
Completed acquisition by Rexel UK Limited of certain assets of Wilts Wholesale Electrical Company Limited

ME/5417/12

The OFT's decision on reference under section 22 given on 26 October 2012. Full text of decision published 13 November 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. **Rexel UK Limited ('Rexel')** distributes electrical products through 361 branches across the UK under the fascias Newey & Eyre ('**N&E**'), WF Senate and Denmans. Rexel's UK turnover in 2010 was £769 million.
2. **Wilts Wholesale Electrical Company Limited** (the '**Seller**')¹ distributed electrical products through 62 branches in parts of England. The turnover of the Seller in 2010 was £83 million.

TRANSACTION

3. On 25 February 2012 Rexel acquired (the '**Acquisition**') the Seller's business, stated to consist of 59² branches out of the 62 branches operated by the Seller ('**Wilts**').³

¹ Now renamed Fernturn Holdings Limited.

² The remaining three branches in Basingstoke, Exeter and Hounslow were subsequently closed by the Seller. In this respect, however, see paragraphs 14 to 19 below and in particular footnote 11.

³ As part of the Seller's business, Rexel also acquired a lighting system design business trading as 'Design Lighting', an electrical installation export business trading as 'Britsource' and a specialist distribution business of spares and accessories for heating and ventilation products trading as 'Cloud'. These businesses are discussed at paragraphs 36 to 40 below.

JURISDICTION

4. As a result of the Acquisition, Rexel and Wilts ceased to be distinct. The UK turnover of Wilts (even if it were appropriate to exclude the three branches purportedly retained by the Seller⁴) was around £81 million in 2010 and hence exceeds £70 million. Therefore, the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the 'Act') is met and the OFT believes that it is or may be the case that the Acquisition has resulted in the creation of a relevant merger situation.
5. The Acquisition was publicly announced on 27 February 2012. Following extensions under section 25(2) of the Act, the statutory deadline is 7 December 2012. The administrative deadline is 26 October 2012.

COUNTERFACTUAL

6. Rexel submitted that Wilts experienced a marked decline in its performance in the two years before the Acquisition, caused by the unsuccessful implementation of a new computer system that resulted in difficulties in meeting customer demand, in addition to the general adverse market conditions at that time. This led to a fall in sales and profits, reduced supplier credit levels and hence a difficulty in purchasing sufficient stock. Wilts had to close its central distribution centre in Trowbridge (Wiltshire) on 31 December 2010, further affecting its ability to service clients. Wilts had been profitable up to 2009, but in the year to March 2010, the last financial year for which its accounts were published, it made an operating loss of £6.5 million. A third party confirmed the significant deterioration in Wilts's performance.
7. Rexel submitted that before the Acquisition, 26 of Wilts's branches were earmarked for closure⁵ and that therefore the appropriate counterfactual is that, absent the Acquisition, these branches would have exited the market. It has further submitted that, for the remainder of the Wilts branches, the most likely outcome, absent the Acquisition, would have been liquidation resulting in a division of Wilts's assets between different buyers or Wilts's withdrawal from the market. Rexel referred in this respect to the failure to identify a purchaser for Wilts that would have led to a more competitive

⁴ See in this respect paragraphs 14 to 19 below and in particular footnote 11.

⁵ Document entitled 'Business Plan – Fern' and 'Wilts Electrical – Post investment strategy – January 2012', prepared December 2011 (Appendix 5 to Rexel's submission of 3 April 2012).

outcome than the Acquisition. Rexel submitted that in any case it would be wrong to take a return to Wilts's competitive strength to its pre-decline levels as the appropriate counterfactual, because, according to Rexel, it is extremely unlikely that any purchaser of or investor in Wilts would have made the very substantial investment needed to expand its branch network and/or re-open its central distribution centre.

8. The OFT will assess a merger against a counterfactual different from the pre-merger conditions of competition where, based on the evidence available to it, it considers that the prospect of these conditions continuing is not realistic (or where there is a realistic counterfactual that is more competitive than the pre-merger conditions of competition). The OFT notes that where a merger raises concerns relative to the pre-merger situation, the OFT is slow to clear the merger based on an alternative counterfactual and will only do so when it has sufficient compelling evidence.⁶ In forming a view on an 'exiting firm' scenario, the OFT will consider:
 - a) whether the firm would inevitably have exited the market, in particular whether the firm was unable to meet its financial obligations in the near future and to restructure itself successfully
 - b) whether there would have been a substantially less anti-competitive alternative purchaser for the firm or its assets, and
 - c) what would have happened to the firm's sales in the event of its exit.⁷

Counterfactual applicable to Wilts as a whole

9. In this case, the OFT considers that it has not received sufficient evidence that the first requirement is met in relation to the exit of the Wilts business as a whole from the market. Wilts made a loss in the year to March 2010 (£6.5 million, including £1.4 million in exceptional costs), and appears also to have made a loss in the year to March 2011, although the size of this loss is not clear. [] However, the fact that a firm has made losses for two or three years running is not, on its own, sufficient to meet the first requirement. Rexel also submitted that the credit position of the firm appeared precarious.⁸ However, this information is only set out in one

⁶ *Merger Assessment Guidelines* (CC2 and OFT1254, September 2010), paragraph 4.3.5. See also for example *Kerry Foods Limited/Headland Foods Limited*, OFT decision of 12 July 2011, paragraph 10.

⁷ *Merger Assessment Guidelines*, paragraphs 4.3.8-4.3.18.

⁸ Document entitled 'Business Plan – Fern' (footnote 5 above), in particular pages 2, 5 and 16.

internal document and does not amount to the compelling evidence that is required to meet the first requirement of the exiting firm counterfactual. Also, the OFT does not have information regarding Wilts's cash position at the time of the Acquisition.

10. As regards the second requirement (namely that there would not have been a substantially less anti-competitive alternative purchaser for the firm or its assets), the OFT has received documentary evidence from a third party that there was at least one credible alternative buyer for the entire Wilts business at the time of the Acquisition. It is therefore definitely plausible, and potentially likely, that, absent the Acquisition, Wilts would have been sold as a whole to a different buyer rather than, as Rexel submitted, being broken up among several buyers or withdrawn from the market. The OFT considers that, given the identity of this alternative buyer, a sale to this buyer would have been likely to have led to a substantially less anti-competitive outcome in certain areas. As a result, the OFT considers that the second requirement for accepting an exiting firm counterfactual is not met.
11. Given that neither the first nor second requirement is met, the OFT considers that it is appropriate to assess the Acquisition against the counterfactual of Wilts as a whole remaining active in the market. However, in light of the evidence provided by Rexel and a third party, the OFT accepts Rexel's submission that a return to Wilts's competitive position in 2008-09, before the start of its financial and commercial difficulties, is too uncertain and insufficiently likely to occur in the short term to form an appropriate counterfactual. As a result, the OFT considers it appropriate to consider the pre-merger situation as the counterfactual in respect of the Wilts business as a whole.

Counterfactual applicable to individual acquired branches

12. In relation to individual branches amongst those acquired by Rexel, the OFT does not consider it inevitable that the 26 branches that, according to Rexel, were earmarked for closure,⁹ would indeed have been closed absent the Acquisition. The OFT's investigation showed that these branches did not suffer any redundancies before the Acquisition but were instead being

⁹ The OFT notes that the presentation that was made to Rexel's investment committee seeking approval of the transaction mentions 25 rather than 26 branches for potential closure (presentation entitled 'Project Fern, 2nd Investment Committee, DD Findings and Deal details', dated 23 February 2012, Appendix 4 to Rexel's submission of 3 April 2012, page 19).

run with very light stock levels from the beginning of 2012 (that is, for around two months before the Acquisition) to focus the available stock on more successful branches.

13. The OFT considers that, while these branches may have been performing relatively poorly compared to Wilts's other branches and the possibility cannot be excluded that some of these branches may have been closed absent the Acquisition, it is equally possible that at least some of these branches may have been viable once Wilts had secured a financial injection from a buyer or a financial investor. This is supported by the fact that Rexel has not closed any of the Wilts branches that it acquired but has instead stated that [].¹⁰ Rexel also submitted that [], but this in itself indicates that closure of the 26 branches absent the Acquisition cannot reasonably be characterised as inevitable.

Counterfactual applicable to the three retained Wilts branches

14. Rexel submitted that it acquired 59 of the Seller's 62 branches. In relation to the three remaining branches (in Basingstoke, Exeter and Hounslow), Rexel stated that these were retained by the Seller and were closed shortly after the Acquisition.
15. The OFT has considered the extent to which it is reasonable to consider any loss of competition in these three areas as being attributable to the Acquisition.¹¹ In this respect the OFT is mindful that:
 - Rexel acquired the large proportion (over 95 per cent) of the Wilts estate
 - Rexel acquired the 'Wilts Electrical Wholesalers' brand and website

¹⁰ In its submission to the OFT of 3 April 2012, Rexel []. The OFT recognises that the closure of these or any other Wilts branches is not permitted under the initial undertakings given by Rexel to the OFT. However, Rexel could have requested a derogation from these undertakings.

¹¹ The OFT has considered these additional three branches under the 'counterfactual' heading. However, from a jurisdictional perspective, the OFT considers that, given the factors listed in paragraph 15, it would also be reasonable to consider that the Acquisition, in substance, relates to the Wilts business previously carried on in all 62 branches, notwithstanding that Rexel only elected to occupy 59 of the 62 branches (see *Merger Assessment Guidelines*, paragraph 3.2.3). Precisely how these three branches are treated in the OFT's analysis has not, ultimately, need to be determined given the OFT's conclusion that no competition concerns would in any event arise in these areas.

