale of EC, which is notably smaller in turnover and branch network than either EEL or Rexel. The OFT notes that EC itself was formed originally by the acquisition of

³³ *Merger Assessment Guidelines*, para. 5.8.3.

³⁴ Yesss Electrical is an offshoot of a separate part of the CEF Group. The parties submit that it is actively recruiting staff and initially intends to open 70-80 locations in the UK.

two independent regional wholesalers and considers that a similar combination is the most likely way in which a competitor of similar size could 'enter' the market. However, the OFT has no evidence to indicate that a competitor, similar in size and competitive constraint to EC, is likely to be created through the merger or acquisition of other smaller independent wholesalers given the high degree of fragmentation amongst wholesalers.

110. One third party commented that the only viable way a new entrant could enter the market and achieve the sort of scale of EC pre-merger would be if a builder's merchant established an electrical wholesaling division leveraging its existing branch network. No potential or likely entrant was identified during the investigation.
111. The OFT considers it likely that CEF and independent wholesalers will continue to expand organically on a relatively small scale. The OFT notes the planned entry of Yesss Electrical, but only limited evidence was available to the OFT such that it is not able to rely on this information to conclude that any entry will be timely, likely and sufficient to outweigh the competition lost by EC. However, as no competition concerns were found in relation to this segment of customer, the OFT has not needed to conclude on barriers to entry and expansion.

CONCLUSION ON MULTI-LOCAL/REGIONAL CUSTOMERS

112. Overall, the OFT considers Rexel to be EEL's main constraint in the supply of electrical goods to multi-local/regional contractors. Based on the size of its branch network, EC is not considered to be a particularly close competitor to EEL but represents a similar competitive constraint to that of CEF. The parties have provided survey evidence to show that larger independent wholesalers can and do compete to supply this customer segment. However, the OFT considers that due to the variable size of independents, their competitive strength will vary by region.
113. The OFT assessed the impact of the merger in the three individual regions which the evidence available to it indicated would be the regions where competition concerns, to the extent they existed, would be most likely to occur. The OFT considers that the range of competitive constraints that exist within these regions, represented by both national wholesalers such as CEF and independent wholesalers, will be sufficient to constrain the parties post-merger. On the basis of the evidence available, the OFT

considers that the transaction does not create a realistic prospect of a substantial lessening of competition in relation to customers with a multi-local/regional scope.

COMPETITION ASSESSMENT FOR SMALL/LOCAL CUSTOMERS

114. The parties submit that competition concerns do not arise at a local level for the following reasons:

- a) the parties are not each others' closest competitor
- b) there are a large number of branch-based wholesalers, each exerting a competitive constraint (and buying groups allow independents to compete on price)
- c) customers use a variety of suppliers in addition to branch-based electrical wholesalers, and
- d) barriers to entry and expansion in branch-based electrical wholesaling are low.

115. Each of the above issues is considered in turn.

CLOSENESS OF COMPETITION

116. The parties submit that they are not close competitors. The parties note that in [a large majority] of the 30 branches in the branch survey, the other merging party is not the next largest competitor (in terms of current spend). The parties also highlight usage ratios³⁵ and estimated diversion ratios between the parties in support of their view.

117. In addition, the parties undertook an event-study analysis in several local markets where one of the merger parties had entered in recent years.³⁶ The parties claimed the results of this analysis demonstrated that entry did not adversely affect the sales or gross profit margin of the other party.

118. The OFT is not persuaded by the entry analysis provided by the parties for a number of reasons, not least that the headline results are counter-

³⁵ The 'usage ratio' is the amount of current spend by EEL customers with wholesalers other than EEL.

³⁶ The parties undertook an analysis of the rivalry between the parties' branches in several local markets: Stornoway, Galashiels, Kendal, Elgin, Scarborough, Glenrothes, Inverness, Ilfracombe and Trowbridge. In Ilfracombe, Kendal, Stornoway and Trowbridge, one of the parties has opened a new outlet in the last six years where the other party had an existing operation.

intuitive – namely, that entry results in an increase in sales for the other party. There is a likelihood that the positive relationship between the parties' sales data is not due to a lack of rivalry between the parties, but the existence of other external factors that may affect demand but are not captured in the analysis. A further limitation of the parties' model is that it did not capture the extent of the competitive dynamic in the area. For example, due to data limitations, no account of the number or type of competitors was made.

119. In general, the OFT's own market testing does not support the contention that the parties are not particularly close competitors. Both customers and competitors consistently told the OFT that they considered the parties to compete closely, albeit that Rexel was seen as a closer competitor to EEL than EC.
120. Nevertheless, the OFT notes that the closeness of competition between the two parties will to some extent differ between local areas, reflecting the different competitors that are active in each local area and their proximity to the parties. The branch survey results indicate that, in a number of local areas, there is an asymmetric constraint where there is a larger diversion from EC to EEL than vice versa. Nonetheless, the diversion ratios between the parties are high in some areas, indicating that they are close competitors.
121. The OFT has considered the results of the survey together with the branch profiles provided by EEL in coming to a view as to how closely the parties compete in a particular local area.

CONSTRAINT FROM EXISTING SUPPLIERS - BRANCH-BASED ELECTRICAL WHOLESALERS

122. The parties submit that a broad range of branch-based electrical wholesalers compete with the parties, from large national chains to independent wholesalers. The parties argue that membership of a buying group confers buyer power on groups of independent electrical wholesalers such that they can compete with larger multi-store competitors on price. In support of this, the parties provided a range of evidence including:
 - a) information on the number of branches represented within buying groups and their estimated turnover, which they claim demonstrates buying groups have broadly equivalent branch scale as the largest multi-store wholesalers and significant electrical product purchasing power

- b) a selection of quotes from AMA Research which relate to the benefits of membership of buying groups and their competitive strength in the industry; and
- c) their own survey of a large proportion of EEL's suppliers, in which they asked a number of questions about terms of supply to larger multi-store wholesales and buying groups. The parties claim that the results of this survey demonstrate that buying groups can gain a similar level of support as large multi-local wholesalers.

