

## **Anticipated acquisition by Werner Access Products UK Holdings Ltd of Youngman Group Limited**

The CMA's decision on reference under section 33(1) on 23 October 2014. Full text of the decision published on 19 November 2014.

**ME/6462-14**

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

### **Summary**

1. **Werner Access Products UK Holdings Ltd. (Werner)** proposes to acquire **Youngman Group Limited (Youngman)** (together the **Parties**).
2. The Competition and Markets Authority (**CMA**) considers the Parties will cease to be distinct, that the share of supply test is satisfied and that accordingly arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of ladders to retailers in the UK, where the Parties' combined share of supply is around [35-45]% with an increment of [10-20]%. This sector can be further sub-divided into the supply of ladders to 'do it yourself' (**DIY**) retailers (the **DIY channel**) and to trade and construction retailers (the **trade channel**). The CMA considered that the relevant geographic frame of reference was the UK including direct imports.
4. The CMA found the merger did not give rise to unilateral horizontal effects in the trade channel because the Parties did not have significant market power in the trade channel (under any relevant segmentation) and post-merger there would remain a number of other strong existing suppliers.
5. In the DIY channel, the Parties would have a combined share of supply of ladders of [70-80]%, with an increment of [15-25]% in the UK. However, the CMA concluded that the Parties have different target customer groups, a differentiated range of products and, based on the evidence of competitive interactions in the market, despite its share of supply in the DIY Channel (which is largely attributable to its contract with Wickes), Youngman exerted a limited competitive constraint on Werner. The CMA also considered that post-

merger the Parties would continue to be constrained by the threat of other suppliers and direct imports (in particular from the Far East).

6. The CMA has therefore concluded that there is no realistic prospect of a substantial lessening of competition arising as a result of the proposed acquisition.
7. This merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **Assessment**

### *Parties*

8. **Werner** is an integrated, international manufacturer and distributor of ladders and other climbing equipment, including fall protection equipment and jobsite truck and van storage equipment. It has manufacturing, warehousing, sales and distribution facilities in the United States, Australia, Canada, China, Mexico, New Zealand, Vietnam and the UK. In the UK, Werner predominantly supplies products to DIY retail customers (following its acquisition of the Abru Limited business in 2010). Werner manufactures approximately 75% of the ladders it sells in the UK, with the remaining 25% being sourced from countries such as China and Taiwan. For the 2013 financial year Werner's UK turnover was £22.7 million.
9. **Youngman** is a supplier of light access equipment, access towers, podiums and ladders with distributors in more than 40 countries. Youngman predominantly supplies products to trade and professional customers, supplying rental, retail and resale customers across the UK, Europe and overseas. Its factory, warehouse and head office are based in Essex with a warehouse and distribution depot in Glasgow, and a warehouse and logistics facility in Compiègne, France. With regard to ladders, Youngman manufactures extension and some combination ladders in the UK, while it imports a mixture of branded products, including ladders, made at third-party facilities located in various countries including China, Mexico, Indonesia, Slovakia and Denmark. For example, Youngman sources glass reinforced plastic (GRP) ladders and steps from Mexico and Indonesia, aluminium ladders and steps from China, Indonesia and Slovakia, and timber loft ladders from Denmark. In the 2013 financial year Youngman had worldwide turnover of £33 million, with UK turnover of £[20-30] million.

## **Transaction**

10. Werner announced on 13 August 2014, that it had agreed the acquisition of 100% of the share capital of Youngman (the **Merger**). The completion of the Merger is subject to regulatory clearance by the CMA.

## **Jurisdiction**

11. As a result of the Merger, the enterprises of Werner and Youngman will cease to be distinct. The Parties overlap in the manufacture and distribution of ladders to retailers. In the supply of ladders in the UK, the Parties' combined share of supply is around [35-45]% with an increment of [10-20]%.
12. The CMA therefore considers that the share of supply test in section 23(3)(a) of the Act is met and believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation. The initial period for consideration of the Merger started on 29 August 2014, and the statutory deadline for a decision is 23 October 2014.

## **Background**

### *Regulatory framework*

13. The supply of ladders is governed by certain regulatory standards. Suppliers of ladders need to ensure that their products comply with the EU General Product Safety Directive. Compliance can be evidenced by certification to national standards such as BS 2037 or the EU standard EN 131.
14. The British Standard for aluminium ladders and stepladders is BS 2037. This British Standard originally had three classes, differentiated by duty rating and static load bearing capacity. Subsequently, a harmonised European standard was introduced, EN 131, which has replaced British Standard, BS 2037 Class II. However, BS 2037 (Classes I and III) remain applicable.<sup>1</sup>

**Table 1 – Overview of ladder categories**

Class	Duty Rating	Static Load Capacity	Target User Group (on a typical basis)
Class I	130 kg	175 kg	Industrial/professional
EN 131 (replaced Class II)	115 kg	150 kg	Tradesman
Class III	95 kg	125 kg	DIY

<sup>1</sup> In addition, there is a national standard for Class I timber ladders (BS 1129) in the UK that remains applicable. Furthermore, there is a European classification for loft ladders EN 14975. The Parties state that work platforms do not have an applicable classification but most manufacturers test them to the same weight standard as ladders.

15. The Parties submitted that there are discussions at a European level to revise EN 131. Apart from additional safety checks, an updated version of EN 131 may include additional classes of ladders: Professional (trade and industrial), and non-professional (DIY). The Parties submitted that when the updated version of EN 131 is finalised the Class I and III BS 2037 for ladders will be considered to be conflicting national standards and will therefore be withdrawn. This would remove the existing Class III standard, which is primarily used for DIY ladders in the UK, and all ladders would have to comply with the EN131 standard. The Parties have submitted that they expect that BS 2037 will be removed within three to five years. Given the degree of uncertainty associated with these developments, and the anticipated three to five year timeframe for removal of the BS 2037 standard, the CMA has not taken these prospective developments into account in its assessment of the Merger.

### **Frame of reference**

16. The CMA considers that market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgment. 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, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>2</sup>

### **Product scope**

17. The Parties overlap in the manufacture and distribution of ladders (including step stools and stepladders). Youngman manufactures combination and some extension ladders in the UK and sources all other types of ladders from third parties. Werner manufactures approximately [70-80]% of the ladders it sells in the UK, with the remaining [20-30]% being sourced from countries such as China and Taiwan.