- Rexel's press release announcing the Acquisition describes Wilts as operating through 59 branches, rather than 62 branches, implying that Rexel had acquired the entirety of Wilts¹²
- the OFT understands that Rexel acquired the entirety of the Wilts stock and customer lists, including those for the three branches retained
- the OFT understands that the staff previously employed in the retained branches have transferred to Rexel, rather than being retained by the Seller, and
- the Seller has closed the three branches, rather than operating them as ongoing businesses.

16. Rexel provided the OFT with []. Rexel further noted that [].
17. Rexel submitted that for these reasons the three branches were not viable and neither the Seller nor any alternative purchaser of Wilts would have kept them open.
18. However, the OFT notes that []. Further, as noted in paragraph 10 above, the OFT received documentary evidence from a third party that there was at least one credible alternative buyer for the Seller's entire business at the time of the Acquisition.
19. The OFT therefore cannot dismiss that an alternative, realistic counterfactual against which to examine the Acquisition is one in which Rexel would have continued to operate against Wilts, or a purchaser of the Wilts business, in those three locations. Hence, the OFT considers it appropriate to assess the Acquisition against the counterfactual of Wilts as a whole remaining active in the market. Based on the information available to the OFT, this would have included the three branches retained by the Seller under the Acquisition. The OFT has therefore considered below whether an acquisition by Rexel of these three branches would have given rise to competition concerns.

Conclusion

20. For the reasons set out above, the OFT has assessed the Acquisition based on the competitive conditions prevailing before the Acquisition, with Wilts

¹² See www.rexel.com/en/finance/press-releases/rexel-strengthens-its-presence-in-the-united-kingdom-through-the-acquisition-of-the-assets-of-wilts-wholesale-electrical.php?id=126 .

operating from all of its 62 branches, including the three branches that were closed by the Seller shortly after the Acquisition.

MARKET DEFINITION

21. The main overlap between the merged parties is in the wholesale distribution of electrical products to professional customers including electrical contractors, industrial and service sector companies, facilities management companies and local authorities. The OFT has considered this sector in its recent *Edmundson/Electric Center* decision ('*Edmundson/EC*').¹³ The OFT addresses the appropriate product and geographic scope of the wholesale distribution of electrical products before going on to consider other specialist businesses acquired by Rexel as part of Wilts.

Product scope

22. In *Edmundson/EC*, the OFT considered whether it was appropriate to segment the wholesale distribution of electrical products by product category, type of supplier and type of customer.

Segmentation by product category

23. The OFT found in *Edmundson/EC* that it was not appropriate or necessary for the purpose of evaluating the merger to delineate the market with reference to different products. The OFT listed a number of reasons, including the fact that customers often purchase bundles of products and electrical wholesalers typically stock a similar range of products.¹⁴ Rexel supported this conclusion and no third parties in the present case suggested a different approach. The OFT has therefore assessed the Acquisition with reference to wholesaling of electrical products.

Segmentation by supplier type

24. Rexel submitted that the market should not be limited to the supply by electrical wholesalers but should include the supply by:

- specialist distributors, in particular the Maclean Electrical Group, which supplies the oil and gas industry along with other sectors; Parmley

¹³ *Edmundson Electrical Limited/Electric Center*, OFT decision of 11 May 2012. The text of this decision was published during the OFT's assessment of the present Acquisition.

¹⁴ *Edmundson/EC*, paragraphs 22-23.

Graham and Routeco, which both supply control and automation products; and Holland House Electrical Company, which supplies lighting products

- retailers targeting trade customers such as electricians, in particular Screwfix and its Electricfix mail order catalogue (for convenience in this decision jointly referred to as Screwfix), Trading Depot, TradePoint (a trade arm of B&Q) and Toolstation (part of Travis Perkins), and
- possibly also builders merchants as well as manufacturers selling directly to customers, from which Rexel stated it faces a significant competitive constraint.

25. Rexel submitted that the competitive constraint from these suppliers is shown, for example, by references to competition from Screwfix in internal []. Rexel further noted that the customer surveys it conducted for the OFT's assessment (discussed in detail below), demonstrate significant diversion to Screwfix (12 and 13 per cent in two areas), although the OFT notes that the diversion ratio in all other areas is six per cent or lower and in some areas no diversion is shown at all.
26. In *Edmundson/EC*, the OFT found insufficient evidence to justify widening the product scope beyond electrical wholesalers. Comments from customers in that case, for example, suggested that other supplier types account for only a small proportion of total spend on electrical products and that trade counters in builders merchants, internet/ catalogue sellers and retail outlets tended to be used for distressed purchasing. Comments from competitors and customers also indicated that industrial wholesalers such as Routeco did not serve the same group of customers as electrical wholesalers such as the merged parties in *Edmundson/EC* and the present case. In *Edmundson/EC* the OFT nevertheless took evidence on the constraint from other suppliers of electrical products in specific geographic markets into account in its competitive assessment.¹⁵
27. Customer comments received by the OFT in the present case broadly confirm the OFT's findings in *Edmundson/EC*. In particular, while some customers indicated they may purchase occasional supplies from other supplier types (in particular online suppliers such as RS Components), most customers did not see these other supplier types as a general replacement for electrical wholesalers. The OFT does not consider that the evidence

¹⁵ *Edmundson/EC*, paragraphs 24-33.

submitted by Rexel is sufficient to justify taking a different approach from its approach in *Edmundson/EC* with regard to the product scope of the market. However, consistent with *Edmundson/EC*, in its competitive assessment of local areas below, the OFT has taken account of the evidence on the constraint from other suppliers than electrical wholesalers as demonstrated by the evidence for each specific area (for example, diversion to such suppliers identified in the parties' branch surveys).

Segmentation by customer type

28. In *Edmundson/EC*, the OFT distinguished between large/national, multi-local/regional and small/local customers as it found that competition for these types of customers differed significantly, although the OFT did not need to reach a conclusion on the precise product scope regarding the first two customer segments. The OFT also distinguished customer types by the nature of their business, as it found they differed in their product requirements and the way they purchase. It identified in particular mechanical and electrical contractors as having specific requirements.¹⁶
29. In the present case, Rexel also identified different types of customers, noting for example that large, national customers (that is, customers carrying out projects across the UK) may enter into framework agreements with wholesalers to facilitate orders being delivered from different branches to multiple work sites. As set out below, the OFT has not identified competition concerns in relation to large/national and multi-local/regional customers. Further, the OFT has not received any evidence to suggest that it was appropriate or necessary in its competitive assessment of the Acquisition to distinguish customers by the nature of their business. There is therefore no need for the OFT in the present case to conclude on the precise product scope by customer type.

¹⁶ *Edmundson/EC*, paragraphs 34-45.

Conclusion on product scope

30. The OFT has assessed the Acquisition by reference to electrical wholesalers focused mainly on commercial/domestic customers. The OFT has also assessed the impact on large/national, multi-local/regional and small/local customers separately, although it was not necessary for the OFT to conclude on the precise product scope by customer type.

Geographic scope

31. The OFT found in *Edmundson/EC* that there was evidence to support a national, regional and local dimension to the geographic scope of the market as a corollary of the customer segmentation discussed above. As in this case the OFT has not identified competition concerns in relation to a national or regional dimension, as set out below, the OFT has not needed to reach a conclusion on these dimensions.
32. As regards the local dimension of the market, the OFT noted in *Edmundson/EC* that the purpose of determining the extent of this dimension in that case was to enable the OFT to apply an initial filter to focus its analysis of the merger's effect at local level on the areas most likely to give rise to competition concerns. On the basis of the evidence received in that case and taking a cautious approach, the initial filter covered a 10-mile radius around each of the Electric Center branches. In the competitive assessment of each local area identified by the filter as of potential concern, the OFT then also took account of competition from suppliers outside this area where appropriate to do so.¹⁷
33. In the present case, Rexel submitted that the large majority (around 80 per cent) of sales is delivered to customers or to a work site address and that relatively few orders (around 20 per cent) are collected by customers. It submitted that therefore branches have wide catchment areas. Rexel provided evidence indicating that the area in which 80 per cent of a branch's customers are located generally varies between 10 and 20 miles around the branch – closer to 10 miles in urban areas and closer to 20 miles in rural areas – although this area is smaller than 10 miles for some branches and significantly larger than 20 miles for some other branches.
34. The OFT received mixed comments from customers about the distance within which they would buy from a wholesaler, with some customers

¹⁷ *Edmundson/EC*, paragraph 67.

identifying distances of less than 10 miles and others identifying greater distances.

35. Taking Rexel's and third parties' comments into account, the OFT does not consider that it has received sufficient evidence to conclude that in this case it should change its approach from the approach taken in *Edmundson/EC*, in particular given that the 10-mile radius acts merely as an initial filter and is not determinative of the OFT's assessment of any individual local area. The OFT notes that it takes a cautious approach in determining the size of the catchment area in its initial filter to ensure that all areas in which the Acquisition may give rise to competition concerns have been identified.¹⁸ Once candidate local markets are identified in this way, the substantive assessment relates to evidence of closeness of competition, which may involve – inter alia – competitors located outside the radial used for the purposes of filtering where there is evidence to support this.

Specialist businesses acquired by Rexel as part of Wilts

36. In addition to Wilts's business in the wholesale distribution of electrical products, Rexel also acquired three other, relatively small businesses operated by the Seller: a lighting system design business trading as 'Design Lighting', an electrical installation export business trading as 'Britsource', and a specialist water heating spares sourcing business trading as 'Cloud'.
37. First, Rexel submitted that Design Lighting is based at Wilts' Bristol branch and offers a lighting design service for customers as a way to derive added value and to sell lighting equipment. Rexel submitted that this is quite a common service for wholesalers to provide. Rexel itself also offers this service in a number of its branches, as do the merged parties' main national and regional competitors, including Edmundson Electrical, City Electrical Factors ('**CEF**'), Devondale Electrical Distributors and Western Electrical (as confirmed by these companies' websites). The OFT has no evidence to suggest that the merged firm has acquired a position in lighting design that is significantly different from its position in the wholesale distribution of electrical products more generally.