123. The OFT's own market testing indicated that the majority of larger independent wholesalers were members of buying groups but there were mixed views on the extent to which membership allowed them to compete on price with the large national wholesalers, including EEL and EC. A number of independent wholesalers informed the OFT that, within buying groups, those placing the largest volume of orders within the group would often be able to negotiate additional discounts with manufacturers over and above those obtained by the buying group such that members of the same buying group could in fact face differentiated pricing.
124. Some competitors of the parties considered they were able to compete in terms of pricing with larger multi-local wholesalers on specific product lines or brands, but not always across a broad basket of goods.
125. However, although some competitors mentioned the difficulty they had beating EEL and Rexel on price, some also confirmed that service factors are often where they can gain a competitive edge over national wholesalers. The OFT understands that, while customers generally have accounts with more than one supplier, strong relationships with suppliers (or often with specific branch managers within them), tend to endure and the understanding a branch manager will have of a customer's product and service needs is highly valued.
126. Therefore, to the extent that service is important to customers, the OFT considers that it may be artificial to consider the ability of large independents to compete with national wholesalers solely on their ability to match prices. The OFT considers the results of the local branch survey provides a guide on the extent to which independent wholesalers compete with the parties and this will vary within each local area.

CONSTRAINT FROM OTHER TYPES OF SUPPLIER

127. The parties submit that other types of supplier, including direct supply from manufacturers, specialist distributors, trade counters in builders'

merchants, internet/catalogue sellers and retail outlets all exert a competitive constraint on the branch-based electrical wholesalers.

128. Amongst the evidence provided by the parties are the results of the branch survey, which the parties state demonstrates that customers can and do purchase from a wide variety of supplier types. Specifically, the parties state that between [] per cent and [] per cent of respondents to the branch survey had used each of these different supplier channels in the last twelve months. However, the OFT notes that these figures only refer to the number of respondents using different supplier channels, not their volume of spend which may be relatively low compared to that with branch-based wholesalers.
129. The parties also cite AMA Research which states that other types of supplier are exerting an increasing competitive constraint on traditional branch-based electrical wholesalers.
130. The reasons why the OFT does not consider that alternative sales channels should be considered as a strong competitive constraint have been addressed in the discussion on market definition above (see paragraphs 24 to 33 above). Broadly, evidence from customers suggested that use of manufacturers, importers, and specialist distributors – including ‘super-distributors’ – is primarily for more specialised items that would be considered complementary to rather than as a substitute for the core electrical products supplied by branch-based wholesalers. The OFT understands there are a number of reasons why small/local customers are unlikely to buy direct from manufacturers, mainly the minimum order limits imposed by manufacturers (which even some large/national customers and regional/multi-local customers have told the OFT they struggle to meet). In addition, the rebate support offered by wholesalers presumes against procuring directly from manufacturers, as customers can take advantage of the volume rebate available when acquiring goods from a range of different manufacturers which they would not obtain buying direct from manufacturers.
131. In addition, the EEL branch profiles rarely specify different sales channels as key competitors to them in given areas [].
132. Evidence from customers and competitors suggested that internet/catalogue suppliers offered a weak constraint on branch-based electrical wholesalers and will typically be used for distressed purchasing. Evidence provided to the OFT by one online supplier suggested purchases from customers are infrequent and for low order amounts. Evidence from

customers suggests trade counters in builders' merchants and retail outlets offer a similarly weak constraint. This is supported by the parties' branch survey – for example, in areas where there is an Electric Fix branch present, diversion levels to it are negligible (see also paragraph 137 below).

133. Therefore, the OFT does not consider other types of supplier are particularly close competitors of branch-based electrical wholesalers but would take account of such constraints where there is specific evidence that the constraint is particularly significant in a given local area.

LOCAL METHODOLOGY

134. As discussed above in the section on geographic market definition (see paragraphs 64 to 68 above), the OFT employed an initial filter based on a 10 mile radius centred on each of the EC branches.
135. In retail mergers, a common OFT approach to focusing on local market overlap areas which are most likely to raise competition concerns is to conduct a fascia count as part of its filter process and therefore has to consider which fascia to include in the initial filtering.³⁷ Fascia-counts can give an initial indication of the potential strength of competition in specific areas. The OFT typically focuses its local market analysis on areas in which the number of independent fascia reduces from 'four to three', 'three to two' or 'two to one' post-merger and has done so in this case.³⁸
136. However, in this case, the OFT has also considered the information available to it in relation to the areas where the merger would result in a reduction in the number of fascia based on the filter from 'five to four'.³⁹ In respect of these areas, the parties pointed to the statement in the OFT's published guidance that 'In relation to the number of firms, previous OFT decisions in mergers involving retailers suggest that the OFT has not usually been concerned about mergers that reduce the number of firms in the market from five to four (or above)'.⁴⁰ The OFT notes that this statement is not conclusive and does not determine the extent or otherwise of its analysis or assessment of a particular merger. Moreover, the OFT notes that these guidelines only tend to apply in cases where it can be confident, at the first phase, that the relevant market is the narrowest

³⁷ Paragraph 2.7, Joint commentary on retail mergers, OFT/CC. Although this case is concerned with electrical wholesaling, the nature of local branch sales means that it is relevant for the OFT to have regard to its common approach for analysing local market conditions in retail mergers.

³⁸ OFT/CC Merger Assessment Guidelines, paragraph 5.3.5.

³⁹ See footnote 42 for an explanation as to why some 'five to four' areas were surveyed.