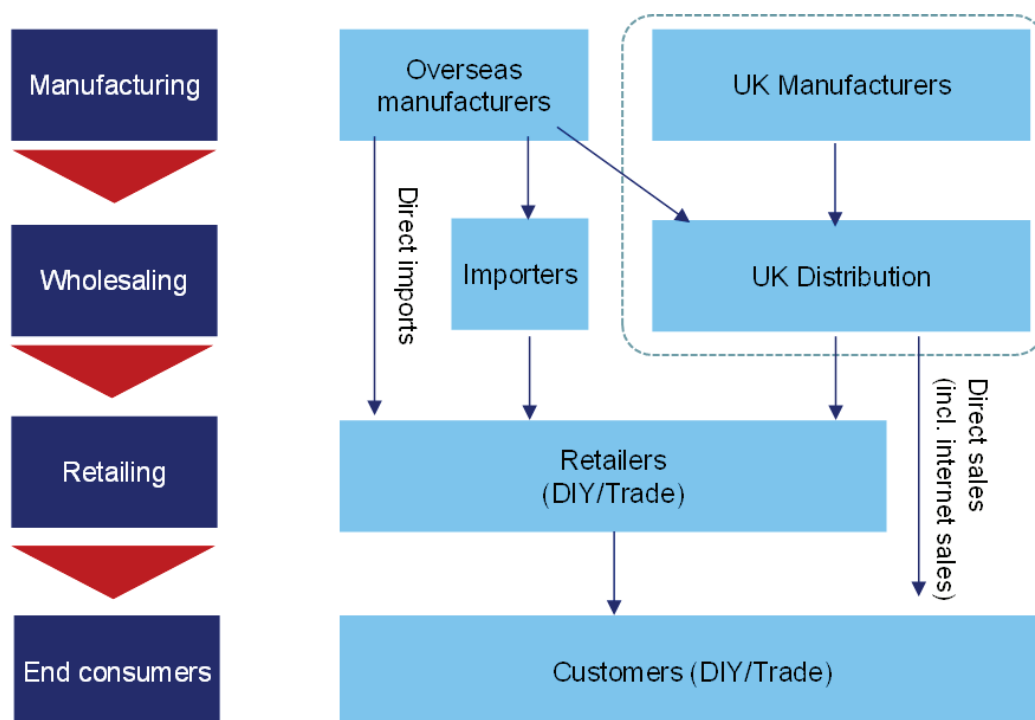
### **Industry structure**

18. The main levels of the supply chain in the ladder industry are manufacturing, wholesaling and retailing/reselling to the end customer. Figure 1 below depicts the industry structure graphically.

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<sup>2</sup> [Merger Assessment Guidelines](#), A joint publication of the Competition Commission and the Office of Fair Trading, OFT1254/CC2, September 2010, paragraph 5.2.2. The *Merger Assessment Guidelines* have been adopted by the CMA (see Annex D to CMA2 *Mergers: Guidance on the CMA's Jurisdiction and Procedure*, January 2014).

Figure 1 – Industry structure



### **Manufacturing**

19. Historically, ladders of all types were manufactured in the UK. However, UK manufacturers have started to source ladders from overseas manufacturers (eg China), particularly the smaller products like step stools. Although, large and bulky ladders (eg extension ladders) are still mainly manufactured in the UK due to transportation costs.<sup>3</sup>
20. The Parties submitted that there are separate frames of reference for the manufacture and the distribution of ladders. The CMA has not considered the manufacturing level of the supply chain in its assessment since neither Party supplies ladders to other third party wholesalers to any great extent<sup>4</sup> and Youngman is only involved in a limited amount of manufacturing.<sup>5</sup>

### **Wholesale supply of ladders**

21. The Parties submitted that the relevant product market included the wholesale supply of all ladders including direct imports, and that it was not necessary to split wholesaling by ladder type, classification or material since any wholesaler with the capability to wholesale one type, classification or material could wholesale other types, classifications or materials. Further, if a

<sup>3</sup> However, the significance of transportation costs for direct imports is contested by the Parties.

<sup>4</sup> According to the Parties, Youngman generally does not supply ladders to third party wholesalers and only 1-2% of Werner's sales are to third party wholesalers.

<sup>5</sup> Youngman, with the exception of combination ladders and some extension ladders, sources all other ladders from third parties in countries including China, Mexico, Indonesia and Denmark.

wholesaler targets either DIY retailers or trade retailers, that wholesaler will supply the ladder types or classifications most suitable for the retailer's target customer group.<sup>6</sup>

22. The CMA notes that the Parties' internal documents as well as third party responses gathered during its investigation suggested that most suppliers consider that there are differences between the retailers that serve the DIY channel and those that serve the trade channel. More specifically, the requirements of these two types of customers appear to vary alongside three main dimensions:
- The type of product purchased – DIY products tend to be lighter, typically meeting the BS 2037 Class III standard, and may be branded, while products for the trade channel tend to be heavier and more robust typically meeting standards EN131 or BS2037 Class I.
  - The volumes purchased – the large chains that operate in the DIY channel (Homebase, B&Q, Wickes) (the **big three DIY retail chains**) tend to purchase large volumes, while trade retailers tend to be smaller businesses and purchase smaller volumes;<sup>7</sup>
  - Logistical requirements – the large chains that operate in the DIY channel tend to have more demanding delivery requirements (eg delivery to multiple stores).<sup>8</sup>
23. The Parties submitted that two of the big three DIY retail chains<sup>9</sup> operated in both the DIY and trade channels. In fact, Wickes is a clear example of a retailer which has a differentiated focus to other DIY retailers with more of an emphasis on the trade channel. The CMA recognises that there is no single criterion to distinguish between DIY and trade retailers, and that there is no clear dividing line between the two segments. Certain retailers (such as Wickes) serve both trade and DIY customers and so require a product range combining different types of ladders. Smaller retailers primarily active in the DIY segment do not purchase the same volumes as the big three DIY retail chains and therefore may not have complex logistics requirements. Whereas some larger retailers who supply trade customers may also have complex logistical requirements meaning that this is not exclusively a characteristic

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<sup>6</sup> The logistical aspects of the distribution of ladders to retailers is typically outsourced by wholesalers to third party logistics providers; this is the case for both Youngman and Werner. However, since the Parties provide an end-to-end service for retailers (including delivery logistics) the CMA has focused on the supply of ladders at the distribution (wholesale) level to retail customers without separating out the logistics aspect of the supply chain.