¹⁸ See *Commentary on retail mergers* (OFT1305 and CC2 com 2, March 2011). Although the present case is concerned with electrical wholesalers rather than retailers, the OFT considers that the nature of local branch sales means that it is relevant to have regard to its common approach for analysing local market conditions in retail mergers (see also *Edmundson/EC*, paragraphs 57 and 135).

38. Secondly, Britsource is an export business that supplies industrial, domestic and specialist equipment overseas and arranges the logistics and specialist freight movement worldwide. Rexel submitted that Britsource services mainly public sector customers that have a requirement for product to be delivered overseas. The turnover derived from this business represents only a very small part of Wilts's total turnover. Rexel submitted that the overlap with Rexel's activities is minimal because Rexel does not have a dedicated export business, although it noted that it may export some products. The OFT has no evidence to suggest that the merged firm has acquired a significant position in the export of any products.
39. Thirdly, Cloud is a specialist distribution business of spares and accessories for heating and ventilation products. Although Rexel sells heating spares as part of its regular product range, it does not have a specific overlapping business. Cloud's turnover is minimal.
40. The OFT has not received any comments from third parties about Rexel's acquisition of Design Lighting, Britsource or Cloud. Given the reasoning set out above, and taking account of the lack of third-party concerns in respect of these activities, Rexel's acquisition of these businesses as part of the Acquisition is not discussed further in this decision.

HORIZONTAL UNILATERAL ISSUES

41. Horizontal mergers give rise to unilateral effects where they increase the ability and incentive of merging parties to increase prices or reduce quality or service post-merger. The Acquisition has resulted in the combination of two rival wholesale suppliers of electrical products. The OFT has therefore considered the possibility that the merger gives rise to unilateral effects in relation to large/national, multi-local/regional and small/local customers.

Large/national customers

42. Rexel submitted that at the time of the Acquisition Wilts had not competed for large/national customers for some time, as it did not have the ability to service the needs of such customers for nationwide deliveries. At the time of the Acquisition Wilts had only one customer that could be regarded as national, which it lost after the Acquisition. Rexel also submitted that the merged parties were not each other's closest competitors for these customers and that the Acquisition results in only a very small increment in Rexel's share of supply to large/national customers.

43. The OFT has not received any evidence to suggest that these submissions are inaccurate. Wilts does not have a branch network with national coverage, as its branches are located mainly in southern England, the Midlands and Wales. The OFT has also not received any third-party concerns regarding the Acquisition's impact on large customers with a national scope. Therefore, the OFT considers that the Acquisition does not create a realistic prospect of a substantial lessening of competition in relation to these customers.

Multi-local/regional customers

44. Wilts's branches are concentrated in southern England, in particular the South West, with Wilts's head office (and, until its closure in 2010, central distribution centre) located in Trowbridge (Wiltshire). In this region, Wilts overlaps with Rexel and faces competition from nationally active electrical wholesalers (Edmundson and CEF) as well as relatively large independent wholesalers active in the South West (Western Electrical and Devondale Electrical Distributors).
45. In *Edmundson/EC*, the OFT assessed the impact of that merger in three regions, including the South West. In that decision, assessing the loss of competition between Edmundson and EC, the OFT treated by way of commercial context Wilts as being part of Rexel, as the Acquisition had been completed before the decision in that case was taken. The OFT considered in that case that in the South West the range of competitive constraints represented by both national and independent, regional wholesalers was sufficient to constrain the merged parties after the merger.¹⁹ However, the question for the OFT in the present case is whether the loss of competition between Rexel and Wilts is substantial, given the commercial context of Edmundson and EC as having merged.
46. In the present case, the OFT has not received any evidence to suggest that its findings in *Edmundson/EC* regarding the general level of competitive constraints faced by each of Edmundson on the one hand, and Rexel on the other, in the South West are incorrect. The OFT received a concern from only one customer that could be characterised as a multi-local/regional customer as it is active in part of the South West and operates over a number of local areas. However, to the extent this customer is a multi-local/regional customer, the OFT considers that the concern raised by this

¹⁹ *Edmundson/EC*, in particular paragraphs 106 and 112-113.

customer is appropriately addressed by its local area assessment set out below as this assessment covers all of the parties' branches with which this customer has trading accounts. The OFT did not receive any concerns from other multi-local/regional customers about the Acquisition. The OFT therefore considers that the Acquisition does not create a realistic prospect of a substantial lessening of competition in relation to multi-local/regional customers.

Small/local customers

47. Rexel submitted that the Acquisition would not affect competition for small/local customers because in each of the areas where the parties' branches overlap, these customers still have several alternative suppliers, including nationally and regionally active electrical wholesalers, local electrical wholesalers operating from one outlet, and retailers targeting trade customers such as Screwfix.
48. As regards competition from small independent wholesalers, Rexel submitted that, in particular, membership of buying groups allows these wholesalers to compete on price with larger chains. However, although in *Edmundson/EC* the OFT found that independent wholesalers could gain a competitive edge based on non-price factors such as service, the OFT also found that buying group membership did not always enable independent wholesalers to compete on price with larger chains across a broad basket of goods.²⁰
49. As also noted above (paragraphs 24 to 27) and in line with *Edmundson/EC*,²¹ on a cautious basis the OFT does not consider that, without further assessment of the competitive conditions in specific local overlap areas through, for example, a survey, there is sufficient evidence for a general finding that the parties face a sufficiently strong competitive constraint from suppliers other than electrical wholesalers. This has been reflected in the initial filter that, on a cautious basis, was applied in this case, as set out below.

Initial filter

50. To focus its assessment of potential local concerns, the OFT has applied an initial filter to the merged parties' overlapping branches at a local level. The

²⁰ *Edmundson/EC*, paragraphs 122-126.

²¹ *Edmundson/EC*, paragraph 133.

branches caught by this initial filter were those where a branch of the other party was within 10 miles²² and the Acquisition resulted in a '4 to 3', '3 to 2' or '2 to 1' reduction in fascia within this 10-mile radius.²³ The OFT applied this filter centring on both Rexel branches and Wilts branches. In addition, Rexel also checked whether additional branches were caught by the initial filter where the Acquisition resulted in a '5 to 4' within the 10-mile radius and in a '2 to 1' within a five-mile radius, as this could indicate that the parties were particularly close competitors within the local area.²⁴

51. For the purposes of the fascia count in this initial filter, on a cautious basis the OFT has taken account only of electrical wholesalers that are part of a group with an annual turnover of at least £10 million. This therefore excludes the small, independent electrical wholesalers and other types of supplier, for the reasons set out above (paragraph 49 above). However, in its competitive assessment of local areas, as set out below, the OFT has taken account of the evidence on the constraint from these suppliers.
52. Within 10 miles, Rexel overlaps with 58 of Wilts's branches.²⁵ Applying the initial filter criteria set out above, 13 Wilts branches and 18 Rexel branches 'failed' the initial filter. These branches are listed in Table 1 below alongside the other party's branches with which they overlap within 10 miles. The Rexel branches are identified by their trading 'banner', that is Denmans, WF Senate and N&E.

²² As noted above in the OFT's findings on the geographic scope of the market (see paragraphs 32 to 36 above), the OFT considered 10 miles to be the appropriate cautious radius to apply in its initial filter. This is also consistent with the OFT's approach in *Edmundson/EC*.

²³ It is the OFT's common approach to focus its assessment on local areas where a merger results in a reduction in the number of competitors in the area to three or less (see *Merger Assessment Guidelines*, paragraph 5.3.5).

²⁴ As noted in, for example, *Edmundson/EC* (paragraph 136), in certain cases the OFT may consider the possibility that concerns will arise in '5 to 4' areas where the parties are particularly close competitors.

²⁵ This includes the three Wilts branches in Basingstoke, Exeter and Hounslow where Rexel did not acquire the premises and that were closed by the Seller shortly after the Acquisition (see paragraphs 14 to 19 above).

Table 1: Overlap branches failing the initial filter

Branch failing the initial filter	Fascia reduction at 10m	Other party's branch(es) within 10 miles	Fascia reduction at 10m
Wilts Devizes	2 to 1	Denmans Melksham	3 to 2
Wilts Chippenham	3 to 2	<ul style="list-style-type: none"> • Denmans Melksham • WF Senate Chippenham 	3 to 2 3 to 2
Wilts Yeovil	4 to 3	N&E Yeovil	4 to 3
Wilts Bideford	4 to 3	Denmans Barnstaple	4 to 3
Wilts Weymouth	4 to 3	<ul style="list-style-type: none"> • Denmans Dorchester • WF Senate Dorchester 	4 to 3 4 to 3
Wilts Midsomer Norton	4 to 3	<ul style="list-style-type: none"> • Denmans Bath* • N&E Bath* 	5 to 4 5 to 4
Wilts Barnstaple	4 to 3	Denmans Barnstaple	4 to 3
Wilts Bridgwater	4 to 3	<ul style="list-style-type: none"> • Denmans Taunton • WF Senate Bridgwater 	4 to 3 4 to 3
Wilts Bletchley	4 to 3	<ul style="list-style-type: none"> • Denmans Leighton Buzzard • WF Senate Bletchley • N&E Milton Keynes • WF Senate Milton Keynes 	4 to 3 4 to 3 4 to 3 4 to 3
Wilts Rugby	4 to 3	Denmans Rugby	4 to 3
Wilts Taunton	4 to 3	<ul style="list-style-type: none"> • Denmans Taunton • WF Senate Bridgwater 	4 to 3 4 to 3
Wilts Weston-super-Mare	4 to 3	Denmans Weston-super-Mare	4 to 3
Wilts Trowbridge	4 to 3	<ul style="list-style-type: none"> • Denmans Melksham • WF Senate Chippenham • Denmans Bath* • N&E Bath* 	3 to 2 3 to 2 5 to 4 5 to 4
N&E Newport	4 to 3	Wilts Fareham*	9 to 8
WF Senate Winchester	4 to 3	Wilts Chandler's Ford*	8 to 7
Denmans Cwbran	4 to 3	Wilts Newport*	5 to 4
WF Senate Merthyr Tidfill	4 to 3	Wilts Ebbw Vale*	5 to 4

* These branches were not caught by the initial filter, due to the fact that there were at least three remaining competitors within 10 miles from these branches. These branches were therefore not surveyed.