⁴⁰ OFT/CC Merger Assessment Guidelines, paragraph 5.3.5.

possible market on the basis of the hypothetical monopolist test. The OFT cannot discount the possibility that concerns will arise in 'five to two' areas where the parties are particularly close competitors. To do otherwise would be contrary to its statutory duty to refer a merger where the evidence points to a realistic prospect of a substantial lessening of competition.

137. The OFT considers that the evidence available to it does not support inclusion of all electrical wholesalers in any substantive local market analysis for filtering purposes. Based on the evidence currently available, the OFT considers it appropriate to include within the filter those wholesalers with a turnover in excess of £10 million.⁴¹ The OFT's market testing indicated that wholesalers with turnover in excess of £10 million would generally be able to negotiate discounts over and above the terms agreed by the buying group and therefore be able to compete closely with the parties on price. These wholesalers are also mentioned in the broader body of evidence, including the parties' branch survey, BES, competitor profiles and EC's pre-merger market research indicating the general competitive constraint these wholesalers place on the parties.
138. The OFT has, however, excluded a number of wholesalers that would otherwise fall within this category as it does not consider, on the balance of evidence including the local survey results, that they actively and strongly compete against the parties. These wholesalers fall into two categories.
- a) Electric Fix and Gibbs & Dandy. While the OFT's own market testing was mixed on the constraint posed by Electric Fix, the parties' branch survey revealed it was not a close competitor of the parties, with low or negligible current spend and diversion in areas where an Electric Fix branch is present. Notwithstanding the OFT's views about the weight to attach to diversion results in individual areas (see paragraph 142 below), in the [] branch survey areas in which Electric Fix is cited by respondents, the highest recorded revenue-weighted diversion from either of the parties' customers to it is 1.8 per cent and is quite often below one per cent. For similar reasons, the OFT considers it appropriate to exclude Gibbs & Dandy from the filter. Gibbs & Dandy

⁴¹ The OFT has included the following branch-based electrical wholesalers in its filter: EEL, EC, Rexel/Wilts, CEF, Eyre & Elliston, Medlock, R&M Electrical Group, BEW, KEW Electrical, ERF Electrical, Holland House, TLC, QVS Electrical, RS Components (branches only), Moss Electrical, Bonus Electrical Limited, TN Robinson Limited, Park Electrical Distribution, BEMCO, Worcester Electrical Distributors, The Electrical Network, Western Electrical.

is a builders' merchants with electrical trade counters in two of its branches, and a smaller range of electrical components in the remaining eight branches; the OFT therefore considers that the competitive constraint it is likely to exert on branch-based electrical wholesalers to be limited.

- b) Industrial Electrical Wholesalers (Lockwell, Routeco, R&M Distribution, John Macleans, Scattergood & Johnson). The parties' branch survey provides mixed evidence on the strength of competition provided by Lockwell. The revenue-weighted diversion to Lockwell from EC customers in Trowbridge is [0-five] per cent and from EEL's customers is [0-five] per cent. In Winsford, the diversion to Lockwell from EC customers is [15-20] per cent, but from EEL customers it is [0-five] per cent, even though EC and EEL are located next to each other. In addition, the OFT's own market testing suggested that Lockwell and Routeco focus predominantly on industrial customers and are a weak competitor of the parties. This is partly supported by the customer segmentation analysis in internal documents provided by the parties, which identifies Lockwell and Routeco as key suppliers to industrial customers.

As a result of the above, Electric Fix, Gibbs & Dandy, Lockwell, Routeco, R&M Distribution, John Macleans and Scattergood & Johnson were not included in the filter. However, the constraint from these suppliers was considered in individual local areas where there was positive evidence that they did provide a significant constraint on the merging parties in that particular area.

- 139. Any area where the transaction leads to a reduction in fascia within the relevant catchment area from 'five to four' or worse was treated as requiring further analysis. There were 35 areas identified by the filter
 - a) three areas where the transaction represents a 'three to two'
 - b) nine areas where the transaction represents a 'four to three', and
 - c) 23 areas where the transaction represents a 'five to four'.

Table 1 – Summary of overlap areas captured by filter

| Group | Fascia reduction | Overlap areas captured | | |
|-------|------------------|---|---|--|
| A | 'three to two' | Galashiels* | Stornoway* | Trowbridge* |
| B | 'four to three' | Darlington* Elgin* Kendal* | Ilfracombe* Norwich* Scarborough* | York* Peterborough Shrewsbury |
| C | 'five to four' | Glenrothes* Inverness* Winsford* Hull* Bedford Bognor Cambridge Cheltenham | Derby Huddersfield Ipswich Leamington Spa Liverpool Northampton Plymouth Preston | Rotherham Sheffield Stirling Stoke Swindon Taunton Worcester |

Source: OFT analysis based on data supplied by the parties

*Included in the parties' branch survey (see note 42 below).

140. The OFT therefore examined the evidence available to it in relation to the effect of the merger in the above local areas, beginning with a discussion of the local branch survey, which covers 14 of the above areas (see note 42 below).

LOCAL BRANCH SURVEY

141. The parties commissioned Gfk to undertake telephone surveys in 14 local areas,⁴² seeking to interview 50 customers in each area. The results of the branch survey have been used to calculate diversion ratios which the OFT has considered in its assessment in each local area.^{43, 44}

142. The OFT notes that for some areas, the response rates are low but due to the size and complexity of the data set, it was not possible to estimate confidence intervals around the central estimates of diversion. The OFT has therefore considered the response rates in coming to a view on how much weight to place on the results in each of the individual areas surveyed.

INCENTIVES TO INCREASE PRICES

143. In order to estimate the pricing pressure that the merger may generate, the OFT has combined the diversion ratios for each of the 14 areas surveyed with estimates of the parties' variable cost margins.