<sup>7</sup> Although there are exceptions, for example the Parties submitted that the revenues supplied to [X<] are similar to those supplied to [Y<].

<sup>8</sup> The CMA is aware that there are trade retailers such as Jewson's with over 600 outlets, Screwfix, with over 350 outlets, and Tool Station with over 100 outlets that may have similar logistical requirements as the big three DIY retailers.

<sup>9</sup> B&Q and Wickes.

associated with serving the big three DIY retailers. However, while there is a degree of blurring between the two segments, when applying the key characteristics above to the requirements of retailers in the market there are strong indications that at least some retailers in the DIY channel face different competitive conditions than others. The CMA therefore, taking a cautious approach, used this distinction as a starting point for its analysis.

24. The CMA's approach to product market definition is generally to consider first if narrow candidate markets can be widened through substitution on the demand-side, and then to go on to consider the supply-side. Therefore, the CMA has considered below whether the evidence suggests that the following candidate markets where the Parties overlap can be widened by demand-side substitution in the first instance, or subsequently through supply-side substitution:
- supply of ladders to the DIY channel; and
  - supply of ladders to the trade channel.

*Supply to the DIY channel as distinct from the trade channel*

25. The Parties submitted that rather than a distinct DIY channel there is a general wholesale channel made up of retailers with different focuses. The Parties argued that all of the major retailers (except Homebase) serve both retail and trade customers to a varying degree. Additionally, the Parties submitted that the trade channel includes customers that are at least as demanding as DIY customers.
26. An internal document<sup>10</sup> of one of the Parties distinguishes between a DIY and trade channel, with the trade channel further subdivided into construction and industrial. According to this document the DIY channel focuses on light duty ladders (Class III), with around [65-75]% of sales in this channel concentrated in the big three DIY retail chains. The other types of retailer that account for the remainder of the sales include variety stores (eg Argos) and grocery stores (eg Tesco), independent retailers and internet sellers.
27. As part of its investigation the CMA contacted retailers and suppliers active in these two segments to investigate the scope for demand- and supply-side substitution. From a demand-side perspective, four out of five DIY retailers [§<] who responded to our market testing stated that they had not (recently) purchased ladders from wholesalers that usually operate in the trade (construction and industrial) channel. The reason given for not purchasing from ladder suppliers specialised in other channels was that the product range

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<sup>10</sup> [§<]

was not focused on the DIY retailers' target customers. Two [X] indicated that in the case of a permanent price increase of 5% by all suppliers that currently supply the DIY channel they would review this price increase and ask for additional information, but may have to accept it. One [X] stated it would review, negotiate and look for alternative suppliers, however, it indicated that switching was not easy. Another [X] stated it would re-tender its contract. Another retailer [X] commented that it had purchased ladders from suppliers that usually operate in other channels, and would not accept a permanent 5% price increase.

28. From a supply-side perspective, third party manufacturers indicated that there is some cost involved to start producing a different classification of ladder including investment in machinery and tooling and product testing. However, at the distribution level the evidence received by the CMA suggests that wholesalers are able to easily source different types of ladders through imports. Despite the relative ease of obtaining imports, the CMA found that there were a number of other factors which potentially restricted the ability of wholesalers to serve large DIY retailers, including: high start-up capital costs and the need to develop a brand; complex logistics requirements; higher stock-holding requirements; high working capital requirements; and the requirement for a large warehouse with distribution facilities. The third party evidence for this is detailed in the barriers to entry section at paragraph 113.
29. More generally, ladder suppliers consistently stated that supplying the big three DIY retailers is a high-volume and low margin business. They said that it was difficult for them to compete in this segment profitably while the trade channel was more fragmented and offered higher margins. One [X] stated that its focus was on the trade channel and that it would not compete in the DIY channel (except for some online sales) even if prices were to increase. Another [X] told the CMA that it found competition in the DIY channel challenging, [X]. A third supplier [X] stated that it did not have the manufacturing capacity to supply the large DIY retailers.
30. On the basis of the evidence gathered, the CMA also considered whether supply to the big three DIY retail chains, which typically use formal tenders in order to select suppliers and the smaller DIY outlets that do not use tenders, should be considered as a separate relevant market. For example the large chains that operate in the DIY channel tend to purchase larger volumes, have more complex logistical requirements and higher service requirements than other retailers in the DIY channel. In its competitive assessment, the CMA considered the supply of ladders to the big three DIY retailers as distinct from the supply of ladders to DIY retailers with a lower volume requirement, however, the CMA did not find it necessary to conclude on this point for the purposes of the product frame of reference.



31. The evidence available to the CMA indicates that a number of DIY retailers do not consider that suppliers to the trade channel are credible alternatives to the Parties, and that suppliers to the trade channel do not consider it easy to be able to start supplying the DIY channel.
32. On the basis of the above evidence, taking a cautious approach, the CMA has considered the supply of ladders to the DIY and trade channels separately.

#### *Trade channel customer segmentation*

33. The CMA also considered whether any further segmentation in the trade channel was appropriate. An internal document <sup>11</sup> of one of the Parties distinguishes between sales to the construction and the industrial sector with further sub-segments including among others (building/paint) merchants, access specialists as well as specialised distance sellers (by catalogue).
34. Three out of five trade customers who responded to the CMA's market investigation stated that they had not purchased ladders from wholesalers that usually operate in other sales channels. One stated that as a trade merchant it needed to carry products fit for their customer base. On the other hand, two out of five trade customers, stated that they had purchased from wholesalers that operate in other trade channels.
35. In its competitive effects assessment, the CMA has considered the effects of the merger for separate construction and industrial segments, and on a combined basis. However, the CMA has not found it necessary to conclude on a segmented frame of reference for the trade channel as the Merger would not raise concerns under any plausible frame of reference.

#### *Geographic scope*

36. The Parties submitted that the narrowest candidate market in which wholesalers supply ladders is the UK including direct imports.
37. The Parties submitted that for almost all ladder types, the relevant geographic market for purchasing ladders is global, since almost all wholesalers (including those with vertically integrated manufacturing facilities) increasingly import ladders. In the case of the Parties, Youngman, with the exception of combination ladders and some extension ladders, sources all other ladders from third parties in countries including China, Mexico, Indonesia and Denmark. The Parties further submitted that a plausible alternative geographic market should include the EEA, due to the increasing level of

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<sup>11</sup> [redacted]

cross-border concentration among DIY retailers and their initiatives to procure on a group-wide basis.