53. Rexel confirmed that there were no '5 to 4' areas within the 10-mile radius in which the Acquisition resulted in a '2 to 1' fascia reduction within five miles.
54. Rexel's N&E branch in Newport on the Isle of Wight was caught by the initial filter due to its proximity to the Wilts branch in Fareham across the Solent. However, in view of evidence on the lack of customer overlap provided by Rexel in respect of this particular area, the OFT considers that these branches do not engage in significant competition with each other. The OFT has therefore not considered this overlap further.
55. As the application of the OFT's cautious initial filter identified prima facie competition concerns in the local areas listed in Table 1 above, with the exception of Newport/Fareham (the '**affected local areas**'), the OFT has examined the evidence available to it on the Acquisition's impact in each of these local areas.

Types of evidence regarding affected local areas

Survey and upward pricing pressure measures

56. Rexel commissioned GfK, a third party market research company, to undertake telephone surveys of customers at each of the 13 Wilts branches and 17 Rexel branches that were caught by the OFT's initial filter.²⁶ In some affected overlap areas only one branch was surveyed as the corresponding branch(es) did not themselves fail the initial filter, as indicated in Table 1 above. Rexel and its advisers discussed the design of the survey in advance with the OFT and had regard to the joint guidance from the OFT and the Competition Commission on survey evidence.²⁷
57. The primary output from the survey consists of estimates of the diversion of sales between the merged parties in the event of a hypothetical store closure, which provides an indication of the closeness of competition

²⁶ As noted at paragraph 54, Rexel's Newport (Isle of Wight) branch was also caught but was not surveyed, as in the specific circumstances of that branch the overlap did not give rise to competition concerns.

²⁷ *Good practice in the design and presentation of consumer survey evidence in merger inquiries* (OFT1230 and CC2com1, March 2011).

between the parties and so whether a branch has the ability to raise its prices post-Acquisition. Rexel also provided variable margin data for each branch, which allowed the OFT to calculate an upward pricing pressure measure in the form of the general upward pricing pressure index ('GUPPI'). The OFT has previously used such measures as part of the evidence base of the likely competitive effect of mergers in local areas, including in *Edmundson/EC*. The OFT notes that these are not 'predicted' price increases resulting from the Acquisition, but simply a relative measure of potential consumer harm arising from the reduction in competitive pressure.

Variable margin data

58. The OFT has considered whether the variable margin data provided by Rexel were appropriate for calculating upward pricing pressure measures. For this calculation the OFT uses variable margins, which are made up of the sales of the relevant products which a merging party supplies less its variable costs. The OFT considers that cost variability depends on the period over which a merging party could change its prices or other key competitive variables in response to a change in competition. This is generally a short period (for example, in the case of supermarkets the OFT has generally considered one month to be an appropriate period).²⁸
59. Aside from cost of goods sold, the cost component that has the greatest impact on margins in this case is branch labour costs. Rexel submitted that the fixed labour costs of a branch are equal to [], as this is the minimum needed to operate a branch. It submitted that any further staffing of a branch can be varied in various ways, such as making use of short notice periods, reducing working hours, employing temporary staff and moving employees to different branches. It submitted that this minimum labour cost is £[] per year and it provided examples of four trade counters of larger branches where the combined salary is around this amount.
60. However, on the basis of the evidence provided by Rexel, the OFT is not persuaded that all branch labour costs in excess of £[] are variable within the short period relevant for the purpose of calculating margins for upward pricing pressure measures. For example, although Rexel stated that its employment of temporary staff had changed at short notice due to []. Also, Rexel did not indicate how many of its staff are on variable hours contracts or provide examples of having moved staff across branches in

²⁸ See *Commentary on retail mergers*, paragraphs 4.13-4.15.

response to a change in sales. In *Edmundson/EC*, as well as in certain previous cases, the OFT regarded 50 per cent of labour costs as variable.²⁹ In this case, the OFT has therefore calculated margins on the same basis. However, on a cautious basis, the OFT has also had regard to the upward pricing measures calculated using 50 per cent of those branch labour costs in excess of the minimum staffing cost of £[].

61. On the basis of the evidence provided by Rexel, the OFT has further included a significant proportion of distribution costs (that is, costs of vehicles, delivery expenses and logistics) as variable. This proportion covers fuel costs and the cost of using third-party delivery services, which Rexel submitted accounted for [] per cent of its distribution costs. The OFT has not taken account of other costs as variable, as it was not persuaded, based on the evidence and taking a cautious approach, that this was appropriate in this case, although the OFT also notes that including most of these costs as variable would not in any event have made a difference to its conclusion in any of the affected local areas taking account of all the available evidence in the round.

Pass-through rate

62. In order to calibrate the potential price rises in each affected local area that could be expected to occur as a result of the Acquisition, the OFT considered the appropriate pass-through rate. This is the extent to which a cost increase is passed on to customers and therefore provides information on the extent to which a Rexel or Wilts branch could be expected to pass through any upwards pricing pressure to customers in the form of higher prices.³⁰
63. Rexel submitted that the firm-specific pass-through rate for both Rexel and Wilts is below 100 per cent and will remain so after the Acquisition, due to the very competitive market in which they operate and as indicated by the low-margin nature of the wholesaling business. Rexel provided evidence of []. It also provided an internal comparison of sales price and cost price movements for a basket of top-selling products in its N&E fascia between January and October 2011, showing a pass-through rate of [], although the OFT notes that these products account for less than [] per cent of Rexel's annual turnover.

²⁹ *Edmundson/EC*, paragraph 144.

³⁰ For example, a pass through rate of 100 per cent means that for every £1 increase in cost, it should be expected that £1 will be added to the prices paid by the parties' customers.

64. Although the evidence provided by Rexel suggests that its pass-through rate is less than 100 per cent for at least some of its products, the OFT does not have sufficient evidence to establish the precise rate of pass-through to be used for the purpose of calculating upward pricing pressure measures in this case. The OFT also notes that due to differences in the level of competition in local areas, the level of pass-through may be higher in some areas, particularly where there are relatively few competitors. In the present case, taking a cautious approach, the OFT has therefore used a pass-through rate of 100 per cent and used GUPPI as the most relevant upward pricing pressure measure, although the OFT has also taken account of a possible feedback effect as set out below (see paragraph 67 below). This is in line with its approach in *Edmundson/EC*,³¹ reflecting the fact that these are businesses of similar size in the same industry.

Sensitivity testing

65. In its assessment of each affected local area, the OFT has taken account of the uncertainty in the diversion estimates, the parties' margins and the pass-through rate.
66. The OFT has sought to take account of uncertainty regarding the diversion ratios shown in Rexel's survey by calculating the 95 per cent confidence intervals for diversion from each survey branch to the other party's branch(es). These confidence intervals reflect, for example, the response rates to the survey and the pattern of branch expenditure covered by the sample. The confidence intervals suggest that the actual diversion ratios could be higher or lower than the central estimated value (although the OFT notes that statistically there is only a 2.5 per cent probability that the actual diversion ratio is at the upper or lower bound of the 95 per cent confidence interval). As a wide confidence interval for a survey of a particular branch indicates that the actual diversion ratio could be higher than suggested by the central estimated value, which would result in greater upward pricing pressure, the OFT considers it appropriate, taking account of its role as a first phase authority, to exercise suitable caution when interpreting the diversion and upward pricing pressure estimates in affected local areas where the survey results have a wide confidence interval. The OFT has therefore had regard to these 95 per cent confidence intervals alongside the central estimated value in its consideration of each such affected local area.

³¹ *Edmundson/EC*, paragraphs 146-147.

67. Finally, the OFT has also considered where relevant the potential for a feedback effect,³² which is not captured in the GUPPI measure. To take account of this the OFT has looked particularly closely at affected local areas where the survey shows a high diversion rate between the parties in order to ensure that the diversion has suitable weight in the overall assessment.

Other evidence

68. The results of surveys and any upward pricing pressure calculations derived from them are only part of the relevant evidence base for a determination of the competitive effects of a merger in a given local market. The OFT will assess all the evidence in the round. In this case, the OFT has also considered a range of other evidence in each affected local area, as listed below.

69. First, Rexel submitted internal reports from Denmans branch managers in the affected local areas, which contain comments on local competition. These reports were prepared independently of, and mainly before the start of, the OFT's assessment of the Acquisition. Rexel also submitted comments from N&E, WF Senate and Wilts branch managers, but as these were collected for the purposes of the OFT process, the OFT has put less weight on these comments than on the comments in the internal Denmans reports.

70. In addition to considering the level of diversion ratios to competing suppliers shown in the survey results, the OFT has also triangulated the expected level of constraint provided by competing suppliers by taking account of the location of their branches compared with the parties' branches. Further, where the suppliers are independent wholesalers, the OFT has also had regard to their estimated branch turnover compared with the parties' branch turnover and the range of products they carry to inform

³² The feedback effect occurs where there is an incentive for one of the merging parties to increase prices, which in turn increases the incentive for the other to do so, and so on. This effect can magnify the potential price increase. Other things being equal, the higher the diversion between merging parties, the larger this effect becomes. Moreover, the higher the diversion between parties, the more potential there is for competition between the parties themselves to be constraining the margins of each of them in a particular local area. The feedback effect was also taken into account in previous analogous cases, including *Edmundson/EC* (paragraph 147).

its assessment of the strength of the competitive constraint these wholesalers can be expected to place on the parties.