144. The parties provided estimates of their variable cost margins based on assumptions of which costs should be categorised as variable. After careful consideration, however, the OFT was not persuaded that all the costs identified as variable by the parties should be categorised as such. For example, the parties argued that over [] per cent of branch labour costs are variable on the basis that staff have notice periods of one month or less and that branch managers' remuneration will vary with the branch turnover and profitability. However, the OFT considered that allowing 50 per cent of staff costs as variable was a more accurate reflection of which costs should be seen as variable in the context of these businesses; this is in line

⁴² The parties elected to survey these 14 local areas based on discussions with the OFT at an early stage of the case as to what might constitute an appropriate filter (and identification of the 'four to three' areas that would result from application of that filter). However, the filter under consideration at that time included some suppliers that have been excluded in the OFT's final analysis and excluded some suppliers that have been included in the OFT's final analysis (see paragraph 137 and footnote 41) (hence leading to some 'four to three' areas not having been surveyed and some 'five to four' areas having been surveyed).

⁴³ The diversion ratios have been aggregated across the delivery and collection channels.

⁴⁴ The central estimates are diversion figures adjusted to remove diversion to another branch of wholesaler of the same brand (non-diverters).

with the OFT's approach to previous analogous cases.⁴⁵ The OFT has also included a proportion of distribution costs as variable as these are likely to vary directly with the quantity of goods sold.

145. In order to calibrate the potential price rises in each local area that could be expected to occur as a result of the transaction, the appropriate pass through rate needed to be estimated. This is the extent to which an EEL or EC branch could be expected to pass through any upwards pricing pressure to customers in the form of higher prices.⁴⁶ The parties argued that the firm specific pass-through should be less than 100 per cent, on the basis that the parties are subject to significant competition from a broad range of suppliers located across a wide geographic area.
146. However, even if the pass through rate will be less than 100 per cent post-merger, there was insufficient evidence to establish the precise rate of pass-through to be used in this case. Further, the OFT notes that due to differences in the level of competition in local areas the level of pass through may be higher in some areas than others, particularly where there are relatively few competitors. In this case, taking a cautious approach in line with a first phase merger control assessment, the OFT considers it appropriate to use a pass through rate of 100 per cent.
147. In other analogous cases,⁴⁷ the OFT has taken account of a 'feedback effect'.⁴⁸ However, in this case the OFT did not identify any local areas that had diversion ratios between the parties sufficiently high to raise concerns about such effects that would make a difference to the outcome of the investigation.
148. The above analysis therefore provided the OFT with an indication from the survey as to whether, given the level of the diversion ratio between the parties and the margin, the parties would face an incentive to raise prices by a material amount in each local area. As noted above, the evidential value of the survey results differed in different local areas reflecting the variation in the number of respondents and, critically, the proportion of spend for the relevant EC or EEL branch that those respondents

⁴⁵ ME/5252/11 '*Completed acquisition by Saint-Gobain of Build Centre*', 8 February 2012.

⁴⁶ For example, a pass through rate of 100 per cent means that for every one per cent of upwards pricing pressure, it should be expected that one per cent will be added to the prices paid by their customers.

⁴⁷ ME/5252/11 '*Completed acquisition by Saint-Gobain of Build Centre*', 8 February 2012.

⁴⁸ The 'feedback effect' occurs where there is an incentive for one of the merging parties to increase prices, which in turn increases the incentive for the other to do so, and this can magnify the potential price increase.

represented. The weight that has been placed on whether the survey indicated that the parties would face such an incentive has therefore been calibrated to reflect the robustness of the survey in the relevant area and has been triangulated alongside other evidence by the OFT in its analysis of each individual area.

EFFICIENCIES

149. While mergers can harm competition, they can also give rise to efficiencies. Efficiencies arising from the merger may enhance rivalry, with the result that the merger does not give rise to a substantial lessening of competition.⁴⁹

150. The parties argue that the merger will generate efficiencies that will ultimately be to the benefit of consumers, including – but not necessarily restricted to – an increase in the average manufacturer rebate levels achievable by both merger parties, and decreases in distribution and labour costs.⁵⁰

151. It is not uncommon for merger firms to make efficiency claims. To form a view that the claimed efficiencies will enhance rivalry so that the merger does not result in a substantial lessening of competition, the OFT must be satisfied, on the basis of compelling evidence, that the efficiencies are timely, likely and sufficient and that they are merger specific. The OFT has only had sufficiently compelling evidence to meet this test in a small number of cases.⁵¹ In this case, the OFT does not consider that the parties provided sufficient evidence to support their claims on the level of efficiencies resulting from increased economies of scale that could be achieved by the merger. For example, the parties' calculations implicitly assume that the product ranges for EEL and EC completely align and this is unlikely to be the case. Nor has the OFT been provided with the necessary documentary evidence (for example in the form of the individual contracts) to substantiate their arguments on manufacturer rebates. It has therefore not been possible to estimate the level of any potential merger specific efficiencies.

152. While it is possible that the merger may give rise to efficiencies that may ultimately be of benefit to consumers, the OFT is unable to conclude

⁴⁹ Merger Assessment Guidelines, OFT and CC, September 2010, section 5.7.

⁵⁰ Paragraphs 3.53-3.58, Assessment of the Local Competitive Effects of Edmundson Electrical Limited's Acquisition of Electric Center, 20 March 2012.

⁵¹ See ME/4551/10 'Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited' 23 September 2010.

definitively in this case given the lack of evidence available to it. Accordingly, no account of efficiencies has been made in its substantive assessment.