38. Three of the five DIY retailers that responded to the CMA's market investigation [38] stated that they had previously sourced certain types of ladders directly from overseas manufacturers, specifically, steps, stepladders and small ladders.
39. The other two [39] indicated that they have not purchased from foreign suppliers, due to volume and investment considerations. These retailers also commented that any direct imports would require additional public liability insurance.
40. As a result of its investigation the CMA considers that only some customers will consider direct sourcing from overseas manufacturers as an alternative source and that direct imports are limited mainly to steps, stepladders and small ladders. On a cautious basis, therefore, the CMA assessed the Merger on the basis of a geographic frame of reference for this Merger as being the UK including direct imports (in particular, from the Far East).

### **Conclusion**

41. On the evidence available to it, the CMA has assessed the effects of the Merger on the basis of the supply of ladders in the UK to the trade channel and separately to the DIY channel.

### **Counterfactual**

42. The CMA assesses the Merger's impact relative to the situation that would prevail absent the merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.<sup>12</sup> In this case, there is no evidence supporting a different counterfactual, and the Parties have not put forward arguments in this respect. Therefore, the CMA considers the prevailing conditions of competition to be the relevant counterfactual.

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<sup>12</sup> See *Mergers Assessment Guidelines*, paragraph 4.3.5 *et seq.*

## Competitive assessment

### *Horizontal unilateral effects*

43. Unilateral horizontal effects can arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm to profitably raise prices (or degrade service) on its own and without needing to coordinate with rivals.
44. The CMA has considered the following theories of harm in this case:
- loss of existing competition in the supply of ladders to the trade channel
  - loss of existing competition in the supply of ladders to the DIY channel.
45. The CMA first considers the relevant shares of supply,<sup>13</sup> and then goes on to assess the potential risk of unilateral effects through the loss of existing competition. Unilateral effects may arise because a price increase becomes less costly when the products of the two firms are brought under common ownership or control.<sup>14</sup> Where there are indications that the product or the associated service is not perfectly homogenous, unilateral effects are more likely where the Parties' products compete closely.<sup>15</sup> The CMA will therefore take into account the closeness of substitution between the Parties' products in its assessment.<sup>16</sup>

### *Shares of supply – all ladders*

46. The Parties submitted that their combined shares of supply for all ladders were around [35-45]%, with an increment of [10-20]% (see Table 2 below).

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<sup>13</sup> See *Merger Assessment Guidelines*, paragraph 5.3.1 ff.

<sup>14</sup> See *Merger Assessment Guidelines*, paragraph 5.4.7.

<sup>15</sup> See *Merger Assessment Guidelines*, paragraph 5.4.6.

<sup>16</sup> See *Merger Assessment Guidelines*, paragraphs 5.4.9 – 5.4.10.

Table 2 – Share of Supply – All Ladders

	All Ladders	
	Sales revenues £,000	Share of supply %
Werner	[X]	[20-30]
Youngman	[X]	[10-20]
<b>Combined</b>	[X]	<b>[35-45]</b>
Direct Import	[X]	[10-20]
Lyte	[X]	[5-10]
Titan	[X]	[5-10]
TB Davies	[X]	[5-10]
Others	[X]	[20-30]
Total	[X]	100.0

Source: The Parties, market shares based on Parties' actual and Werner's competitor estimates.

### Shares of supply – Trade Channel

47. The CMA considered whether the merger may give rise to horizontal unilateral effects in the trade channel.
48. As set out in paragraph 33, the trade channel consists of the supply of ladders to the construction and the industrial segment. The Parties provided the shares of supply at Table 3 below, for sales of ladders (including steps and stepladders) to the combined trade channel as well as for each segment separately.

Table 3 – Shares of Supply – Trade Channel

	Industrial		Construction		Combined	
	Sales revenues £,000	Share of supply %	Sales revenues £,000	Share of supply %	Sales revenues £,000	Share of supply %
Werner	[X]	[5-10]	[X]	[5-10]	[X]	[5-10]
Youngman	[X]	[0-5]	[X]	[5-10]	[X]	[5-10]
<b>Combined</b>	[X]	<b>[5-15]</b>	[X]	<b>[10-20]</b>	[X]	<b>[10-20]</b>
Lyte	[X]	[15-25]	[X]	[10-20]	[X]	[15-25]
TB Davies	[X]	[5-10]	[X]	[5-10]	[X]	[5-10]
Titan	[X]	[5-10]	[X]	[5-10]	[X]	[5-10]
Zarges	[X]	[5-10]	[X]	[5-10]	[X]	[5-10]
LFI	[X]	[10-20]	[X]	[5-10]	[X]	[5-10]
Telestep	[X]	[10-20]	[X]	[0-5]	[X]	[5-10]
Others	[X]	[10-20]	[X]	[5-10]	[X]	[5-10]
Direct Imports	[X]	[0-10]	[X]	[20-30]	[X]	[10-20]
Total	[X]	100	[X]	100	[X]	100

Source: The Parties. Please note that shares of supply might not add up to 100.0% because of rounding.

49. The CMA notes that the Parties' combined share of supply for the industrial segment is [5-15]%, with an increment of [0-5]%; for the construction segment it is [10-20]%, with an increment of [5-10]%; and for the trade segment, as a whole, the Parties' combined share of supply is [10-20]%, with an increment of [5-10]%. These shares are unlikely to give cause for concern over unilateral effects.

50. The CMA also notes the following evidence, which supports a lack of any competition concern in the trade channel. First, Lyte has the highest share of supply in the industrial segment and trade channel overall. In the construction segment, Lyte’s share of supply is near to the Parties’ combined share. The CMA therefore expects Lyte to continue to provide strong competition to the Parties post-merger. Second, there are a range of credible alternative suppliers in the trade channel overall and in each of the individual segments. Third, there is a considerable volume of direct imports in the trade channel, especially in the construction segment. Lastly, no third parties raised any concerns about the Merger’s impact on the supply of ladders to the trade channel.
51. Based on this evidence, the CMA considers that there is no realistic prospect that the merger will give rise to a substantial lessening of competition in the supply of ladders to the trade channel.

*Share of supply – DIY Channel*

52. The Parties provided shares of supply for sales of ladders (including steps and stepladders) to the DIY channel (see Table 4 below).

