

Completed acquisition by Richard Burbidge Limited of FW Mason & Sons Limited

ME/5116/11

The OFT's decision on reference under section 22(1) given on 26 October 2011. Full text of decision published 16 January 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. **Richard Burbidge ('Burbidge')** is a wholly owned subsidiary of Ripat Limited. Burbidge has headquarters in Shropshire and a factory in Wrexham. It is active in the design, manufacture, and supply of timber products and moulding. In terms of timber products, it specialises in staircases, decks, patios and balconies. Burbidge's turnover for the year ended September 2010 was £43.3 million.
2. **FW Mason and Sons ('Mason')** was a private limited company based in Nottingham. It manufactured timber home improvement products for sale to DIY retailers and merchants. Mason supplied timber and sheet material products. Its website described the production of bespoke wood mouldings as a speciality.¹ Mason's turnover to year ended August 2010 was £10.9 million. Mason went into administration in March 2011.

TRANSACTION

3. Burbidge acquired from administration the assets of the business carried on by Mason (the Mason Business) through an acquisition company called Masons Timber Products Limited (MTPL) on 22 June 2011. Since completion, MTPL has operated as a separate entity within the Ripat Group.

¹ www.masons-timber.co.uk

4. The OFT examined this merger as a result of an unsolicited complaint. The deal completed on 22 June 2011, the statutory deadline, as extended, expires on 31 October 2011.

JURISDICTION

5. As a result of this transaction Burbidge and the Mason Business have ceased to be distinct. The OFT is satisfied that the combination of assets making up the Mason Business is an 'enterprise' for the purposes of section 22 of the Enterprise Act 2002 (the Act).
6. The turnover test in section 23 of the Act is not met. The parties overlap in the manufacture of wood mouldings. Burbidge submitted that the parties' combined share of such a market would be [0–10] per cent. However, a third party complainant submitted that the parties' combined shares of 'small' timber mouldings would be well over 25 per cent. While the OFT has not been able to independently verify either the parties' or third party's estimates the OFT believes that it may be the case that the share of supply test is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

COUNTERFACTUAL

7. Mason went into administration in March 2011, and the P&A Partnership was appointed as Mason's administrator.
8. The administrator advised the OFT that rising input costs and increased international competition had adversely affected Mason's turnover and profits, and that there was no serious prospect of re-organising the business. Press reports at the time indicate that the administrator believed that rising fuel costs, lack of finance to modernise the business, and the loss of long-standing customers to the national multiple DIY retailers were responsible for Mason's decline.² The OFT understands that there were three bidders for the business, including Burbidge.
9. When carrying out its merger assessment, the OFT will generally take the pre-merger situation as its starting point, unless the parties can

² www.diyweek.net/news/news.asp?id=14483&title=All+the+best

demonstrate that the target firm was failing. In this case the OFT has not needed to conclude on whether the failing firm defence applies because the transaction does not raise competition concerns on the basis of a status quo ante counterfactual.

MARKET DEFINITION

10. The parties overlap in the supply of staircase parts, decking parts, and timber mouldings.

Staircase parts

11. Staircase parts include balustrades, newel posts and spindles, the OFT has taken this as its starting point as the narrowest candidate frame of reference that could reasonably meet the hypothetical monopolist test. However, it has not been necessary to conclude on whether this represents a relevant market as no concerns were established.
12. The parties advised that imports of staircase parts are in the region of £10 million, and that there are numerous carpenter and joinery businesses in the UK that also produce staircase parts. Given that Burbidge had turnover of £[] million and Mason £[] in staircase parts for 2010, this suggests that the increment to Burbidge's market share is, even if other domestic sales are discounted, less than one per cent. Burbidge has estimated that its market share could exceed 10 per cent, but that together the parties' combined share was unlikely to exceed 25 per cent.
13. The OFT has concluded that, given the relative insignificance of Mason in the supply of staircase parts, there is no realistic prospect of a substantial lessening of competition in the supply of staircase parts, therefore this sector is not considered further.

Decking parts

14. Decking parts include components such as spindles, balusters, handrails and newel posts. The OFT has taken this as the narrowest frame of reference that could reasonably meet the hypothetical monopolist test. However, it has not been necessary to conclude on whether this frame represents a relevant market as no concerns were established.

