

Anticipated acquisition by Travis Perkins plc of Wickes Ltd

The OFT's decision on reference under section 33(1) given on 4 February 2005

Please note that square brackets indicate figures replaced by a range at the parties' request.

PARTIES

1. **Travis Perkins plc (Travis Perkins)** is primarily a builders' merchant operating 740 stores in the UK. It also owns Connections (AML) Ltd (**Connections**) that acts as an importer and distributor of plumbing fittings, valves and branded sundry consumables; and, CCF Ltd (**CCF**) which makes wholesale sales of insulation and dry lining materials to builders' merchants and contractors.
2. **Wickes Ltd (Wickes)** is a chain of 172 do-it-yourself (DIY) retail stores in the UK designed to appeal to DIY retail customers and small tradesmen who undertake maintenance and improvement projects for households. Wickes offers these customers a complete range of home improvement products. Wickes currently belongs to Focus Wickes Group which also owns the national DIY retail chain trading as Focus. Wickes' turnover for the year ending 31 October 2004 was £911.5 million.

TRANSACTION

3. On 16 December 2004, Travis Perkins announced its proposed acquisition of Wickes. The statutory deadline for the consideration of this merger expires on 7 February 2005, having been extended in accordance with section 97(2) of the Enterprise Act 2002 (the Act) on 14 January 2005.

JURISDICTION

4. As a result of this transaction, Travis Perkins and Wickes will cease to be distinct. The UK turnover of Wickes exceeds £70 million, so the turnover test in section 23(1) of the Act is satisfied. Therefore, arrangements are in progress or in

contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

RELEVANT MARKET

5. Both parties supply a portfolio of repair, maintenance and improvement (RMI) products to trade customers and retail consumers in the UK. The RMI range encompasses a broad spectrum of product groups ranging from 'heavy' building materials such as timber, bricks, plumbing, concrete, cement and plaster products on the one hand to the 'light' items such as decorative, ironware, tools, electrical goods, lighting, kitchens, bathroom units and gardening products on the other.

Product scope

6. The parties consider the supply of RMI products to be the relevant product frame of reference.
7. RMI products are supplied to market through different distribution channels. These include generalist builders' merchants, DIY retail stores (of different sizes), DIY specialists and specialist RMI distributors such as specialist timber, plumbing, bathroom or kitchen showrooms. It is also possible to purchase some products directly from the manufacturers and/or from food and non-food retail chains.
8. The OFT investigation has confirmed that these different channels overlap in product ranges but our investigation has also shown that as a consequence of the different business focus, builders' merchants and DIY retailers have different customer bases with a limited overlap, estimated by third parties, in the range of 10 per cent-20 per cent depending on the precise position within each category. Given that Wickes' business model is the closest to the builders' merchant's approach within the DIY sector, the parties estimate that 35 per cent of their customer bases overlap.
9. Our investigation has confirmed that, on the demand side, it is unlikely that the builders' merchants' main customer base, i.e. trade customers, would switch significantly to DIY retail stores because they consider the provision of credit facilities and delivery essential for their businesses. In the event of a 5 per cent-10 per cent price increase, tradesmen would switch to alternative builders' merchants or specialist distributors who have traditionally offered similar services, as opposed to DIY retailers. There are no or negligible costs involved in switching to these alternative suppliers.
10. In addition, retail customers are unlikely to make price comparisons between DIY retail chains and builders' merchants unless they are experienced DIY customers

with some knowledge of the products. It is more likely that those retail DIY consumers would switch to other RMI specialist suppliers. The proportion of sales made to retail customers by builders' merchants has traditionally been very low.

11. On the other hand, as to the supply side, DIY retail chains and builders' merchants have considerable flexibility in the range and focus of products they sell and are able to begin supplying new product ranges similar to products currently sold by other distribution channels within a short time frame (three months) at a low cost.
12. Despite the above-mentioned differences, DIY retail and builders' merchants' stores are competing increasingly with each other as well as with other RMI distribution channels. Moreover, chains of substitution on the demand side may link all distribution RMI channels. Nonetheless, it remains unclear whether customer switching from one RMI distribution channel to another would be of sufficient scale to constrain a supplier's prices.
13. For the purposes of this decision, this issue as to whether there is a single RMI product scope or separate frames of reference depending on the different distribution channels or product groups may be left open since the OFT believes that, whatever the frame of reference adopted, this merger is not expected to lead to a significant lessening of competition in the UK.

Geographic frame

14. There is competition between suppliers of RMI products at a national level in terms of national pricing, procurement, marketing, national roll-out strategy, competition for appropriate locations, national commercial policies and stock range. Their respective stores also have overlapping catchment areas throughout the UK. There are also elements of regional and local competition due to the diversity of customers, some of whom operate only at a regional or local basis and the existence of regional and local suppliers who compete with the national chains. Most national builders' merchants and DIY chains allow their branch and sales managers at local and regional level some discretion to depart from their companies' national price lists to take into consideration local conditions.
15. There is no evidence to suggest that DIY retailers or builders' merchants currently based abroad will begin supplying the UK market at a retail level within a short time frame and at a low cost. For these reasons, the OFT considers that the relevant geographic frame is not wider than the UK.
16. In view of the above, the OFT has examined the effects of this merger at a national, regional and local level but it is unnecessary to conclude on the

geographic frame of reference because competition concerns do not arise at any of these levels.