**Table 4 – Shares of Supply – DIY Channel**

	Sales revenues £,000	Shares of supply %
Werner	[<]	[45-55]
Youngman	[<]	[15-25]
<b>Combined</b>	[<]	<b>[70-80]</b>
TB Davies	[<]	[0-5]
Titan	[<]	[0-5]
Others	[<]	[0-5]
Lyte	[<]	[0-5]
Direct imports	[<]	[15-25]
Total	[<]	100.0

*Source: The Parties. Please note that shares of supply might not add up to 100.0% because of rounding.*

53. The CMA notes that Werner is the largest supplier within the DIY channel, with Youngman as the second largest supplier.<sup>17</sup> Based on the Parties’ estimates, all other UK suppliers have marginal shares of supply in the DIY channel. Direct imports consisting of imports by wholesale importers (pure importers) and imports by retailers account for [15-25]% of the sales in to the DIY channel.<sup>18</sup>

<sup>17</sup> The CMA notes that the ladders supplied to DIY retailers may comprise a mixture of ladders that are compliant with either Class III or EN131.

<sup>18</sup> The CMA notes that ‘direct imports’ refers to ladders imported by pure importers (wholesalers specialised in importing products but not necessarily ladders) or retailers. Ladders imported by ladder suppliers (like for example Youngman) are attributed to the share of supply of the respective supplier.

54. The CMA notes that high combined shares of supply may in itself raise prima facie competition concerns.
55. The Parties' supply approximately [65-75]% of all ladders in the DIY channel to the big three DIY retailers. Excluding the big three, the Parties' shares of supply of DIY retail would be around [15-25]% with an increment of [5-10]%. This would be unlikely to raise prima facie competition concerns. The remainder of the DIY channel is made up of sales to variety stores, such as Argos, grocery stores, such as Tesco, independent retailers and internet sellers. The CMA has therefore considered the closeness of competition between the Parties' in supplying DIY retailers and, in particular, supplying the big three DIY retailers taking into account the extent of the constraints imposed on the Parties by other suppliers and direct imports.
56. The CMA considered the following in assessing the impact of the Merger on the DIY channel:
  - the extent to which Werner and Youngman constrain each other in the supply of ladders to DIY retailers
  - whether DIY retailers can source ladders from UK 'trade' suppliers on competitive terms
  - whether DIY retailers can source ladders from EU suppliers on competitive terms
  - whether DIY retailers can use direct imports as a substitute.

### ***Closeness of Competition***

#### *The Parties' submissions*

57. The Parties submitted that Werner is more focused on the DIY channel whereas Youngman is more focused on the trade channel. To support this, the Parties noted that, of the big three DIY retailers, Werner supplies [X] and [X], whose offering is focused on DIY customers, whereas Youngman only supplies [X], whose offering is aimed more at professional/trade customers, and does not supply other retailers such as Tesco or Argos. The CMA has analysed the evidence on supplies submitted by the Parties and notes that Youngman supplies [0-5]% of Class III ladders in comparison with the [75-85]% of Class III ladders supplied by Werner in respect of the market for Class III ladders (valued at £[X]). This appears to indicate, as submitted by the Parties, that Youngman currently only supplies a limited number of Class III extension ladders as part of the wider portfolio of ladders it supplies to [X]. The Parties also submitted that Youngman would have difficulties supplying

Class III ladders at competitive prices on a bulk basis and provided internal margin calculations to support this. The CMA analysed the Parties' financial viability analysis and considered it to be credible.

58. The Parties' and their competitors' shares of supply for each class of ladder is set out in Table 5 below.

**Table 5 – Shares of Supply – Ladders according to categories**

	Class I		EN131		Class III	
Total market size £,000	[X]		[X]		[X]	
Werner		[0-5]		[15-25]		[75-85]
Youngman		[5-10]		[10-20]		[0-5]
<b>Combined</b>		<b>[5-15]</b>		<b>[30-40]</b>		<b>[80-90]</b>
Competitor 1	Lyte	[30-40]	Direct Import Retail	[10-15]	Titan	[0-5]
Competitor 2	Titan	[10-20]	Telestep Sales	[5-10]	Lyte	[0-5]
Competitor 3	Zarges	[10-20]	Lyte	[5-10]	TB Davies	[0-5]
Competitor 4	LFI	[10-20]	Direct Import Wholesale	[5-10]	Others	[0-5]
Competitor 5	Ramsay	[5-10]	TB Davies	[5-10]	Ramsay	[0-5]
Other competitors		[10-20]		[20-30]		
Total		100		100		100

*Source: Parties. Please note that shares of supply might not add up to 100.0% because of rounding. Please note that step stools, loft ladders, work platforms and other products are not subject to these product categories and, therefore, sales revenues of these products are not included in this table.*

59. Additionally, the Parties stated that while Youngman does not supply other DIY-focused retailers such as variety stores or supermarkets, Werner focuses more on retailers with a DIY customer base, such as Tesco and Aldi.
60. The Parties submitted that they considered that retailers benchmarking of direct imports posed a bigger threat to both Parties than the Parties do to each other. In the Parties' view, should the big three DIY retailers decide to switch to a greater percentage of direct imports, this would result in a loss of volume that would be unsustainable for the Parties, and particularly Werner.<sup>19</sup>

### *Third party submissions*

61. Three third party DIY retailers, [X] considered that Werner and Youngman were close competitors, at least for some of their products (particularly steps and stepladders). One of these highlighted the strength of Werner's brand (Abru) compared to Youngman's offerings (with regards to the DIY channel). [X] stated that all ladder suppliers offer very similar products and that some products are designed more for trade use and some more for domestic use. [X] mentioned that Werner is stronger in domestic DIY ranges whereas

<sup>19</sup> The CMA notes that the big three DIY retailers are all part of larger Groups (Wickes – part of the Travis Perkins Group; B&Q – part of the Kingfisher Group; and Homebase – part of the Home Retail Group). The Parties submitted that it was aware of examples of intragroup benchmarking of prices and products for each of these groups.

Youngman is traditionally stronger in trade ranges and platform/tower products.

62. [X] stated that it could source approximately 90% of the products sourced from Werner from Youngman.