71. Further, for some affected local areas, Rexel submitted that entry was imminent. Where this entry was by an established competitor of the parties, this has been a factor in the OFT's assessment. However, the OFT has been cautious in putting weight on entry by YESSS, as this is a relatively new entrant into the UK and there is little evidence on which affected local areas YESSS will enter and when this is likely to take place (barriers to entry are discussed further at paragraphs 152 to 156 below).
72. Finally, the OFT has taken account of comments from customers in the affected local areas, where available.

Affected local areas

73. Some of the branches failing the initial filter appear in the 10 mile radius around a number of the other party's branches. Rexel therefore combined these branches into 12 local area clusters:
 - Devizes/Trowbridge/Chippenham/Melksham
 - Yeovil
 - Bideford/Barnstaple
 - Weymouth/Dorchester
 - Midsomer Norton/Bath
 - Bridgwater/Taunton
 - Milton Keynes/Leighton Buzzard
 - Rugby
 - Weston-super-Mare
 - Winchester/Chandler's Ford
 - Cwmbran/Newport, and
 - Merthyr Tydfil/Ebbw Vale.

Devizes/Trowbridge/Chippenham/Melksham

Introduction to this cluster

74. This cluster consists of Devizes, Trowbridge, Melksham and Chippenham, four towns in Wiltshire. These towns are located close to each other and the 10-mile radii from the overlap branches in these towns largely overlap. Both Rexel and the OFT have therefore considered these towns together as a cluster, but below the OFT has for convenience discussed these towns separately. A map showing the location of the branches of the parties and their main competitors is in Annex 1 to this decision. The parties' branches in the towns in this cluster overlap as follows:

- the Wilts branch in Devizes, located in the east of this cluster, overlaps with a Denmans branch in Melksham in the centre of this cluster (around seven miles away)³³
- the Wilts branch in Trowbridge, located in the south of this cluster, overlaps with (a) the Denmans branch in Melksham (around four miles away), (b) a WF Senate branch in Chippenham in the north of this cluster and (c) Denmans and N&E branches in Bath in the west of this cluster (eight to nine miles away); these branches in Bath were not caught by the initial filter and Rexel has therefore not conducted a survey of these branches
- in Chippenham, located in the north of this cluster, a Wilts branch and a WF Senate branch overlap (located around 0.1 miles from each other); in addition, these branches overlap with the Denmans branch in Melksham (around seven miles away) and the Wilts branch in Trowbridge (around 9.5 miles away)
- the Denmans branch in Melksham, located in the centre of the cluster, overlaps with Wilts branches in Trowbridge to the south (around four miles away), Devizes to the east and Chippenham to the north (both around seven miles away)

³³ The distances between branches in the affected local areas, as submitted by Rexel, are measured 'as the crow flies' rather than on the basis of the most direct route between the branches.

Devizes

75. The survey result for the Wilts branch in Devizes shows relatively low diversion to Denmans in Melksham and identifies stronger competition from Edmundson in Trowbridge (just outside the 10-mile radius) and John Cribb & Sons, a 12-branch electrical wholesaler, even though its branches are significantly further away in Salisbury and Andover (both around 23 miles from Devizes). The survey results are reasonably robust and do not indicate that the parties would face an incentive to raise prices materially in Devizes after the Acquisition.
76. The comments from the Wilts branch manager, collected by Rexel for the OFT's assessment, []. The OFT did not receive any comments from customers in Devizes.
77. Rexel submitted that the diversion to John Cribb & Sons can be expected to increase because, as announced on its website, it will open a branch in Devizes later in 2012. The OFT considers that this is indeed likely since the survey result show that this wholesaler is already a significant competitor despite the distance of its current branches from Devizes. Further, Rexel submitted that reports from staff and customers show that YESSS Electrical intends to open a branch in Devizes in November 2012. However, the OFT has not received any further evidence for this possible new entry. Further, the OFT considers that, even if it had firm evidence of entry by YESSS, it is not clear that it will form a sufficient constraint to the parties in this area (see further at paragraphs 154-155 below).
78. Taking the evidence in the round, the OFT therefore does not consider that the Acquisition raises competition concerns in the Devizes area.

Trowbridge

79. The survey result for the Wilts branch in Trowbridge shows low diversion to the Denmans and N&E branches with which it overlaps in a 10-mile radius (as identified at paragraph 74 above) and indicates stronger competition from each of Edmundson and Electric Center in Trowbridge, with low diversion to CEF in Bath (nearly nine miles away). The OFT notes that, although Edmundson and Electric Center have merged, their Trowbridge branches are being held separate under the initial undertakings given by Edmundson to the OFT. Further, at the time of the present decision, the OFT is consulting on divestment of the Electric Center branch

in Trowbridge to a proposed purchaser linked to Medlock in order to resolve the competition concern that the OFT found in Trowbridge in *Edmundson/EC*.

80. The survey results do not indicate that the parties would face an incentive to raise prices materially in Trowbridge after the Acquisition. The survey response rate for the Wilts branch in Trowbridge was relatively low, in particular in terms of represented branch turnover, but even taking the diversion ratio at the upper bound of the 95 per cent confidence interval, the most relevant measure for upward pricing pressure in Trowbridge is not at a level that would normally indicate concerns.
81. The comments from the Wilts branch manager []. The OFT did not receive any comments from customers in Trowbridge.
82. Taking the evidence in the round, the OFT therefore does not consider that the Acquisition raises competition concerns in the Trowbridge area.

Chippenham

83. The survey of each of the Wilts branch and the WF Senate branch in Chippenham identifies the other party as closest competitor with a high diversion. Despite the geographic closeness of the Wilts and WF Senate branches to each other, their survey results differ in identifying the next-closest competitors. While the survey of the WF Senate branch indicates significant diversion to Edmundson in Trowbridge (nearly 10 miles away) and/or Bath (around 12 miles away), the survey of the Wilts branch shows the diversion to Edmundson as very low. Further, the Wilts branch survey indicates a small diversion to CEF in Bath (around 12 miles away), but the survey of the WF Senate branch did not indicate any diversion to CEF. The survey of the Wilts branch also indicates a large share of customers stating that they were most likely to divert to internet or catalogue wholesalers. This may indicate a diversion to Screwfix in Chippenham, although it is not clear why Screwfix was not specifically identified by these customers. The WF Senate survey did show some diversion to Screwfix.
84. The most relevant upward pricing pressure measures (see paragraph 64 above) for both parties' branches in Chippenham to the other party's branches in the area are significantly above a level that indicates that the parties would face an incentive to raise prices materially after the Acquisition. The OFT notes that the survey of both branches covers a

relatively small percentage of branch turnover and that the sample size for Wilts is relatively small. This results in a confidence interval that is sufficiently wide that, taking a cautious approach, the OFT considers it appropriate also to take account of the possibility that the actual diversion ratios and consequent upward pricing pressure measures are in fact even higher than already indicated by the central diversion estimates in the surveys.

85. The comments from both branch managers were mixed. The WF Senate branch manager []. The Wilts branch manager []. The branch manager also stated that []. One customer in Chippenham provided comments to the OFT, but this customer did not express a concern about the Acquisition.
86. Taking all of the evidence in the round, the OFT considers that there is a realistic prospect of a substantial lessening of competition in the Chippenham area.

Melksham

87. The survey of the Denmans branch in Melksham indicated significant diversion to Wilts. It was not possible to identify whether this was to the Wilts branches in Devizes, Trowbridge or Chippenham, which are all within a 10-mile radius from the Denmans branch, although Rexel noted that it is more likely to be likely to be to Wilts in Trowbridge and/or Chippenham given the relatively poor road link between Melksham and Devizes. Higher diversion is shown to Edmundson in Trowbridge (around four miles away) and/or Bath (around 11 miles away). The survey also showed some diversion to CEF in Bath and Screwfix in Chippenham. Rexel submitted that Kingsway, an independent, one-branch electrical wholesaler in Bradford-on-Avon (just to the north-west of Trowbridge, around six miles from Melksham), and Electric Center in Trowbridge are also mentioned by some survey respondents, but the survey does not identify any significant diversion to these suppliers. Also, the OFT notes that the turnover of Kingsway, as estimated by Rexel, is significantly lower than the turnover of the parties' branches in this cluster, which suggests Kingsway may not form a strong competitive constraint on the parties.
88. The most relevant upward pricing pressure measure (see paragraph 64 above) for the Denmans branch in Melksham was approaching the level that indicates that the parties would face an incentive to raise prices

materially after the Acquisition based on the central diversion estimate in the survey. The OFT notes that the survey represented a relatively small percentage of branch turnover, resulting in a confidence interval that, taking a cautious approach, is sufficiently wide for the OFT also to take account of the possibility that the actual diversion ratio and consequent upward pricing pressure measure are in fact higher than indicated by the central diversion estimate in the surveys. Taking a cautious approach, the OFT is also mindful that, even based on the central estimate, the relatively high diversion ratio for this branch means that the potential feedback effect (see paragraph 67 above) could result in a significant upward pricing measure in this area. The OFT has also carefully considered the other evidence available for this area, as set out below.

89. The monthly internal reports from the Denmans branch manager in Melksham suggest that []. The comments from the managers of the Wilts branches in Chippenham and Devizes (discussed above) []. The OFT did not receive any customer comments in Melksham.
90. Rexel submitted that the divestment of the Electric Center branch in Trowbridge (see paragraph 79 above) will increase competition in this area. However, the OFT considers that it is not clear that this will be sufficient to remove the competition concerns in this area given that the survey identifies only a very low diversion from Denmans Melksham to Electric Center (in contrast to the survey for Wilts Trowbridge, which identifies a significant diversion to Electric Center, as noted above). The OFT also notes that Melksham is in the centre of the cluster and that the Acquisition results in significant overlaps between the parties in the cluster as a whole.
91. Due to the relatively poor road link between Melksham and Devizes identified by Rexel, the OFT considers it is insufficiently likely that the Denmans branch in Melksham will face significant competition from the entry by John Cribb & Sons in Devizes (see paragraph 77 above).
92. Taking the evidence in the round, the OFT considers that there is a realistic prospect of a substantial lessening of competition in the Melksham area.