15. The parties submitted a press release by an industry body, the Timber Decking Association ('TDA'),³ which estimates that the 2010 timber decking market had a 'value of around £135 million'.⁴ The parties further submitted that, given Burbidge's and Mason's sales of around £[] million and £[] respectively, the parties' combined share would be [less than five] per cent with an increment of less than one per cent.
16. The TDA press release, however, does not make clear whether the 'market value' pertains to sales at the manufacturer/distributor stage in the supply chain or the retailer level. In order to test whether this distinction materially affected the market share estimates, the OFT used its knowledge of DIY stores' gross margins to infer the relevant cost of sales and hence the cost of decking materials. This calculation implied, on any reasonable basis, that the parties have a relatively small combined share with a small increment. The figures are not at a level which would typically give the OFT cause for concern.
17. The OFT has concluded, therefore, that given the relative insignificance of the parties in the supply of decking parts there is no realistic prospect that the transaction resulted in a substantial lessening of competition in the supply of decking components, therefore this sector is not considered further.

Timber mouldings

Product frame

18. Timber mouldings are an embellishment in strip form, made of wood that are used to decorate or finish a surface, such as a wall or door frame.⁵ Timber mouldings include a number of different forms, for example skirting boards, architraves, dado rails, dowels, decorative profiles, picture frame, door or window mouldings, and embossed mouldings.
19. These mouldings can also be supplied in other materials, such as plastic, aluminium and Medium Density Fibreboard (MDF); however, the parties

³ The TDA describes itself as a 'technical and advisory organisation that provides guidance on the materials and practices required to create high quality decks and associated structures'.

Source: www.tda.org.uk/NetBuildPro/process/4/AboutTDA.html

⁴ www.tda.org.uk/NetBuildPro/process/21/Timber-Decking-UK-Market-Growth-2011.pdf

⁵ www.ehow.com/about_5444102_define-moulding.html

acknowledged that from a demand perspective the market for timber mouldings was likely to constitute a discrete market for competition purposes.

20. The complainant considered that the appropriate market definition to consider this merger should be small timber mouldings sold in 2.4 metre lengths to DIY outlets.
21. The parties submitted that it would be difficult to assess which mouldings would meet a 'small mouldings' description, since Burbidge, for example, produce mouldings that range from 6mm in diameter to 116 by 18 mm in cross section, the size depending on the suggested end use of the moulding. Third parties did not recognise this distinction.
22. Third parties commented that while timber mouldings were typically sold for retail in standard lengths of 2.4 metres, there were some variations on the standard length. Burbidge submitted that while the majority of its mouldings were 2.4 metre lengths, a large number were sold in 900mm convenience lengths and some in 2.1 metre lengths. In addition, the Mason range is more diverse with 1.8m, 2.1m, 2.4m, 3m and 4.2m lengths being offered for many of its timber moulding products.
23. The parties submitted that if the DIY market was considered to only comprise the major multiples, for example B&Q, Homebase etc, the merger would not create an overlap between the parties since these larger retailers were not supplied by Mason. However, if it were considered that the DIY market includes the major multiples, independents, builder's merchants etc then an overlap between the parties would exist.

Geographic frame

24. The parties both supply these products nationally. Distributors and DIY multiples commented that wood mouldings could also be obtained from international suppliers in particular from Finland, France and New Zealand.

Conclusion on frame of reference

25. The OFT has, on a cautious approach, assessed the competitive effects of the merger at a national level in relation to the supply of timber mouldings to the retail DIY/home improvements sector.