COMPETITIVE ASSESSMENT OF THE LOCAL AREAS

153. The OFT has undertaken a detailed assessment of the three areas identified by the filter that have resulted in a reduction in fascia of 'three to two' and the nine areas that have resulted in a reduction in fascia of 'four to three'. The OFT benefited from local survey results in all the 'three to two' areas and in the large majority of 'four to three' areas, although there were two areas that were not included in the survey, namely Peterborough and Shrewsbury, (that represent a 'four to three' reduction in fascia).

154. As part of its competitive assessment in each local area, the OFT has considered the range of evidence available, for example, in considering the constraint provided by independents in these areas it has had reference to:

- the location of the independent(s) in question
- the estimated turnover of the independent(s) in question – and whether it was broadly equivalent to the branch turnover of one of the party's stores
- the range of products supplied by the independent(s) in question
- whether the independent(s) in question featured in the branch survey
- whether the independent(s) in question featured in the BES data and/or the EEL 2010 branch profiles, and
- whether the independent(s) in question had been identified as a competitive constraint by third parties.

155. The OFT has also considered whether the merger could plausibly be said to raise competition concerns in any of the 23 areas that have resulted in a reduction in fascia of 'five to four'.

GROUP A: FASCIA REDUCTION OF 'THREE TO TWO' AREAS

Stornoway

156. Stornoway is a town located on the Isle of Lewis in the Outer Hebrides, around 50 miles off the west coast of Scotland. In addition to EEL and EC, CEF is the only other electrical wholesaler on the island and all three branches are located within a half-mile radius close to the ferry terminal. The EC branch is a trade counter within the vendor's plumbing and heating store.

157. The survey results identify a high diversion between the merging parties and, although the sample size is numerically relatively low, it accounts for a good share of each of the store's turnover. The survey results indicate that the parties would face an incentive to raise prices materially (and this was the case in relation to both the EC and EEL stores). The OFT notes that the EEL 2010 branch profile places [references to competitors picked up in EEL 2010 branch profile]. The OFT did not consider the BES evidence persuasive in support of the parties' view that wholesalers from the mainland act as a strong competitive constraint on the parties' branches in Stornoway and that, had this constraint been sufficient, it would have been expected to have been revealed through the survey.

158. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Stornoway.

Trowbridge

159. Trowbridge is a town in the south west of England, just over 10 miles south-east of Bath. The EEL branch which was opened in October 2010 is located just over two miles from the EC branch in Trowbridge. The survey identifies a high diversion from the EC branch to EEL's although the Rexel Group (including Wilts), which has a number of branches in this area, is identified as the strongest competitor to both parties. The survey results indicate that the parties would face an incentive to raise prices materially in respect of the diversion from the EC to the EEL store.

160. The OFT considered whether the CEF branch which is located just outside the 10 miles would provide a sufficient competitive constraint on the parties but notes that [references to competitors picked up in EEL 2010 branch profile]. The OFT considers that Kingsway may, due to its proximity, provide some competitive constraint on the parties. However, the OFT was not persuaded by the evidence provided in relation to the BES that Kingsway would be a sufficient competitive constraint to replace that lost as a result of the merger. The survey also indicated that the level of diversion to Kingsway from both stores was relatively small. []

161. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Trowbridge.

Galashiels

162. Galashiels is a town located in the Borders region of Scotland, around 30 miles south-east of Edinburgh. EC and CEF are located close to each other on the same business park. EEL is located nearly three miles from the EC

branch and a Rexel Group branch is located in Kelso, 15 miles away. The survey results indicated that the parties are not particularly close competitors and that Rexel and CEF provide a strong competitive constraint on both parties. Significantly, the survey results, that are reasonably robust in terms of number and value of respondents in the local area, indicate that the parties will not face an incentive to raise prices materially in respect of either store. The OFT notes that the 80 per cent delivery radius for EC's Galashiels branch is [more than 10] miles and considers there is sufficient evidence to expand the radius to include the Rexel Group within its competitive assessment (not least given that Rexel was the closest competitor to either party based on the survey results).

163. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Galashiels.

GROUP B: FASCIA REDUCTION OF 'FOUR TO THREE' AREAS

Darlington

164. Darlington is a town in the north east of England, around 15 miles west of Middlesbrough. The parties are located on the same trading estate, together with Newey & Eyre (Rexel Group) and CEF. Although the survey results indicated that the diversion level was just about at a level at which there would be an incentive to raise prices materially in respect of diversion from the EC store to EEL, the OFT is cautious in interpreting the results of the local survey overly precisely due to the low sample size and the limited share of the parties' turnover the responses account for in this area.

165. However, the OFT is mindful that respondents to the survey identified a range of suppliers in this area, including Bilcourt (located in Middlesbrough), TEP and Upex. This is consistent with the EEL branch profiles that list these same three wholesalers [reference to EEL 2010 branch profile], as well as evidence in the BES data. The OFT therefore considers that the competitive constraint represented by these wholesalers should constrain the parties post merger.

166. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Darlington.

Elgin

167. Elgin is a town located in the Moray region in Scotland, around 40 miles east of Inverness. The EC branch is located close to the centre of Elgin in the same building as the vendor's plumbing and heating business. The closest electrical wholesalers are CEF and Holland House, both situated

less than half a mile from the EC branch. The survey records high diversion between the parties and the diversion level from EEL to EC was above a level at which there would be an incentive to raise prices materially; further, the EEL survey results were reasonably robust in this area in terms of sample size and represented turnover. The OFT also notes that EEL's 2010 branch profile lists [reference to EEL 2010 branch profile]. Although the BES data does refer to other competitors in the area, these are not featured at all in the local branch survey, therefore raising doubts over whether they would act as a strong competitive constraint on the parties post-merger.

168. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Elgin.