Yeovil

93. Yeovil is a town in southern Somerset, where a Wilts branch and a N&E branch are located at opposite ends of the town (around three miles apart).

Branches of Edmundson and CEF are located in Yeovil in between the parties' branches.

94. The surveys of the parties' branches indicated that diversion to the other party is relatively low and did not indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition. Edmundson was shown to be a stronger competitor to each of the parties than they are to each other. The surveys also indicated competition from CEF and from smaller wholesalers located further away, in particular the branch in Chard (around 16 miles from Yeovil) of C&S Electrical, a three-branch business, and the branch in Wincanton (around 11 miles from Yeovil) of John Cribb & Sons, a twelve-branch business. For the N&E branch, the survey also indicated a small diversion to Screwfix. [] the N&E and Wilts branch managers in Yeovil in comments collected by Rexel for the OFT's assessment. The Wilts branch manager reports [].
95. Comments from customers buying from the parties' branches in Yeovil were mixed, with one customer expressing some concern about a reduction in choice but two other customers expressing no concern. The OFT also noted that the survey response rates for both branches were low, which was reflected in relatively wide 95 per cent confidence intervals for the diversion ratios. However, even taking the diversion ratio at the upper bound of this confidence interval, the most relevant measure for upward pricing pressure in this case was not at a level that would normally indicate concerns.
96. Taking the evidence in the round, the OFT does not consider that the Acquisition raises competition concerns in Yeovil.

Bideford/Barnstaple

97. This cluster consists of the towns of Bideford and Barnstaple in northern Devon. In this cluster Wilts has branches in Bideford and Barnstaple and Rexel has a Denmans branch in Barnstaple, which is around three miles away from Wilts in Barnstaple and eight miles from Wilts in Bideford.
98. The survey results for each of the parties' branches in this cluster indicated that the parties are not each other's closest competitors in this area. The results showed very low diversion ratios to the other party's branch(es) and did not indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition. Stronger diversion was shown

to Edmundson in Barnstaple, to CEF, located in both Barnstaple and Bideford (on the same estate as Wilts), and to the Barnstaple branch of Devondale, a six-branch business. Customers of Wilts in Bideford also showed some diversion to Screwfix in Barnstaple, although no diversion to this supplier was indicated by customers of the parties' branches in Barnstaple.

99. The internal reports from the branch manager of Denmans in Barnstaple over the past three years []. [] mentioned by the Wilts branch managers in Barnstaple and Bideford. Customer comments for the parties' Barnstaple branches were mixed, with one respondent (out of the two replying to the OFT's request for comments) expressing a concern. The OFT did not receive any customer comments regarding Bideford.
100. Taking the evidence in the round, the OFT therefore does not consider that the Acquisition raises competition concerns in Barnstaple and Bideford.

Weymouth/Dorchester

101. The Wilts branch in Weymouth overlaps with Rexel's Denmans and WF Senate branches in Dorchester, around seven miles away (both towns are in Dorset).
102. Rexel noted that the surveys of the Wilts branch in Weymouth and the Denmans branch in Dorchester identified diversion to CEF and Edmundson, each of which has branches in both Weymouth and Dorchester, to be higher than to the other merged party's branch(es) in this area. In particular, the diversion from Denmans to Wilts was very small. Rexel also noted that the survey of the WF Senate branch in Dorchester identified diversion to Edmundson to be at the same level as to Wilts.
103. Nevertheless, the OFT notes that the diversion between the merged parties shown in the survey results for the Wilts and WF Senate branches was sufficiently high to indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition. The survey result for the WF Senate branch is reasonably robust, as both the sample size and the represented turnover for the WF Senate branch are high.
104. The survey result for the Wilts branch also indicates that the parties would face an incentive to raise prices materially after the Acquisition. In contrast to the WF Senate branch, the response rate for the Wilts branch is low, both in sample size and represented branch turnover. The OFT notes that

this results in a confidence interval for the Wilts branch that, taking a cautious approach, is sufficiently wide for the OFT to take account of the possibility that the actual diversion ratio and consequent upward pricing pressure measure are in fact higher than indicated by the central diversion estimate in the survey of the Wilts branch. The OFT also notes that, even if the Wilts survey result is disregarded, the survey result for WF Senate is sufficient in itself to indicate an incentive to raise prices materially in the area.

105. The OFT notes that the most relevant upward pricing pressure measure (see paragraph 64 above) calculated on the basis of central diversion estimates of the survey in the Wilts branch exceeds the level that gives rise to concern, albeit only slightly. In addition, taking a cautious approach, the OFT is also mindful that, even based on the central estimate, the relatively high diversion ratio for the Wilts branch means that the potential feedback effect (see paragraph 67 above) could result in a significant upward pricing measure in this area.
106. Rexel submitted that, in addition to competition from Edmundson and CEF, the parties face competition from electrical wholesalers further afield, in particular All Skills Electrical in Poole and Blandford Forum (around 17 and 20 miles from Dorchester respectively) and 3 Line Electrical in Poole (around 25 miles from Weymouth). However, the survey showed only low diversion ratios to these suppliers and they are significantly further away than the parties' branches are from each other. The parties' only significant competitors in the Weymouth/Dorchester area are Edmundson and CEF.
107. The comments from the Wilts and WF Senate branch managers, as collected by Rexel for the OFT's assessment, []. The Wilts branch manager's comments []. The WF Senate branch manager []. The internal reports from the Denmans branch manager in Dorchester in the past three years [].
108. [] YESSS Electrical opening in Dorchester in November 2012. However, the OFT has not received any further evidence for this possible new entry. Further, the OFT considers that, even if it had firm evidence of entry by YESSS, it is not clear that it will form a sufficient constraint to the parties in this area (see further at paragraphs 154-155 below).
109. The OFT received comments from two customers in this area, neither of which expressed a concern about the Acquisition.

110. Taking the evidence in the round, the OFT considers that there is a realistic prospect of a substantial lessening of competition in the Weymouth/Dorchester area.

Midsomer Norton/Bath

111. The Wilts branch in Radstock, Midsomer Norton (Somerset) overlaps with Rexel's Denmans and N&E branches in Bath, around seven miles away. Rexel's branches in Bath were not caught by the initial filter as there were sufficient large competing wholesalers in the 10-mile radius around these branches. Rexel has therefore not conducted a survey of these branches.

112. Rexel noted that the survey of the Wilts branch identified a higher diversion to Edmundson than to Rexel's branches. Rexel further noted that the survey also identified a very small diversion to Norton Electrical Wholesale Supplies, a one-branch business that is the only other electrical wholesaler in Midsomer Norton. Nevertheless, the OFT notes that the diversion from Wilts to Denmans identified in the survey was significant (in addition to a very small diversion to N&E), such that the most relevant upward pricing pressure measure (see paragraph 64 above) for the Wilts branch was significantly above a level that indicates that the parties would face an incentive to raise prices materially in this area after the Acquisition. The OFT considers that, although the survey respondents cover a significant percentage of the turnover of this Wilts branch, the sample size is relatively small, resulting in a confidence interval that, taking a cautious approach, is sufficiently wide for the OFT also to take account of the possibility that the actual diversion ratio and consequent upward pricing pressure measure are in fact even higher than already indicated by the central diversion estimate in the survey.

113. Rexel submitted that there are several alternative suppliers in the area, both in Bath, such as CEF (around seven miles from Wilts), and Bristol (around 12.5 miles from Wilts). However, the survey did not show any diversion to these suppliers.

114. The Wilts branch manager referred to []. One customer in this area provided comments to the OFT, expressing a concern that the merged firm would have too strong a position in the market.

115. Taking the evidence in the round, the OFT considers that there is a realistic prospect of a substantial lessening of competition in the Midsomer Norton/Bath area.

Bridgwater/Taunton

116. Both Rexel and Wilts have branches in Bridgwater and Taunton (Somerset), which are around eight miles from each other but connected by the M5. In Bridgwater Rexel has a WF Senate branch and in Taunton a Denmans branch. Edmundson and CEF also have branches in both towns. In addition, there is a branch of Devondale in Taunton and a branch of Western Electrical in Bridgwater. Both are six-branch businesses.

117. The survey of the Denmans and Wilts branches in Taunton indicated that they are not each other's closest competitors, with significantly stronger diversion to Edmundson, CEF and Devondale. Wilts customers in Taunton also indicated some diversion to the Taunton branches of C&S Electrical, a three-branch business, and Screwfix. The survey results for these branches in Taunton did not indicate that the parties would face an incentive to raise prices materially in Taunton after the Acquisition.

118. The survey of the Wilts branch in Bridgwater indicates that Edmundson, which is located next to Wilts on the same estate, is a significantly closer competitor to Wilts than the WF Senate branch in Bridgwater, with similar diversion levels shown to Western Electrical and CEF as to WF Senate. The survey of the WF Senate branch, however, suggests that Wilts is its closest competitor. The diversion ratio to Wilts is larger than the diversion ratios to each of Edmundson, Western Electrical and CEF. Rexel submitted that this relatively high diversion ratio to Wilts is driven by one customer of WF Senate, which accounts for around a third of this branch's revenues. Rexel noted that this customer had in fact in the past also used several competing suppliers. Rexel submitted that the reported diversion ratio is therefore likely substantially to overstate the degree of competition between the parties in Bridgwater.

119. While the diversion data for the WF Senate branch – but not the Wilts branch – in Bridgwater identified in the survey do suggest that the parties may face an incentive to raise prices materially after the Acquisition, the OFT considers that it should place less reliance on the survey result for the WF Senate branch in Bridgwater given the impact of this single customer.