COMPETITIVE ASSESSMENT

26. The parties overlap in the supply of timber mouldings to the retail DIY/home improvements sector.
27. Burbidge submitted that the manufacture of timber mouldings falls within the SIC Sub Class 20:30 *Manufacture of builder's carpentry and joinery*. It commented that there are a very large number of suppliers in the market for timber mouldings, which include multi-national players and merchants with their own manufacturing facilities.
28. Burbidge considered that it was difficult to quantify this market given an absence of industry information. However, using a report prepared by MBD Limited in 2010⁶ Burbidge looked at the SIC Sub Class 20:30, which was broken down further into window frames, doors, floor coverings, prefabricated floor coverings and other. It was considered that the market for timber mouldings would fall within this 'other' category with an estimated value of £1,153 million in the UK.
29. From this report, and using its knowledge of the market, Burbidge has estimated that the value of the UK timber moulding market to be approximately £200-300 million per annum. Given the parties' own turnover from timber mouldings, this market size implies that the parties' combined market share is approximately [0–10] per cent with an increment of [less than five] per cent.
30. The third party complainant submitted, based on information available to it and its knowledge of the three main importers that the parties' combined UK share of 'small' timber mouldings would be around 70 – 85 per cent.
31. The OFT has not been able to independently verify either the parties' or third party's market share estimates, although the OFT notes that the increment caused by Mason's revenues is small on either basis. The wide discrepancy between the two figures may be due, in part, to a definition of the market that is 'small timber mouldings' which is difficult to clarify and which is not recognised by third parties other than the complainant. However, from our third party enquiries it is not clear that market shares are a particularly good measure of market power in this case (see

⁶ The UK Timber Distribution Market Development

paragraph 41 below). The OFT has therefore focussed its attention on the remaining constraints on the merged parties.

Remaining competitors

32. Burbidge submitted that the parties' five main competitors for timber mouldings were Finn Forest UK, SCA Timber Supply Limited, International Timber (a division of Saint Gobain), Hoppings Softwood Products, and Cheshire Mouldings and Wood Turnings Limited.
33. Customers confirmed that the parties face competition from Cheshire Mouldings, Finn Forest, SCA, and various international suppliers. In general customers advised that they were satisfied with their incumbent supplier and had been with that supplier (whether Burbidge or Mason) for several years. While these customers had not explored other options recently, many were confident that there were several alternative suppliers. One customer that the OFT contacted commented that, '(l)oads of people sell wood mouldings'.
34. Moreover, for at least some larger customers, supply can be obtained from international providers. One third party told the OFT that it purchases wood mouldings from Finland, while another told the OFT that it has purchased from France and from as far away as New Zealand, as well as from Cheshire Mouldings in the UK.
35. To a degree, the parties appear to supply different types or sizes of retail outlets, with Mason largely supplying the smaller single outlet or local chains. One customer of Burbidge commented that Mason was not known to them prior to the OFT's third party enquiry. Its buyer was aware of three main suppliers in the sector — SCA, Finn Forest and Richard Burbidge, and considered that the market was quite fragmented with some large outlets and several independents having saw mill facilities attached to their other business operations and therefore were able to self supply. Consistent with the above comment another third party customer stated that it could self-supply timber mouldings on a small scale if required.
36. One smaller DIY store advised the OFT that, because of the small volumes that it purchased, it did not feel that it could purchase from abroad, although it had not investigated this option in any depth. However, another customer stated that despite purchasing relatively small volumes, it was able to import timber mouldings. The OFT also notes that Mason's

administrator's view that increased international competition was one of the reasons for Mason going into administration.

37. On balance it appears that the merged parties are constrained directly by at least Cheshire Mouldings and by international manufacturers when supplying to distributors and by international manufacturers and distributors when supplying to retailers.

BARRIERS TO ENTRY AND SWITCHING

38. A third party indicated that the investment cost required for entry is relatively low – between £100,000 and £120,000 for the requisite machinery, although a provider would also need to supply customers with the moulding box.
39. The third party complainant submitted that it believed moulding boxes acted as a substantial barrier to entry, since customers were constrained from switching between suppliers because timber moulding suppliers provide merchandising stands, known as moulding boxes, which are branded and can only be used to store that supplier's timber mouldings.
40. It advised that moulding boxes were used for presentation, storage, marketing, coding and pricing. The third party stated that suppliers may also offer solus agreements and rebates to discourage retailers from switching. It advised that customers would generally agree contracts for one to three years and then consider switching supplier, rather than stocking two or more suppliers at the same time. However, it conceded that customers regularly check the market, and at this point may well decide to switch supplier. It accepted that although there may be some switching costs, such as stock cleansing, these did not appear to be prohibitive. However, the complainant's characterisation of the market is not consistent with the fact that some customers currently purchase from two suppliers.
41. This point also lessens the relative merit of market shares as a measure of market power since competition happens infrequently and at the point when a new agreement is made. The OFT has found no evidence to show that there are important incumbency advantages in the supply of timber mouldings. Although we note that some competitors are also distributors,

not manufacturers, and may therefore purchase from the merged parties (see paragraph 45 below).