Kendal

169. Kendal is a town in the north west of England. EEL, CEF and the Rexel Group all have branches located within a mile of the EC branch. The survey results indicate a high diversion from the EC to the EEL branch which was significantly above a level at which there would be an incentive to raise prices materially; the OFT notes that the EC survey results are not as strong in evidentiary terms as in other areas, but are still of a level that means they provide some indication of competitive interaction. The survey also indicates that both Rexel and CEF are strong competitors to the parties. However, [] are the only wholesalers named in EEL's 2010 competitor profile [references to competitors picked up in EEL 2010 branch profile]. Given these factors, the OFT was not persuaded by the evidence presented in the parties' BES data that wholesalers based outside the local area acted as a strong competitive constraint on the parties.

170. The OFT therefore considers that there is a realistic prospect of a substantial lessening of competition in Kendal.

Ilfracombe (EC) / Barnstaple (EEL)

171. Ilfracombe is a small town located in the south west of England. The parties are located eight miles apart with several wholesalers located between their branches. The survey results in this area did not indicate that the parties would face an incentive to raise price materially in respect of the diversion in either direction, with minimal diversion between the parties, and Rexel/Wilts, CEF and Devondale accounting for significantly higher diversion figures. The EEL 2010 branch profile did not indicate that the parties were close competitors [reference to EEL 2010 branch profile].

172. As noted above, the survey and branch profile identified at least one strong, albeit smaller, independent wholesaler, Devondale, that placed some competitive constraint on the parties and there was reliable BES data that supported the view that Devondale represents a competitive constraint on the parties in this area.

173. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Ilfracombe.

Norwich

174. Norwich is a city located in East Anglia. EEL has a number of branches in and around Norwich and both Rexel and CEF are present. The survey results in this area did not indicate that the parties would face an incentive to raise price materially in respect of the diversion in either direction. The EEL 2010 branch profile did not name [] as a competitor but did name [], in addition to [] and [] (the former of which is the strongest competitor to the EEL stores in this area). The survey indicates that M D Thompson does represent a competitive constraint on the parties, as does another independent, Hedley and Ellis.

175. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Norwich.

Scarborough

176. Scarborough is a coastal town in the north east of England. The closest located wholesalers to the EC branch are CEF, The Electrical Network and B Danby. The survey results in this area did not indicate that the parties would face an incentive to raise price materially in respect of the diversion in either direction. Although [reference to EEL 2010 branch profile], the survey results do not indicate that the parties are particularly close competitors, with CEF and The Electrical Network both having higher diversion than the other party from each store.

177. The survey also identified the independent wholesaler, B Danby, as placing some competitive constraint on the parties and this was supported by the BES data, the EEL branch manager profile and the OFT's own market testing.

178. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Scarborough.

York

179. York is a city located in the North of England. The survey results in this area did not indicate that the parties would face an incentive to raise price materially in respect of the diversion in either direction and indicate that the parties compete with a range of wholesalers in this area. In addition to the Rexel Group and CEF, the independent wholesaler, A B Electrical has been identified as a strong competitor across the evidence base – being present in the survey, [reference to EEL 2010 branch profile] and there were numerous pieces of BES data to show that it competes with the parties. Bonus Electrical, which is based 13 miles from the EC store, was also named in the survey (albeit with limited diversion) and might be considered, given the nature of the BES data that refers to it, to place some competitive constraint on the parties.
180. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in York.

Peterborough

181. Peterborough is a city in the east of England. No survey results were available in respect of Peterborough (see note 42 above by way of explanation). [reference to EEL 2010 branch profile]. The OFT considers that the independent wholesaler, Hedley & Ellis, which is located only half a mile from the EC branch should also provide a constraint on the parties post merger. Hedley & Ellis has a total of five branches, with the branch in Peterborough being of comparable size to that of EEL but significantly larger than the EC branch, both in terms of turnover and staff numbers. The OFT has also been informed that it carries a large stock holding and is a member of a buying group.
182. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Peterborough.

Shrewsbury

183. Shrewsbury is a town in the Midlands. EC is based on the same trading estate as a number of electrical wholesalers including EEL, the Rexel Group and CEF. No survey results were available in respect of Shrewsbury (see note 42 above by way of explanation). The EEL 2010 branch profile ranks [] and the OFT notes that [], is listed in the parties' 2011 profile.
184. The OFT has also identified Shrewsbury Electrical Wholesalers, another local independent that should, together with Links Electrical, provide a constraint on the parties post-merger. Both firms' branches in the local area

have a similar turnover to that of the parties and serve both large and small customers. The OFT has also been informed that both wholesalers are members of buying groups and have comparable stock holdings to those of the parties' branches. Both Shrewsbury Electrical and Links Electrical considered that they compete against the merging parties.

185. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Shrewsbury.

GROUP C: FASCIA REDUCTION OF 'FIVE TO FOUR' AREAS

186. As explained at paragraph 136 above, The OFT considered the information available to it in relation to the areas where the merger would result in a reduction in the number of fascia based on the filter from 'five to four'.

187. The OFT was presented with survey results in relation to four of the 23 'five to four' areas. In three of those areas (Winsford, Hull and Inverness), the survey results for those areas indicated that the parties would not face an incentive to raise price materially in respect of the diversion in either direction. There was only one area, Glenrothes/Kirkcaldy, where the level of diversion between the parties would be expected to trigger a material price increase.

188. Considering Glenrothes/Kirkcaldy, the OFT is mindful that the turnover accounted for by the sample of EC customers (where the diversion is comparatively high) is particularly small. Indeed, the parties clarified that this result had been primarily driven by a single respondent such that the OFT has placed little weight on the survey results in this local area (or the fact that the calculations indicated the parties would have an incentive to raise price in respect of the diversion from EC to EEL). Other evidence in relation to the Glenrothes/Kirkcaldy overlap also pointed towards competition concerns not arising in this area. Specifically, the OFT notes that there are a number of independent wholesalers that are named by customers in the survey, namely [] and [] that are also listed in the EEL 2010 branch profile. The BES data included a number of examples [references to independent wholesalers which featured in the BES evidence]. The OFT therefore considers that Holland House, together with R&M Distribution and SM Electrical Supplies should provide a competitive constraint on the parties post-merger in Glenrothes/Kirkcaldy. Therefore, on the balance of evidence, the OFT does not consider that the merger raises competition concerns in Glenrothes.