This consideration does not apply to the survey results for the other branches in Bridgwater and Taunton, where those results are more robust.

120. The competitor comments in the internal reports from the Denmans branch manager in Taunton for the past three years []. The Wilts Bridgwater manager notes that []. The WF Senate branch manager refers []. The OFT received comments from a customer buying in Taunton and a customer buying in both Taunton and Bridgwater. Both customers expressed a concern.
121. In reaching a conclusion regarding this cluster, the OFT has taken account of all of the evidence set out above. In addition, the OFT in particular notes that the Acquisition results in a '6 to 5' fascia reduction in this cluster and '5 to 4' in each of Bridgwater and Taunton, as the survey results indicate that Devondale and Western Electrical³⁴ are in fact significant competitors in this area and will continue to place an effective constraint on the merged entity in this area post-Acquisition. Taking the evidence in the round, the OFT does not consider that the Acquisition raises competition concerns in Taunton and Bridgwater.

Milton Keynes/Leighton Buzzard

122. This cluster covers one Wilts branch in Bletchley (just south of Milton Keynes), which overlaps with four Rexel branches: (a) two branches, under 'WF' 'Senate' banners, in Bletchley very close to Wilts, (b) a N&E branch on the other side of Milton Keynes (around 3.5 miles from Wilts), and (c) a Denmans branch in Leighton Buzzard (around eight miles from Wilts).
123. The survey results of the parties' branches in this cluster indicated low diversion ratios to the other party's branch(es) and did not indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition. The surveys showed significantly stronger diversion to Edmundson and CEF, which have branches in both Bletchley and Leighton Buzzard, as well as local independent suppliers including MK Lamps, BED, Wharfside and Gillec. Although the survey response rates for some of the branches in this cluster were relatively low, having considered the 95 per cent confidence intervals for the diversion ratios, the OFT does not consider that this casts material doubt on the parties' incentive to raise prices.

³⁴ Devondale in Taunton and Western Electrical in Bridgwater were not included in the OFT's initial filter.

124. The competitor comments in the internal reports from the Denmans branch manager in Leighton Buzzard for the past three years []. [] mentioned by the managers of the Wilts, WF and Senate branches in this cluster in comments collected by Rexel for the OFT's assessment. The WF branch manager also refers to []. The OFT further received comments from two customers in Milton Keynes, neither of which was concerned.
125. The OFT therefore does not consider that the Acquisition raises competition concerns in Milton Keynes and Leighton Buzzard.

Rugby

126. The Wilts and Denmans branches in Rugby (Warwickshire) are around 0.3 miles away from each other. Both branches were caught by the initial filter and hence covered by Rexel's survey. A Wilts branch in Coventry, around eight miles away from Denmans' Rugby branch, was not caught by the initial filter.
127. Rexel noted that the survey results for both parties' branches in Rugby indicated a higher diversion to Edmundson in Rugby (or to nearby Edmundson branches) than to the other party. The survey also identified some diversion to CEF in Rugby and to independent electrical wholesalers in Northampton (around 14 to 18 miles away) and Nuneaton (around 13 miles away).
128. Nevertheless, the OFT notes that the diversion from Wilts to Denmans in Rugby was significant, such that the most relevant upward pricing pressure measure (see paragraph 64 above) for Wilts was significantly above a level that indicates that the parties would face an incentive to raise prices materially in this area after the Acquisition.
129. The diversion ratio from Denmans to Wilts identified by the survey was higher than from Wilts to Denmans. However, as regards the margin of the branch, because it opened only in October 2011 the OFT could only use the commercial gross margin for this branch (that is, turnover with only the cost of goods sold deducted) or make an assumption about the likely variable profit margin of the branch in the medium term. The OFT accepts Rexel's submission that using commercial gross margin is likely to overstate the potential for upward pricing pressure, because it takes no account of other variable costs (see further at paragraphs 58 to 61 above). The OFT therefore examined the range of variable gross margins at other

Rexel branches and noted that only towards the lower end of the variable gross margin spectrum would the upward pricing pressure measure not exceed the level which indicates an incentive to raise prices materially post-Acquisition. If the average variable gross margin at Rexel branches is used, this measure does exceed this level.

130. The OFT further notes that the survey response rate for both branches is relatively low, both in sample size and represented branch turnover, which results in confidence intervals that, taking a cautious approach, are sufficiently wide for the OFT to take account of the possibility that the actual diversion ratios and upward pricing pressure measures for both branches in this area are higher than observed based on the central diversion estimate in the survey.
131. Rexel submitted that the parties face competition from both Edmundson and CEF, which are located very close to the Wilts and Denmans branches and also have other branches in the vicinity. Rexel also referred to competition from independent wholesalers in Northampton, to which the survey shows some diversion. However, the OFT also notes that this diversion is relatively low and that only few customers indicated in the survey that they had purchased from these wholesalers in the past year.
132. The monthly internal reports from the Denmans branch manager in Rugby []. Further, the Wilts branch manager, in comments collected by Rexel for the OFT's assessment, referred to []. The OFT did not receive any customer comments in Rugby.
133. Taking the evidence in the round, the OFT considers that there is a realistic prospect of a substantial lessening of competition in Rugby.

Weston-super-Mare

134. In Weston-super-Mare, in north western Somerset, a Wilts branch and a Denmans branch are located very close to one another. However, the survey of the parties' branches indicated that the parties are not each other's closest competitors, with significantly stronger diversion to the branches of Edmundson and CEF in Weston-super-Mare. Significant diversion from the Wilts branch was also shown to Templegate Electrical, a sizeable independent wholesaler in Bristol (around 18 miles away). The survey results did not indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition.

135. The internal reports from the Denmans branch manager []. [] mentioned by the Wilts branch manager in comments collected by Rexel for the OFT's assessment. This manager notes in particular that []. The OFT did not receive any customer comments regarding Weston-super-Mare.
136. The OFT therefore does not consider that the Acquisition raises competition concerns in Weston-super-Mare.

Winchester/Chandler's Ford

137. Rexel's WF Senate branch in Winchester (Hampshire) overlaps with the Wilts branch in Chandler's Ford, around seven miles away close to Southampton. The Wilts branch was not caught by the initial filter as there were sufficient large competing wholesalers in the 10-mile radius around its branch. Rexel has therefore not conducted a survey of the Wilts branch.
138. Rexel noted that the largest diversion from WF Senate identified in the survey is to R&M Electrical in Southampton (around 12 miles from WF Senate). Smaller diversion was shown to Medlock in Winchester and Edmundson in Southampton. Nevertheless, the survey also showed a significant diversion from WF Senate to Wilts such that the survey indicated that the parties would face an incentive to raise prices materially in this area after the Acquisition. Taking a cautious approach, the OFT is also mindful that, while the most relevant upward pricing pressure measure (see paragraph 64 above) calculated on the basis of the central diversion estimate of the survey only slightly exceeds the level that gives rise to concern, the relatively high diversion ratio between the parties identified in the survey means that the potential feedback effect (see paragraph 67 above) could result in a significant upward pricing measure in this area.³⁵
139. Rexel noted that the Southampton branch of R&M Electrical is advertised as its flagship branch and at 16,000 square feet is significantly larger than WF Senate's Winchester branch (3,000 square feet) and Wilts's Chandler's Ford branch (4,800 square feet). R&M Electrical is also a member of

³⁵ The OFT considered the possibility that one key customer of the WF Senate branch may be causing the relatively high diversion ratio to R&M Electrical, which may have resulted in an overstatement of the diversion to R&M Electrical (that is, comparably to the way that a key customer of WF Senate in Bridgwater has driven a relatively high diversion ratio to Wilts in that area (see paragraph 118 above)). However, to the extent that this is the case, this would result in an understatement of the actual competition between the parties and would mean that the upward pricing pressure measures would in fact yield higher results than those produced by the central estimate of the diversion results.

ANEW, the largest buying group of electrical wholesalers in the UK. However, the main focus of this branch is on servicing the industrial, petrochemical and marine sectors,³⁶ which is a different customer group from the commercial/domestic customers, in particular electrical contractors, that the parties focus on.

140. The WF Senate branch manager comments [].
141. The OFT received comments from two customers regarding this area. One of these customers was concerned about the Acquisition's impact on competition in this area.
142. Finally, Rexel submitted that reports from staff and customers show that YESSS Electrical intends to open a branch in Winchester in January. However, the evidence regarding this company's entry into Winchester is very limited. Further, the OFT considers that, even if it had firm evidence of entry by YESSS, it is not clear that it will form a sufficient constraint to the parties in this area (see further at paragraphs 154-155 below).
143. Taking the evidence in the round, the OFT considers that there is a realistic prospect of a substantial lessening of competition in Winchester/Chandler's Ford.

Cwmbran/Newport

144. Rexel's Denmans branch in Cwmbran (southern Wales) overlaps with the Wilts branch in Newport, around five miles away. The Wilts branch was not caught by the initial filter as there were sufficient large competing wholesalers in the 10-mile radius around its branch. Rexel has therefore not conducted a survey of the Wilts branch.
145. The survey of the Denmans branch indicated that Wilts was not its closest competitor, with significantly stronger diversion to Edmundson's branch in Newport (located closer to Denmans than Wilts's Newport branch) as well the Cwmbran branches of Dean Electrical, a three-branch business, and LH Evans, a five-branch business. CEF is also present in this area with a branch in Newport (around six miles from Denmans), although it did not come up in the survey results. The survey results did not indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition.

³⁶ See www.rm-electrical.com/publish/uk/southampton

146. Comments regarding competitors in the internal reports from the Denmans branch manager for the past three years []. [] mentioned by the Wilts branch manager in comments collected by Rexel for the OFT's assessment. The OFT did not receive any customer comments regarding this area.
147. The OFT therefore does not consider that the Acquisition raises competition concerns in Cwmbran/Newport.