42. Customers were split on whether moulding boxes represented a barrier to switching. One customer told us that he uses similar presentation boxes for other products, and that on the last occasion that the customer switched supplier, the incumbent supplier decided that it would not be economic to remove the presentation box and so the customer retained the box and the customer's new supplier uses it instead of installing a new moulding box of their own. Moreover, one customer commented that it currently purchases from two suppliers – Burbidge and Finn Forest – and that it believed that a supplier would allow another supplier's products to be merchandised through their unit, if it were to make such a request. Although another customer disagreed with this assessment.
43. All customers that responded to the OFT's merger enquiries advised that there had been no changes in prices, quality, or service since the merger completed, and were generally unconcerned about the effects of the merger.

Conclusion

44. The OFT has, therefore, concluded that the merged entity is constrained by several competitors at both the manufacturing and distribution levels of the supply chain; that the parties' customers were unconcerned about the transaction; and that there have been no changes in price, quality, range or service since the transaction completed. Therefore the OFT considers that there is no realistic prospect that the transaction would be expected to result in a substantial lessening of competition in the supply of timber moulding products.

VERTICAL EFFECTS

45. The OFT considered whether the merged parties might, given their larger size post-merger, have the incentive to foreclose distributors. However, no complaints were received from distributors. Moreover, distributors appear to have a sufficient number of alternative options to limit the incentive and effect of any attempt at foreclosure by the merged entity.

THIRD PARTY COMMENTS

46. Third parties' comments have been considered, where appropriate, above. Other than the original complainant, no respondents, including other competitors, were concerned about the transaction.

ASSESSMENT

47. The parties overlap in the supply of supply of staircase parts, decking components, and timber mouldings.
48. In the supply of staircase parts the increment from Mason's activity in this sector is estimated to be less than one per cent. Given the relative insignificance of Mason in the supply of staircase parts the OFT has concluded that the merger does not create a realistic prospect of a substantial lessening of competition in the supply of staircase parts.
49. In the supply of decking components the OFT estimated that parties have an estimated combined share of [0–10] per cent with an increment of less than one per cent. Given the relative insignificance of the parties in the supply of decking components the OFT has concluded that the merger does not create a realistic prospect of a substantial lessening of competition in the supply of decking parts.
50. In timber mouldings, Burbidge estimated the value of the UK market to be approximately £200-300 million per annum. Using its knowledge of the market and the parties' own turnover from timber mouldings, Burbidge estimated that the parties' combined market share is approximately [0–10] per cent with an increment of [less than five] per cent.
51. However, a third party, based on its own information/knowledge of the three main importers, estimated that the parties' combined UK share of 'small' timber mouldings was around [70 – 85] per cent.
52. The OFT was not able to independently verify either of these market share estimates for timber mouldings, although on either basis the increment caused by the activities of Mason is small. The wide discrepancy between the two figures may be due, in part, to the way that the complainant has adopted a narrow definition of the market which is not recognised by the parties or other third parties. However, as a first phase authority, the OFT

has taken a cautious approach and has assumed jurisdiction on the basis that it 'may be the case' that a relevant merger situation has been created.

53. Customers were unconcerned by the merger and confirmed that the parties face competition from at least Cheshire Mouldings, Finn Forest, SCA, and various international suppliers. All competitors confirmed that timber mouldings could be supplied by international companies and that some customers were also able to self supply.
54. The third party complainant submitted that customers were constrained from switching between suppliers because timber moulding suppliers provide merchandising stands, known as moulding boxes. Customers' views on the constraint to switching imposed by the moulding box were mixed. There was some anecdotal evidence that suppliers may leave the box if they lost the contract to supply, with the result that it could be re-branded and used by the new supplier.
55. The OFT considers that the merged entity is constrained by several competitors at both the manufacturing and distribution levels of the supply chain. Customers were unconcerned about the transaction, and commented that there had been no changes in price, quality, range or service since the transaction completed.
56. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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