189. There were an additional 19 areas that had been identified with a reduction of fascias of 'five to four'.
190. On the basis that the survey results indicated that the merged firm would not have an incentive to raise prices in respect of three of the four 'five to four' areas surveyed, and that a more detailed examination of one area, Glenrothes/Kirkcaldy, where diversion ratios appeared high did not indicate that there was a realistic prospect of a substantial lessening of competition,⁵² the OFT is minded to conclude that competition concerns can be excluded in the remaining 'five to four' areas. Its conclusion is strengthened by the fact that only two of the nine 'four to three' areas were ultimately found to raise competition concerns, meaning that it is unlikely that the remaining 19 areas where the transaction results in a fascia reduction from 'five to four' which were not surveyed would be found to be problematic. On this basis, the OFT does not consider that the merger raises competition concerns in any of the 'five to four' areas identified.

CONCLUSION

191. In summary, the OFT has identified a realistic prospect of a substantial lessening of competition based on unilateral effects at a local level in four local areas, namely, Stornoway, Trowbridge, Elgin and Kendal.
- Barriers to entry and expansion
192. The OFT has considered whether the competition concerns identified above in four local areas might be removed by the prospect of entry or expansion into the local areas in question. In this respect, in accordance with the OFT's guidance, the OFT has considered whether the prospect for such entry can be viewed as timely, likely and sufficient.⁵³
193. The parties submit that the barriers to entry in local markets are modest and suggest that capital of around [£100,000-£200,000] is necessary to establish a wholesaler with annual turnover of around £1 million. They state that there are no significant regulatory hurdles to establishing a wholesale outlet. The parties claim that new entrants are commonly established by ex-employees of other electrical wholesalers. They have provided examples of recent entry and expansion in local markets.

⁵² The OFT considered whether the merger would result in a fascia reduction of 'two to one' on a five mile basis within any of the 'five to four' areas. However, in none of the 'five to four' areas was this found to occur.

⁵³ OFT/CC Merger Assessment Guidelines, paragraph 5.8.3.

194. Third party competitors told the OFT that they thought that there were relatively low barriers to entry into local markets.
195. The parties submit that expansion by existing electrical wholesalers in new local markets is relatively easier than for new entrants and provided several examples of where this has occurred in the past two years. The parties also point to AMA Research stating that independents have been growing in both turnover and branch numbers recently, while national wholesalers have seen turnover reduce and branch numbers contract slightly. The OFT notes that larger wholesalers also have a history of acquiring smaller independent wholesalers, a strategy adopted by EEL historically.
196. The OFT considers that, in general, larger electrical wholesalers are likely to impose a stronger competitive constraint on local competitors when expanding into new areas than smaller electrical wholesalers. In general, the strongest constraint is likely to come from Rexel or CEF, and these wholesalers are most likely to be in a position to support branch expansion.
197. However, notwithstanding the generic characterisation of prospects for entry and expansion, above, the OFT has not identified any entry or expansion that would be sufficiently timely and likely to constrain the emerging parties in those specific local areas raising competition concerns.

THIRD PARTY VIEWS

198. The OFT received comments from a wide range of third parties including large and small customers, competitors, suppliers and trade bodies. The OFT has included specific reference to third party views in the above detailed assessment but, for the sake of completeness, notes the following.
199. A number of regionally based customers considered EC to be a strong competitor to EEL (although the strongest competition was always seen as being between EEL and the Rexel Group) and were concerned that post-merger they would have a limited choice of supplier resulting in higher prices or a deterioration in service. However, as explained in the decision, the OFT identified a number of alternative wholesale suppliers that it considered would provide a sufficient competitive constraint on the parties post-merger. In addition to the existing national wholesalers, the OFT considers that the large regional independent wholesalers will together be sufficient to replace the competitive constraint that has been lost as a result of the merger. In the four local areas where competition concerns have been identified, customers raised concerns with respect to the level of future prices and whether the branch manager would be changed,

reflecting the importance of the branch manager in terms of the overall service provision.

200. The OFT received a mixed response from competitors. A number commented on EEL's scale and that they sometimes found it difficult to compete with them on price, particularly in the supply to large regionally-based customers. However, others, particularly those focused on serving smaller customers within a local area considered the electrical wholesaling market to be very competitive. The OFT's investigation found that competition varies in relation to customer type and size and by geographic location. It therefore segmented the market in order to undertake its assessment of the transaction.

201. No concerns were raised by suppliers or trade bodies.

ASSESSMENT

202. The parties overlap in the wholesale supply of electrical products.

203. The OFT considered that it was possible to segment the market by size and type of customer. The OFT considers that as a customer's size increases, its service requirements will differ. Although there is mixed evidence on the degree of customer segmentation that should be used to assess the merger, the OFT considers that the parties' internal documents that include a segmentation based on customer size and type were probative on this point. The OFT therefore assessed the merger on a national, multi-local/regional, and local basis.

204. The OFT's investigation did not find the parties to be close competitors in the supply to large, national customers. The OFT's market testing indicated that the number of viable suppliers reduces as a customer's size increases such that EEL and Rexel are considered to be the only two viable suppliers that can meet the needs of national customers. The OFT considers that a wholesaler's reputation for price competitiveness and service in delivering across a multi-local area will determine whether it is considered a viable competitor to Rexel and EEL. On the evidence available and in the absence of customer concerns, the OFT considers that the merger does not raise competition concerns in relation to the wholesale supply of electrical products to large, national customers.