Merthyr Tydfil/Ebbw Vale

148. Rexel's WF Senate branch in Merthyr Tydfil (southern Wales) overlaps with the Wilts branch in Ebbw Vale, around six miles away. The Wilts branch was not caught by the initial filter as there were sufficient large competing wholesalers in the 10-mile radius around its branch. Rexel has therefore not conducted a survey of the Wilts branch.
149. The survey of the WF Senate branch indicated that Wilts was not its closest competitor, with significantly stronger diversion to the branches of Edmundson and CEF in Ebbw Vale (located closer to WF Senate than Wilts's branch). Some diversion was also shown to the Cwmbran branch of Dean Electrical, which is around 16 miles from the WF Senate branch in Merthyr Tydfil. Survey respondents also indicated that in the past they had used the LH Evans branch in Cwmbran, although it did not come up in the survey results. The survey results did not indicate that the parties would face an incentive to raise prices materially in this area after the Acquisition.
150. [] mentioned by the WF Senate branch manager []. The OFT did not receive any customer comments regarding this area.
151. Taking the evidence in the round, the OFT therefore does not consider that the Acquisition raises competition concerns in Merthyr Tydfil/Ebbw Vale.

Barriers to entry and expansion

152. When assessing possible supply-side responses to a merger, including entry and expansion, the OFT will consider whether the response would be (i) timely, (ii) likely, and (iii) sufficient.³⁷ In terms of timeliness, the OFT's guidance indicates that the OFT will look for entry to occur within two years.

³⁷ *Merger Assessment Guidelines*, paragraph 5.8.3.

153. Rexel submitted that barriers to entry and expansion in electrical wholesaling are low. It estimated that it would take three to six months for an electrical wholesaler to establish itself at a new location and one to two years to become profitable. Based on evidence from Rexel's own recent branch openings, it estimated the cost of opening a new branch at around £[] in the first year (consisting of capital expenditure, working capital and stock costs). It further submitted that the time and cost for new wholesalers to open an outlet would be similar. Rexel noted that during 2010, despite adverse economic conditions, medium-sized wholesalers such as TLC Electrical Supplies, BEW Electrical Distributors and Western Electrical opened new branches. Rexel also referred to the launch by Screwfix in 2009 of the Electricfix catalogue brand for registered trade professionals and the opening of trade counters in 130 Screwfix branches since then.
154. Rexel further submitted that in the near future it will face competition from a new entrant, YESSS Electrical, whose owners were linked to CEF. Rexel stated that YESSS is planning to open 85 branches in the UK in its first year, as noted in press reports. Rexel submitted a letter from YESSS to an electrical contractor in the Edinburgh area in which YESSS referred to opening a head office and distribution centre in Normanton (West Yorkshire) and promised to beat quotations from competing wholesalers. This letter was undated but according to Rexel was very recent. Rexel has further referred to entry of YESSS in some of the affected local areas, as noted where relevant above.
155. However, the evidence received by the OFT as regards the entry by YESSS was very limited. Although entry in some of the affected local areas would, according to Rexel, take place in the next few months, this was not supported by evidence. Also, YESSS is a new entrant into the UK and Rexel did not put forward any significant evidence as to the likely strength of YESSS as a competitor in the market generally or in any specific area. It is therefore not clear that YESSS will be able to create a sufficiently strong constraint on the merged entity, in any case within the two-year period that the OFT normally regards as sufficiently timely.³⁸
156. The OFT has taken account of Rexel's submissions on planned entry in specific affected local areas in the OFT's assessment above. However, the OFT considers that the evidence received in this case on entry and

³⁸ *Merger Assessment Guidelines*, paragraph 5.8.11.

expansion is not such that it is able to rely on this information to reach a general conclusion that any entry will be timely, likely and sufficient to outweigh the competition lost as a result of the Acquisition.³⁹

THIRD-PARTY VIEWS

157. Third-party views have been discussed above where relevant. Customer comments on the Acquisition were mixed, with the majority of customers unconcerned. None of the parties' competitors expressed concerns.

ASSESSMENT

158. The Acquisition qualifies for review because the turnover test in section 23(1)(b) of the Act is met.

159. The main overlap between Rexel and Wilts is in the wholesale supply of electrical products. Consistent with its recent *Edmundson/Electric Center* decision in this sector, the OFT has focused its analysis on the supply to large/national customers, multi-local/regional customers and small/local customers. The relevant geographic scope applicable to each of these customer sets is national, regional and within a 10-mile radius of local branches respectively.

160. The OFT considers that the Acquisition does not give rise to competition concerns in the supply to large/national customers in view of the lack of a national presence for Wilts and the fact that at the time of the Acquisition it had only one national customer, which it subsequently lost. The OFT further considers that no concern arises in the supply to multi-local/regional customers, since in the only region where Rexel and Wilts overlap to a significant degree – the South West of England – the merged firm faces competition from well sized regional wholesalers (Western Electrical and Devondale) in addition to national players (Edmundson and CEF).

161. For the purpose of identifying local areas of potential concern, the OFT applied a cautious initial filter based on a 10-mile radius from overlapping Rexel and Wilts branches. The OFT undertook a detailed assessment of those local areas where within this 10-mile radius two or fewer competitors remained to the merged entity (that is the merger resulted in a reduction in fascia from 'four to three' or fewer), including only electrical wholesalers of a certain size. The areas caught by this initial filter are

³⁹ See also *Edmundson/EC*, paragraphs 196-197.

Devizes/Chippenham/ Trowbridge/Melksham, Yeovil, Bideford/Barnstaple, Weymouth/Dorchester, Midsomer Norton/Bath, Bridgwater/Taunton, Milton Keynes/Leighton Buzzard, Rugby, Weston-super-Mare, Winchester/ Chandler's Ford, Cwmbran/Newport and Merthyr Tydfil/Ebbw Vale. The OFT also considered whether there were areas where there were three remaining other competitors within 10 miles of an overlap branch but where no competitors remained within five miles, but such areas were not present.

162. Rexel conducted surveys of all overlap branches caught by the initial filter. The OFT used the diversion ratios resulting from the surveys into account in its assessment of all the above areas and calculated the upward pricing pressure measures, using margin data for each branch. The OFT also took account of a range of other evidence in each area, including the relative geographic positions of different branches in an area and information from internal reports from Denmans branch managers in the affected local areas.
163. Taking the evidence for each local area in the round, the OFT identified a realistic prospect of a substantial lessening of competition in Chippenham, Melksham, Weymouth/Dorchester, Midsomer Norton/Bath, Rugby and Winchester/Chandler's Ford. Having reviewed the local areas in more detail, the OFT did not find that the test for reference was met in the other areas that were caught by the initial filter.
164. Consequently, the OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

UNDERTAKINGS IN LIEU

165. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the parties concerned undertakings as it considers appropriate.
166. The OFT has therefore considered whether there may be undertakings in lieu of reference ('**UILs**') that would address the competition concerns outlined above. The OFT's Exceptions and Undertakings Guidance states

that UILs are appropriate only where the remedies proposed to address the competition concerns raised by the merger are clear cut and capable of ready implementation.⁴⁰

167. Rexel offered to divest the Wilts branch(es) in each of the local areas in which the OFT identified competition concerns, as set out at paragraph 163 above. Since the entire increment resulting from the Acquisition in the area of Chippenham and Melksham consists of the Wilts branches in Chippenham, Trowbridge and Devizes, Rexel offered to divest all of these branches. In addition, Rexel offered to divest the Wilts branches in Weymouth, Midsomer Norton, Rugby and Chandler's Ford.
168. As a structural remedy that will result in the removal of the overlap in each of the areas in which the OFT found that the test for reference is met, the OFT considers that the UILs proposed by Rexel are, in principle, sufficient to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT.
169. The OFT has considered whether it is appropriate in the circumstances of this case to require that the relevant divestments be made in whole or in part to an upfront buyer or buyers. An upfront buyer requirement means that, before the OFT accepts UILs, the proposed divestment purchaser(s) will have committed contractually, subject to formal OFT approval of the UILs, to acquiring the relevant divestment business(es). This means that the OFT will accept UILs only where a provisional sale in the upfront buyer areas has been agreed, thereby demonstrating that a sale to a suitable purchaser is achievable. It also means that the OFT will consult publicly on the suitability of the proposed divestment purchaser(s), as well as any other aspects of the draft undertakings, during the public consultation period. The OFT will seek an upfront buyer where the risk profile of the remedy requires it, for example where the OFT has reasonable doubt with regard to the ongoing viability of the divestment package and/or there exists only a small number of candidate suitable purchasers.⁴¹
170. Rexel submitted that it has already been approached by two potential buyers of divestment branches. Rexel also noted that, unlike in

⁴⁰ See *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122, December 2010), paragraph 5.7.

⁴¹ *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 5.31-5.37.

Edmundson/EC, none of the branches are concessions within a third party's retail premises.

171. However, the OFT notes that several of the divestment branches in this case were loss-making (excluding central overheads) []. The OFT also notes that [], which may make it more difficult to find a purchaser for this branch. The OFT is also mindful that Rexel's offer extended only to divestment of the Wilts branches in the local areas, and not to the corresponding Rexel branches.

172. For these reasons, the OFT considers that it is reasonable and proportionate for it to seek an upfront buyer in respect of all of the branches to be divested. The OFT has therefore decided that any UILs that it accepts should include an upfront buyer provision.

DECISION

173. The OFT's duty to refer the completed merger between Rexel and Wilts to the Competition Commission pursuant to section 22 of the Act is suspended because the OFT is considering whether to accept undertakings in lieu of reference under section 73 of the Act.

ANNEX 1

Cluster Devizes/Trowbridge/Chippenham/Melksham

