
Anticipated acquisition by Balfour Beatty plc of Birse Group plc

The OFT's decision on reference under section 33(1) given on 1 September 2006. Full text of decision published 11 September 2006.

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

PARTIES

1. **Balfour Beatty plc** (Balfour Beatty) is primarily a civil and specialist engineering and construction company which offers building, building management, rail engineering and other engineering services to the transport, energy and water sectors across Europe and North America. Its worldwide turnover in 2005 was £4.9 billion, its EU turnover was around £4 billion and its UK turnover was £3.7 billion.
2. **Birse Group plc** (Birse) is a provider of civil engineering, building and plant hire services to the public and private sectors in the UK including to the road, rail and water sectors. Its worldwide turnover in the year to April 2005 was £340 million.

TRANSACTION

3. Balfour Beatty proposes to acquire the entire issued share capital of Birse. On 8 August Balfour Beatty announced that it had received enough valid acceptances by Birse shareholders to do this. The transaction to subject to the City Code on Takeovers and Mergers.
4. The Office of Fair Trading's (OFT) administrative deadline for consideration of this transaction is 4 September 2006.

JURISDICTION

5. As a result of the proposed merger, the parties will cease to be distinct. The turnover threshold set out in section 23 of the Enterprise Act 2002 (the Act) is exceeded.¹
6. The OFT therefore considers that it is or may be the case that arrangements are in progress or in contemplation which if carried into effect will result in the creation of a relevant merger situation.

RELEVANT MARKET

7. The parties overlap in the provision of civil engineering, new builds and plant hire services. They submitted that these three areas of activity form distinct product markets.

Product scope – civil engineering

8. Civil engineering is a broad field incorporating the planning, construction, and maintenance of fixed structures or public works. It may be segmented further by various means such as by type of customer (rail, road or water customers). While there is no demand-side substitution between these segments, some third parties commented that it is reasonably easy for construction firms to switch between different types of civil engineering segments and would consider doing so if prices in these segments increased by around 5-10 per cent. This is facilitated by the fact that as much as 80 per cent of each civil engineering contract can be sub-contracted to a specialist service provider. The principal contractor then focuses on project management, contract management and procurement, which in most cases involve skills that are transferable between different types of civil engineering activities. Therefore, supply side substitution seems easy.
9. In this case the OFT has considered water, road and rail civil engineering projects to be one product area.
10. Another possible segmentation is by size of contract. Some third party respondents indicated a distinction in the set of competitors that tender for smaller or larger contracts, albeit with some disagreement on what constitutes 'small' and 'large'. The OFT has not found it necessary to conclude on this as the outcome of the competition analysis is the same regardless of the approach used.

¹ The parties' turnover exceeds the threshold levels set out in the European Commission Merger Regulation (Council Regulation (EC) No 139/2004). However, since each party earns more than two-thirds of its turnover in the UK the transaction does not fall within the jurisdiction of the European Commission.

Geographic scope – civil engineering

11. Geographic scope varies with the size of the project, according to third parties. While the parties and third parties felt the geographic scope for smaller projects was regional, such as the South East or an area within two hours of a regional office, others suggested that for major projects the scope was national or even international.
12. On the supply side, it is necessary, particularly for smaller contractors to have good relationships with sub-contractors. Smaller companies will tend to have contracts with sub-contractors in the same region, whereas larger contractors have a wider network either across several regions or nationally. The exact delineation between the areas in which contractors operate depends on the size of the organisation.
13. The OFT has not found it necessary to conclude on the geographic scope of civil engineering as the outcome of the competition assessment is the same regardless of the approach applied. In this case civil engineering has been examined at both the national and regional levels.

Product scope – new builds

14. Building work relates to commercial, industrial and other non-residential building projects which the parties subdivide into new build and repairs, maintenance and improvement (RMI). For this transaction it has not been necessary to consider RMI as Birse is not active in this segment.
15. As with civil engineering, while there is no demand side substitution between types of new builds, third parties confirm that it is relatively easy for construction firms to switch between different types of new build projects.
16. There is some scope for segmenting new building work by the size of contracts. The parties suggested that new build projects over £20 million in value would be considered major projects.
17. The OFT has not found it necessary to conclude on the product scope for new build as the outcome of the competition assessment is the same regardless of the approach taken.

Geographic scope – new builds

18. The parties considered that the geographic scope should be a national one, although smaller projects may have a regional scope. The factors considered in relation to the geographic scope for civil engineering are also relevant to new builds.
19. The OFT has not found it necessary to conclude on the geographic scope of new build as the outcome of the competition assessment is the same regardless of the approach applied. Both a national and regional approach have been applied to this case.

Product scope – plant hire

20. In Balfour Beatty plc / Mansell plc the OFT decided that plant hire was a distinct product scope.² In the current case, the parties agreed that this is the appropriate product scope. Balfour Beatty hires tower cranes and Birse crawler cranes. Although the former are static and the latter mobile, no third parties suggested that the two types of crane are sufficiently different not to be substitutable on at least some occasions.
21. The OFT did not find it necessary to conclude on the product scope for the plant hire of cranes as the outcome of the competition assessment is the same regardless of the approach applied. In the current case the OFT has used all plant hire as its product scope.

Geographic scope – plant hire

22. In terms of plant hire, third parties confirmed that any work that requires the hiring of a large crane would be of sufficient value that the contractor would put out a competitive tender to sub-contract the supply of cranes. There are several large crane hire firms which operate on a national basis. Third parties agree that the geographic scope for plant hire can be national or international. However, the OFT has not found it necessary to conclude on the geographical scope of plant hire as the competition assessment is the same regardless of the approach used. The OFT has applied a national geographic scope.