205. The OFT explored whether the merger would lead to higher prices of electrical products or a deterioration in service to multi-local/regional based customers, specifically electrical and mechanical and electrical contractors. The parties estimated that the increment resulting from the merger with regard to supplying this segment of customer was less than five per cent. The OFT was unable to substantiate the parties' estimates but did not consider that EC was a strong competitive constraint on EEL in this customer segment. CEF, an electrical wholesaler, with a wider national coverage than EC, is considered to be as strong a competitor as EC in serving this type and size of customer. The OFT also considered that large regional independent wholesalers can and do supply regionally based contractors although their competitive constraint is likely to vary by region.
206. The OFT focused its assessment on three regions where customers had raised concerns and where it considered that, to the extent that competition concerns might arise, they would be most likely to do so. The OFT considers that the range of competitive constraints that exist within these regions, represented by both national wholesalers such as CEF and independent wholesalers, will be sufficient to constrain the parties post-merger. The OFT has therefore concluded that the transaction does not create a realistic prospect of a substantial lessening of competition in relation to customers with a multi-local/regional scope.
207. For the purposes of assessing local markets in this case, the OFT used a filter based on a 10 mile radius of EC's stores. In addition to the national wholesalers of EEL, EC, the Rexel Group and CEF, a number of independent electrical wholesalers were included within the fascia count. The OFT was not persuaded to include a number of additional wholesalers, specifically Electric Fix and wholesalers such as Lockwell, that primarily serve industrial customers, as evidence indicated that these wholesalers did not provide a strong competitive constraint on the parties.
208. The OFT triangulated a range of different evidence on the competitive effect of the transaction in different local areas, including branch survey data where that was available. Based on a detailed review of that evidence, the OFT found that competition concerns arose in four local areas. Consequently, the OFT believes 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.

UNDERTAKINGS IN LIEU

209. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned undertakings as it considers appropriate.
210. As explained in the OFT's guidance,⁵⁴ in order to accept undertakings in lieu of reference, the OFT must be confident that all the potential competition concerns that have been identified in its investigation would be resolved by means of the undertakings in lieu without the need for further investigation. The need for confidence reflects the fact that, once undertakings in lieu have been accepted, this is final in terms of the OFT's ability to refer, as section 74(1) of the Act precludes a reference after that point.
211. Undertakings in lieu of reference are therefore appropriate only where the remedies proposed to address any competition concerns raised by the merger are clear cut and where they are capable of ready implementation.⁵⁵
212. EEL offered a UIL to divest all relevant assets comprising a branch electrical wholesaling business in a sufficient number of local areas where the OFT identified competition concerns meeting its test for reference to the CC. EEL reserved the right in its offer of undertakings to sell either the EC or EEL relevant branch business assets in the relevant local market and to undertake such divestments either individually or in one or more packages.
213. As a structural remedy that will, in each local area, remove the overlap between the parties and restore pre-merger competition, the OFT considers that the parties' proposed UILs are sufficient in principle to act as a clear cut and comprehensive remedy to the competition concerns identified by the OFT.

⁵⁴ OFT Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122), chapter 5.

⁵⁵ Ibid, paragraph 5.7.

UPFRONT BUYER

214. The OFT considered whether it is appropriate in the circumstances of this case to require that the relevant divestments are made in whole to an up-front buyer.
215. An up-front buyer requirement means that the proposed purchaser will have committed contractually, subject to formal OFT approval of the undertakings in lieu, to acquiring the relevant divestment before the OFT accepts undertakings in lieu. This means that the OFT will accept undertakings in lieu only where a provisional sale has been agreed, thereby demonstrating that a sale to a suitable purchaser is achievable. It also means that the OFT may consult publicly on the suitability of the proposed divestment purchasers, as well as any other aspects of the draft undertakings, during the public consultation period.
216. The OFT will seek an upfront buyer where the risk profile of the remedy requires it, for example where the OFT has reasonable doubts with regard to the ongoing viability of the divestment package and/or there is only a small number of candidate suitable purchasers for the divestment business that would remedy the competition concerns. Such doubts may arise, for example, because there are questions about the commercial attractiveness of the divestment business in question or where the field of suitable potential candidate purchasers is very limited.⁵⁶
217. The parties have indicated that they are prepared to accept the need for an upfront buyer for this remedy package if required. The OFT considers that it is appropriate to require an up-front buyer in this case for the following reasons:
- a) although EEL considers that the branch businesses are marketable and saleable assets and anticipate there will be market interest from established wholesalers and new entrants, no prospective purchasers have yet been identified by EEL. Therefore, there remains a degree of uncertainty regarding who the potential bidders will be for these branches
 - b) the OFT is mindful that two EC branches, namely Stornoway and Elgin, are not stand alone fascias but are located in the vendor's plumbing and heating business premises and therefore may be less

⁵⁶ Mergers - *'Exceptions to the duty to refer and undertakings in lieu of reference guidance'* (OFT1122 paragraph 5.33).

commercially attractive to potential bidders than the other branches,
and

- c) the parties have insisted on retaining the right to chose which of the parties' businesses is divested in a particular area.

218. The OFT therefore considers that the requirement for an up-front buyer is both reasonable and proportionate in seeking to ensure that competition concerns are remedied.

DECISION

219. The OFT has therefore decided to refer the completed acquisition by Edmundson Electrical Limited of Electric Center to the Competition Commission pursuant to section 22 of the Act. However the OFT's duty to refer is suspended because the OFT is considering whether to accept undertakings in lieu of reference from Edmundson Electrical Limited pursuant to section 73 of the Act.