#### *Internal documents*

63. The CMA notes that the Parties' internal documents support the case that the Parties are close competitors. For example, an internal strategy document provided by Werner indicates that it considers Youngman as its closest competitor in the DIY channel and explicitly targets Youngman's [X] account.<sup>20</sup>
64. Similarly, an internal strategy document provided by Youngman states, as an action point for new business development, that Youngman's products will be showcased against Werner's Abru products to [X].<sup>21</sup>

#### *Closeness of competition for the big three DIY retailers*

65. The CMA notes, based on evidence it has collected, that the instances of actual competition between the Parties appear limited. It received information from both the Parties and third parties with regard to a tender process performed by [X] and an ad hoc call for a quote by [X].
66. The CMA understands that a pan-European tender was initiated for supply to UK and European DIY stores, and that although invited, Youngman did not submit a bid.<sup>22</sup> The CMA understands that at a later stage of the tender process, the process was split between the UK and France, but Youngman was not invited back at this stage. Accordingly, Youngman was not involved in the tender process and therefore does not appear to have provided any competitive constraint on Werner. For this tender process, the EU suppliers invited to participate, [X] and [X], appear to have been used to exert a competitive constraint on Werner.
67. The CMA also received information about an informal request for a quote initiated by [X]. This arose as a result of [X], and as a result the customer took the opportunity to consider and explore whether an opportunity arose to move their business to a new supplier. Youngman was identified by the customer as a potentially suitable supplier and a comparison of the two

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<sup>20</sup> [X]

<sup>21</sup> [X]

<sup>22</sup> The CMA understands that [X] also did not submit a bid at the pan-European stage.



suppliers was carried out. This comparison largely focused on the price of 'like for like' SKUs<sup>23</sup> offered by the two suppliers.

68. [X] stated that Youngman was able to offer more commercially attractive pricing across the range, however, the process was put on hold due to the announcement of the acquisition by Werner of Youngman.
69. Youngman stated that its Board had had serious concerns about the financial viability of the commercial terms proposed [X]. It also provided an internal analysis that indicated that had it agreed to the terms it would earn a margin of less than [0-5]% on its sales to [X] and that this figure overstated profitability given higher transport costs and the expected lower sales for some products. The Board's profitability concerns were in part driven by the fact that Youngman does not currently supply a large quantity of Class III step ladders (see Table 5) and, in order to supply this quantity, it would need to import these at a price which enabled Youngman to then re-sell at a profit. However, owing to the lower margins available on the cheaper, lighter Class III products the transport costs associated with Youngman's import model this would mean that its margins would be further reduced below the [0-5]% level set out above. Moreover, in servicing a large DIY retailer, Youngman would be obliged to agree to a number of discounts and rebates which would further reduce any prospective margin to such an extent that it would become a non-viable business proposition. As noted above, the CMA analysed the Parties' financial viability analysis and considered it to be credible.
70. [X] on its part commented that it was unconcerned about the proposed Merger, as it would be able to source the majority of its requirements from the Far East.
71. Apart from these two processes the CMA has not received any evidence that indicates that DIY retailers have switched or sought to switch between the Parties within the last ten years.
72. The CMA also considered the Parties' submission that Youngman's key customer in the DIY channel, [X], was closer to being a trade retailer than a DIY retailer. In support of its submission, the Parties provided evidence that [10-20]% of [X] ladder requirement was for Class III ladders and this was in marked contrast to [X] and [X] both of which required a majority of Class III ladders in their ladder portfolio. Table 5 demonstrates that Youngman's supply of ladders by standard/class aligns more closely to other wholesale

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<sup>23</sup> A stock keeping unit or SKU is a distinct item, such as a product or service, as it is offered for sale that embodies all attributes associated with the item and that distinguish it from all other items.

trade suppliers than with Werner who supplies [80-90]% of the Class III ladders in the overall ladder market.

73. On the basis of this evidence, it is therefore unclear that Youngman is providing a materially stronger competitive constraint on Werner in the DIY channel than other trade channel suppliers (for example, Lyte, Titan etc).

*Conclusion on closeness of competition*

74. Based on the evidence above, the CMA considers that Werner and Youngman may be each other's closest competitors in the supply to the big 'three' DIY retailers but have:

- Different target customer groups since Werner's customer base is, to a large extent, in the DIY channel whereas Youngman is more focused on the trade channel. Youngman's share of supply in the DIY channel emanates from its contract with [X] – which also has a partial focus on the trade channel. Additionally, Youngman's share of supply of Class I ladders is some three times greater than Werner's (see Table 5 above). The evidence available therefore indicates that Youngman does not support any contract with a DIY retailer similar to [X] or [X].
- Differentiated product ranges as Werner supplies [75-85]% of all Class III ladders whereas Youngman supplies only [0-5]% within this ladder category.
- Different brand images since Werner's Abru brand is particularly recognised in the DIY Channel.

75. The CMA also notes that the internal documents referred to above indicate that the Parties monitor each other and the CMA is aware that Youngman has been approached by two of Werner's DIY customers ([X]) as part of either a tender process or an ad hoc request for a quote (a range of other competitors had also been approached for the tender process). However, on the basis of the evidence available to it, the CMA considers that Youngman is not a strong competitor in the DIY channel than other wholesale ladder suppliers in the trade segment:

- Youngman has rarely, if ever, competed with Werner for the big three DIY retailers and there has been no switching for many years.
- Youngman has not participated in a major tender by a DIY retailer against Werner and has provided evidence to show that when asked to quote it would not have found it profitable to supply a further major DIY retailer (see paragraphs 67 to 69 above).

76. Therefore, while the evidence points to Youngman being Werner's closest competitor in the DIY channel, there is a significant gap between Werner and Youngman's competitive propositions. The CMA considers that Werner does constrain Youngman, given its position as the strongest supplier in the DIY channel with major contracts with retailers. However, the CMA does not consider that Youngman poses a significant constraint on Werner, given that it has not, despite opportunity, attempted to win Werner's major DIY contracts. However, the CMA has gone on to consider whether other constraints will exist in the market post-merger, which may constrain the merged entity.

### ***Remaining Constraints – UK suppliers***

77. The Parties submitted that they are constrained post-merger by a large number of existing UK suppliers, the most relevant being Lyte with an estimated share for all ladders of [5-10]% and [10-20]% in the trade channel, and Titan with an estimated share for all ladders of [5-10]% and [5-10]% in the trade channel. The Parties also provided estimated shares of supply for other UK suppliers including TB Davies, Zarges, LFI, and Telestep, (see Tables 2 and 3 above).