² Completed acquisition by Balfour Beatty plc of Mansell plc, 29 January 2004.

HORIZONTAL ISSUES

Civil engineering

23. As a result of the proposed merger the parties will become one of the largest civil engineering firms in the UK. However, it will only have around a 10 per cent share of supply in the UK. Nationally, the merged entity will face competition from a number of other large firms. Indeed, there are more than 10 firms which had a turnover of £300 million or more in 2005 (in total, civil engineering activities were worth over £6.7 billion).
24. On a regional basis the parties combined shares of supply were similar to their national share, with their highest share (in an overlapping region) being in the North East (about 15 per cent, increment around 5 per cent). In addition to the national competitors the merged entity also faces competition from other firms with a regional focus.
25. By size of contract the parties' combined share of supply is again similar to their national share of total civil engineering services when segmented between large contracts (worth £40 million or more) and small ones. On a national basis their combined share of small contracts [around] 10 per cent, ranging from around 5 per cent in Central East to [less than] 20 per cent in the North East (increment [less than] 10 per cent) on a regional basis. For large contracts, the parties' national share was again about 10 per cent with a very small increment ([around] one per cent).
26. What is more, within civil engineering activities there has been little direct overlap between the parties. Bidding data supplied by the parties show that for 2003 to 2005 inclusive, the parties only bid for the same contract in less than 5 per cent of the cases in which they tendered. Excluding Scotland (where there is no recent overlap) the parties bid for the same contract in less than 10 per cent of the cases in which they tendered, although Balfour Beatty put in tenders for around 20 per cent of the contracts that Birse tendered for.³
27. By type of customer there is limited direct overlap between the parties for water customers. Birse is active in above ground assets (e.g. treatment plants for drinking water or sewage) whereas Balfour Beatty's activities in this area are limited and more focused on below ground pipeline work (where Birse is currently not active). In any case, the parties only have around a one per cent combined share of water-related work. For road and airport related work the parties have a combined share of about 15 per cent (increment about 5 per cent).

³ For those instances in which both parties tendered for the same contract, their combined success rate was [45-55] per cent.

28. The parties have around a 15 per cent share in rail related work (increment about 5 per cent) but Birse's principal focus in this segment is on mainline rail customers whereas Balfour Beatty is barely active in mainline rail.
29. An overlap does arise in relation to maintenance, replacement and upgrade work for London Underground Limited ('LUL'). Balfour Beatty has a 20 per cent share in the concessionaire Metronet, (collectively Metronet Rail BCV Limited and Metronet Rail SSL Limited which provides LUL with train, station and related infrastructure services in relation to the Bakerloo, Central, Victoria, Waterloo & City, Circle, District, East London, Hammersmith & City and Metropolitan Lines). Birse provides upgrade work for the other concessionaire, Tube Lines, which is responsible for the Jubilee, Northern and Piccadilly lines.
30. LUL also has a Framework Agreement for Alternative Providers of rail buildings (LUL stations and premises), which runs for 5 years. Birse is one of three suppliers in the Framework. The OFT has been told that there are sufficient suppliers besides Birse to successfully bid for the Framework.

New builds

31. On a national basis the parties' combined share is very low (less than 3 per cent). On a regional basis the only overlaps are in the North West and the North East where in each case combined shares are below 3 per cent.
32. By contract size (contract value worth less than £20 million), the parties' share is around 1–2 per cent on both national and regional bases.

Plant hire

33. In plant hire the parties overlap in the hire of cranes. Their combined share of supply of total plant hire in the UK is less than one per cent. Several other large plant hire firms exist with sales in excess of £200 million per year (total plant hire is worth around £4.2 billion in the UK).

VERTICAL ISSUES

34. Balfour Beatty owns a number of businesses that would normally act as sub-contractors in civil engineering work. One, Stent, had sales of £[1–2] million to Birse in 2005 (less than one per cent of Birse's turnover). The parties are not aware of any other sales between them and their associated businesses.

THIRD PARTY VIEWS

35. No customer in any segment which commented to the OFT had any concerns about the proposed merger.
36. Only two competitors had concerns. One, a rail contractor told the OFT that the merger would reduce the number of potential contractors it could use. However, other respondents said that there are several other firms, both regionally and nationally, that compete with the merging parties so a number of competing contractors will remain after the merger.
37. A second competitor raised concerns relating to the foreclosure of supply of casing vibrators for hire. Casing vibrators are used in conjunction with crawler cranes, principally by piling contractors. As supply is limited in the UK the third party was concerned that following the acquisition Stent Foundations, a piling business unit owned by Balfour Beatty, would get control or preferential use of Birse's casing vibrators, foreclosing supply to other customers. However, this third party also told the OFT that it seldom uses Birse for the hire of crawler cranes and with regard to casing vibrators it mostly hires these from one of two suppliers (not Birse). The OFT does not consider that the merged entity would have sufficient power in the hiring of casing vibrators to embark on a foreclosure strategy.

ASSESSMENT

38. Civil engineering in the UK is large and fragmented. Although the merged entity will create one of the largest civil engineering firms in the UK, its share of supply will be small – whether measured on a national, regional, contract size or type of customer basis. After the merger a number of large competitors will remain to give customers choice in all segments and to ensure effective competition.
39. For both new builds and plant hire services, the parties combined shares of supply are very small (on all measures) and do not raise competition concerns.
40. No vertical concerns arise from the merger.
41. No customers were concerned about the merger and only two competitors raised concerns, which have been addressed above.
42. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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