HORIZONTAL ISSUES

National level

17. In relation to the national supply of RMI products, the parties estimate that they will have a combined share of supply of [0-10] per cent in the UK with an increment of [0-10] per cent.
18. In the supply of DIY retail products only, the combined share of supply at a national level would be less than [0-10] per cent with an increment of less than [0-10] per cent. This proposed acquisition may bring a potential pro-competitive effect due to the fact that Wickes will become an actual competitor of Focus, an important UK DIY retailer, as opposed to the current common ownership.
19. On the narrowest possible area of overlap, i.e. supply of RMI products to trade customers, the merged entity will have a combined share of supply of [15-25] per cent with an increment of [0-10] per cent.
20. In any of these frames of reference, there is a negligible increment to the merged entity's combined market share. It will continue to face strong competition from at least two competitors with market shares similar or larger to that of the merged entity. In addition, the evidence shows that there are a number of smaller suppliers that will continue to effectively constrain the merged entity's behaviour.

Regional level

21. At regional level, the parties submit that they will not supply more than [10-20] per cent of RMI products in any given region. As to the narrower DIY sector, the maximum average combined market share in any region will be [5-15] per cent. Concerning trade sales, the data submitted by the parties indicates that there are only two regions where the combined market share will be greater than [10-20] per cent: in the South West it will be [30-40] per cent with an increment of [0-10] per cent; and, in the South bank of the River Thames, within the South East region, where the parties' combined share of supply to the trade sector is [30-40] per cent with an increment of [0-10] per cent.
22. In all areas there are a number of other national, regional and local suppliers. In the two areas where the combined market share is [30-40] per cent or more the increment is minimal. Accordingly, the OFT considers that this merger does not raise significant competition concerns at regional level.

Local

23. On the basis of the information supplied by the parties and other evidence from third parties, the OFT considers that the catchment area for the parties' stores has a 10-mile radius. It has therefore taken this as the relevant geographic frame of reference for the purpose of assessing whether competition concerns might arise at a local level.
24. The evidence before the OFT indicates that in those 10-mile-radius catchment areas where the parties are both present, choice is at worst reduced from 6 to 5 fascias of national competing suppliers of RMI products. In addition to the merged entity, these comprise at least two national retail DIY stores and at least two national builders' merchants stores or specialist builders' merchants' plumbing outlets. In addition, in most cases in these areas, at present, there are a number of independent builders' merchants and DIY stores. Therefore, however the product frame of reference is segmented, there will remain a number of other players at local level.
25. In addition, in a selection of areas where no more than 5 national fascias will remain following this merger, the OFT contacted local competitors for their views. However, no concerns were raised.

Barriers to entry and expansion

26. The barriers to entry vary depending on the product and geographic scope of the frame of reference. Whilst entering with the aim of achieving a 5 per cent market share of the national RMI product scope would require a substantial capital expenditure, the investment required to open an average-size individual store is more manageable with limited sunk costs.
27. A key issue is the requirement to obtain planning permission for the opening of new outlets. It appears that, at present, there are restrictive planning policies in relation to out of centre retail development. Nevertheless, evidence shows that a number of new stores have opened recently and various effective competitors have announced the opening of new stores in the near future. This suggests that planning permission is not, at present, an unduly high barrier to entry.

Buyer power

28. DIY retail customers are unlikely to have any buyer power. In contrast, builders' merchants' main customer base, in particular the big and medium trade

customers, can exert a degree of buyer power as they purchase in large volumes or on a regular basis and can negotiate special terms with the builders' merchants.

VERTICAL ISSUES

29. Travis Perkins owns CCF, a company active in the upstream supply of insulation and dry lining material to builders' merchants. Travis Perkins estimates that CCF supplies approximately [15-25] per cent (£ []) of insulation and dry materials in the UK. Given the fact that [75-85] per cent of those sales are intra-group, the OFT does not believe that this merger raises vertical competition concerns.
30. In addition, Travis Perkins is vertically integrated with Connections. The parties' estimate that Connections' share of supply is less than [0-10] per cent. On this basis, no further vertical issues arise.
31. In line with previous cases¹ considered by the EC Commission relating to the retail sector, the procurement market, where a retailer could exercise bargaining power, has to be distinguished from the retailing market, even though an interrelation between these two markets exists.
32. After examining the procurement markets, it appears that following the acquisition the merged entity will not purchase more than [15-25] per cent of total UK supplies in any product range within the RMI spectrum. The OFT contacted a number of affected suppliers and none of them raised any competition concerns.

THIRD PARTY VIEWS

33. Only a limited number of the third parties contacted by the OFT raised any competition concerns. One third party raised the concern that prices might rise post merger and that the credit facilities currently offered to small and medium-size tradesmen could be reduced. Another third party was concerned that the customer choice would be reduced in some locations.
34. After examining these concerns carefully and in particular in respect of some specific locations, the OFT is of the view that these concerns, in effect, relate more to previous consolidation between builders' merchants rather than as potential effects arising from this particular transaction.

¹ See Decision IV/M.1221 Rewe/Meinl of 3 February 1999 and Decision IV/M.1684 Carrefour/Promodes of 25 January 2000.

ASSESSMENT

35. The parties overlap in the supply of RMI products to trade and retail customers. There are substantial differences between the different distribution channels through which RMI products reach their customers and differences as to the type of customers using those different distribution channels. However, for the purpose of this decision, it has not been necessary to decide whether the appropriate frame of reference includes all of the various distribution channels and product groups or only some of them since this transaction is not expected to lead to a significant lessening of competition in the UK whatever frame of reference is adopted.
36. The OFT has formed this belief for the following reasons: (i) the merging entities at present predominantly compete for different customer types with different purchasing characteristics; (ii) customers will continue to have considerable choice of suppliers (either at national, regional and local level) through different distribution channels and will be able to switch supplier at relatively low or negligible cost; and, (iii) the lack of substantive concerns in relation to this transaction from third parties.
37. 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

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