#### *Lyte*

78. The Parties submitted that Lyte is a Swansea-based supplier of all types of ladders, with the majority of its product portfolio being manufactured in the UK. The Parties stated that Lyte supplies some [60-70]% of [X]<sup>24</sup> ladder requirements, and that [X] has the same revenues from ladders as [X] does with a broader range.<sup>25</sup>
79. Lyte told the CMA that its product range was focused on trade customers and that it primarily sells to the trade channel with only around 10% of its sales to the DIY channel. Lyte stated that its customers have switched from Werner/Youngman to Lyte products and vice-versa, and that at least some of these customers seem to operate (at least partly) in the DIY channel.<sup>26</sup> Current DIY customers of Lyte include [X] and paint and decorating stores; [X].
80. Lyte considered competition in the DIY channel to be challenging given it was characterised by high volumes and low margins. [X]. This is similar to Youngman's own submissions to the CMA evidenced by its response to the

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<sup>24</sup> [X] is a UK multi-channel supplier of trade tools, accessories and hardware products. It is part of the [X] group, which also owns [X], and has over 350 stores.

<sup>25</sup> The Parties commented that [X] was the most demanding customer in the UK.

<sup>26</sup> Lyte stated that [X] had switched from Werner to Lyte, and that [X] – a web seller - had switched from Lyte products to Youngman.

[X] request for a quote (see paragraphs 67 to 69 above) where Youngman considered that it had considerable challenges to supply at a competitive price given the volumes of Class III step ladders required. On the evidence available, Lyte is in a similar position.

81. As mentioned above [X]. The Parties also submitted that [X] had recently advised [X] that it had become the new distributor for glass reinforced plastic (GRP) steps in the UK for [X], who is currently one of Youngman's suppliers. The Parties submit that this demonstrates existing suppliers are available to challenge Werner in its absence post-merger.

#### *Titan*

82. Titan is headquartered in Bristol and supplies all types of ladders. The Parties submitted that Titan used to supply 'Do it All'<sup>27</sup> and currently supplies the Grafton Group in the trade channel and has been supplying Class III ladders through wholesalers.
83. Titan stated that its sales are approximately 70% to the trade channel and 30% to the DIY channel. The Parties estimated that Titan had around [0-5]% of the supply of class III ladders compared to Youngman's share at around [0-5]% (see Table 5). [X].

#### *Conclusion on constraint from UK suppliers*

84. The CMA notes that [X] currently supply smaller volumes to the DIY channel and that [X] was invited to participate in the [X] tender but did not submit a bid (like Youngman). [X] also supplies a large trade customer facing similar requirements to those in the DIY channel. While [X] appears to be the strongest UK-based competitor to the Parties post-merger, it appears to be less price-competitive, in particular with regard to Werner. As a result, the CMA considers that while the remaining UK suppliers impose a limited constraint on Werner, the degree of constraint is likely to be similar to that imposed by Youngman on Werner.

#### *Remaining Constraints – EU suppliers*

85. The Parties submitted that they are constrained post-merger by a large number of EU suppliers including Hailo as well as the other suppliers, such as Centaure, Escalux, Artub and Krause-Werk [X].

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<sup>27</sup> The retail chain 'Do It All', a joint venture between WH Smiths and the Boots Group was sold to Focus (DIY) Ltd. Focus subsequently acquired Wickes in 2000. The Focus Group later sold Wickes to Travis Perkins.

## *Hailo*

86. Hailo is a German based ladder manufacturer. It has supplied the UK for three and a half years and employs five sales staff in the UK. Sales revenues in the last financial year were €[X]m (£[X]k) and it expects to sell €[X]m (£[X]m) in 2014. Around 70% of its sales are to the DIY channel, with its largest customers [X] and [X].
87. The Parties submitted that Hailo supplied Homebase with 50-60% of requirements in the late 1990s and that Hailo obtained an ex-Lyte warehouse in the UK.
88. Hailo stated that transportation costs for European suppliers are a challenge. Estimating that while transportation costs amounted to [X]% of product value for UK suppliers, it is some [X]% for Hailo.
89. Hailo commented that it cannot currently compete effectively for the large DIY retailers because Hailo (like most of the other European manufacturers) do not manufacture any Class III ladders and only produce ladders to the EN131 standard. Hailo, commented that Class III ladders form a substantial part of the business with the large UK DIY retailers; and that it is unclear when the BS 2037 Class III will disappear as these discussions, at the European level, have been ongoing for a decade.
90. Responses from DIY retailers suggested that not many of them are aware of Hailo. Although, it already supplies [X], and [X], part of the same group, stated that it considered Hailo to be a credible alternative supplier.

## *Other European Suppliers*

91. As discussed in paragraphs 65 to 67, [X] performed a tender process for the supply of ladders to its [X] and [X] stores. Following the decision to split the tender process, [X] received three bids for the supply to [X]: [X]. [X] told the CMA that the business remained with Abru since the bids that were received were less competitive – [X]. Although these other bids were higher, it is clear that [X] used these two EU suppliers, and not Youngman, to price discipline Werner. The Parties submitted that concerns over the potential loss of the [X] contract caused Werner to reduce its prices during the final rounds of the tender exercise.
92. Other European suppliers include German-based Zarges GmbH, which established a UK subsidiary in 1991. However, Zarges appears to be primarily focused on the trade channel and the CMA has not received any evidence that Zarges was considered a credible alternative for the supply to DIY retailers.

### *Conclusion on constraint from European suppliers*

93. The CMA notes that Hailo primarily supplies the DIY channel in the UK and has an increasing, albeit small share of supply. Since Hailo does not offer Class III ladders and faces additional transport costs compared to UK suppliers, the CMA considers that Hailo may not necessarily be able to compete effectively for all customers or contracts (depending particularly on the product range required). However, the evidence from third party customers indicates that Hailo is considered to be a credible supplier for some DIY customers.
94. The CMA notes that two European suppliers were successfully used by [X] in its tender process as a competitive constraint on Werner and, therefore, can pose a credible constraint on the Parties post-merger.<sup>28</sup>

### ***Remaining Constraints – Direct Imports***

95. The Parties submitted that the large multiple retailers can, and do, import directly from overseas manufacturers themselves, and that they have provided evidence of repeatedly being forced to accept prices at the level of direct import prices in order to retain business.
96. Additionally, the Parties submit that they are constrained by pure importers (in addition to established rival wholesalers) who simply act as middlemen between the overseas manufacturers and the retailer.
97. The Parties stated that it anticipated that Youngman [X]. It is the Parties expectation that some of [X] foreign manufacturers would try to enter the UK market of their own accord for example [X] and [X]. The CMA understands that [X] has signed a distribution agreement with [X] (see paragraph 84).
98. Third party evidence generally supported direct imports as a viable constraint in the retail and also the trade channel. One major DIY retailer stated that it could source the vast majority of its requirements from the Far East. The only area where direct imports did not pose a constraint was large ladders due to transport costs and potential safety and quality concerns.
99. Other retailers either already sourced from the Far East or stated that direct imports were a credible competitive constraint. Those in the trade channel also said the same. These retailers import either directly or through one of the importers which are active in the UK. In the main, actual imports appear to be

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<sup>28</sup> The CMA notes that in the [X] tender process for [X], both European suppliers offered substantially higher prices ([X]% and [X]%) than Werner. The CMA does not have any information regarding the price calculation of these suppliers, but given the available information it appears plausible that these suppliers were less competitive at least partly due to the transport costs. The contract of [X] was awarded to a French supplier.

mainly limited to steps, stepladders and smaller ladders due to transportation costs, although, [X] stated that all types of ladders can be sourced through direct imports.

100. One supplier ([X]) told the CMA that direct imports were primarily used for promotions and to import smaller items. For larger products the product value per container diminishes thus reducing the price competitiveness of these larger products.
101. One retailer however did not consider direct imports met product, quality or distribution standards and requirements. [X] stated that, in its experience, factory standards in the Far East did not meet the EN 131 standard. As many of the ladders this DIY retailer sells are big, bulky items, the logistics, distribution and environmental impact of Far Eastern sourcing needs to be given careful consideration. [X] had considered in its tender process proposals from vendors identified by its sourcing offices in Shanghai and Warsaw, but that they could not meet [X]'s and [X]'s store delivery and merchandising requirements. However, this retailer also commented that should Werner attempt to increase its cost prices it would consider other options, including looking at the commercial viability of sourcing from overseas factories directly.
102. One of [X] suppliers stated that if the business relationship with [X] were to be terminated, it would seek out new distributors or set up a direct supply arrangement in the UK with the large retail groups. However, this supplier does not currently supply direct to UK retailers or maintain any infrastructure, eg warehouses, in the UK.
103. However, the CMA notes that direct imports amount to around [15-25]% of supply to the retail channel. This constraint will remain post-merger and provides an effective and continual constraint on the merged entity for the DIY retailers – through importation or direct sourcing – and for the smaller retailers – who are already using this supply route. In particular, [X], stated that it is confident that it can source the vast majority of its requirements from the Far East. The CMA therefore considers that direct imports will impose a significant constraint on the Parties post-merger and replace the limited price constraint that Youngman imposed on Werner pre-merger, particularly with regard to smaller ladders, which comprise a significant proportion of the sales in the DIY channel.

### ***Conclusion on horizontal unilateral effects***

104. Post-merger the Parties will continue to be the major supplier to the DIY channel in the UK. The evidence available indicates that while there is some

competitive interaction between the Parties in the DIY channel, Youngman and Werner have different target customer groups, and a differentiated range of products and that Youngman does not significantly constrain Werner. The CMA therefore does not consider that Youngman exerted a significant competitive constraint on Werner.

105. The CMA considers that the prospect of direct imports will remain a strong competitive constraint on the Parties post-merger. Direct imports currently have a share of supply of [15-25]% in the UK and are considered by several DIY retailers, including one of the big three DIY retailers, as credible alternatives particularly for the smaller ladders which constitute a large proportion of their requirements.
106. The CMA considers that the Parties will also be constrained by European suppliers, particularly Hailo, and by UK suppliers, particularly Lyte. The CMA notes that European and UK suppliers are more competitive (in terms of product range) for larger and heavier ladders due to the European standard EN 131 and the trade focus of the other UK suppliers. The competitive constraints from the remaining European and UK suppliers, therefore, complements the competitive constraint from direct imports for smaller ladders.
107. The CMA has found that customers will have a significant number of options open to them to impose a constraint on the Parties post-merger, as demonstrated by the use of tenders, Far East suppliers, and the use of distributors etc in order to discipline the Parties with regard to prices. Accordingly, the CMA has found that Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of horizontal unilateral effects in relation to the supply of ladders to the DIY retail channel.

### ***Third party views***

108. Third party comments have been taken into account where appropriate in the competitive assessment above.
109. The CMA received responses from five DIY retailers, five trade customers, two wholesale customers, four suppliers and eight competitors. One DIY retailer raised concerns that prices might increase, while two competitors and suppliers commented that the DIY channel would be dominated by the Parties post-merger.
110. One of the five DIY retailers that responded to the CMA expressed concerns that the transaction could enable Werner to be more bullish about cost prices and that, given the lack of alternative suppliers in the market, this could potentially lead to increased retail prices for customers. This customer had



considered direct imports, but commented that while the initial product pricing was favourable the experience was that the products were of a lower quality.

111. No other retailer, including those with a stronger focus on the trade channel, expressed concerns.

112. These concerns have been addressed above.

### ***Countervailing factors***

#### *Entry and expansion*

113. The Parties submitted that new players could credibly enter the market owing to the ease of imports and existing players could expand across the relevant channels.

114. In the course of the CMA's investigation those suppliers that operated primarily in the trade channel referred to various barriers to start supplying the DIY channel. One [X] stated that retailers were very demanding in terms of logistics, with specific delivery requirements (for example delivery to individual stores). Additionally, a lot of stock-holding is required. The view that retailers in the DIY channel were very demanding was supported by another supplier [X]. A third supplier [X] commented that expansion would require increased working capital for stock and raw material as well as larger warehousing and distribution facilities and additional merchandising staff. While a fourth [X] submitted that the highest barrier to entry or expansion to another channel would be start-up capital and branding.

115. In light of the CMA's conclusion that the Merger will not give rise to unilateral horizontal effects in either of the DIY and trade channels, the CMA did not consider it necessary to consider further whether new players would enter the market or the extent to which existing players could expand across channels.

#### *Buyer Power*

116. The Parties submitted that the big three DIY retailers have the ability to source directly from manufacturers and were able to 'look after themselves', and that the Parties' high shares of supply in the DIY channel overstate their market power since the big three DIY retailers were responsible for [65-75]% of the Parties' sales revenues, and thus can be considered to have considerable buyer power.

117. The CMA did not consider it necessary to conclude on the level of buyer power exerted in this market.

## **Decision**

118. Consequently, the CMA does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

119. This merger will therefore **not be referred** under section 33(1) of the Act.

**Sheldon Mills**

**Senior Director of Mergers**

**Competition and Markets Authority**

**23 October 2014**