

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

ME/5417/12

The OFT's decision on reference given on 23 January 2013. Full text of decision published 29 January 2013.

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**PARTIES**

1. **Rexel UK Limited ('Rexel')** distributes electrical products through 361 branches across the UK under the fascias Newey & Eyre, WF Senate and Denmans. Rexel's UK turnover in 2010 was £769 million.
2. **Wilts Wholesale Electrical Company Limited (the 'Seller')**<sup>1</sup> 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 59 branches out of the 62 branches<sup>2</sup> operated by the Seller ('**Wilts**').<sup>3</sup>

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<sup>1</sup> Now renamed Fernturn Holdings Limited.

<sup>2</sup> The remaining three branches in Basingstoke, Exeter and Hounslow were subsequently closed by the Seller. In the OFT's decision of 26 October 2012 with regard to the Acquisition, the OFT considered these additional three branches under the 'counterfactual' heading but the OFT also stated that, from a jurisdictional perspective, it could have considered the Acquisition, in substance, to relate to the Wilts business previously carried on in all 62 branches (see paragraphs 14 to 19 of the OFT's decision of 26 October 2012).

<sup>3</sup> 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".

## JURISDICTION

4. As a result of the Acquisition, Rexel and Wilts ceased to be distinct. The UK turnover of Wilts exceeded £70 million in 2010. 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.

## BACKGROUND

5. In its decision of 26 October 2012 with regard to the Acquisition (the '**Decision**'), the OFT stated its belief that it is or may be the case that the Acquisition has resulted or may be expected to result in a substantial lessening of competition in electrical wholesaling in six local areas, namely Chippenham, Melksham, Weymouth/Dorchester, Midsomer Norton/Bath, Rugby and Winchester/Chandler's Ford. Accordingly, the OFT found itself under a duty to refer the Acquisition to the Competition Commission.
6. To address the OFT's competition concerns, Rexel offered undertakings in lieu of a reference to divest all Wilts branches in each of the local areas in which the OFT identified competition concerns. Since the entire increment resulting from the Acquisition in the area of Chippenham and Melksham consisted of the Wilts branches in Chippenham, Trowbridge and Devizes, Rexel offered to divest all of these branches, in addition to the Wilts branches in Weymouth, Midsomer Norton, Rugby and Chandler's Ford (these branches jointly the '**Divestment Branches**').
7. The OFT stated in the Decision that it considered that the undertakings proposed by Rexel, 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 was met, were, in principle, sufficient to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT. As set out in the Decision, the OFT further considered that it was reasonable and proportionate for it to seek an upfront buyer in respect of all of the Divestment Branches.
8. In the Decision the OFT therefore stated that it was suspending its duty to refer the Acquisition to the Competition Commission under section 22 of the Act, because the OFT was considering whether to accept appropriate undertakings from Rexel in lieu of a reference under section 73 of the Act. Subsequently, Rexel entered into a sale and purchase agreement with Kew

(Electrical Distributors) Limited ('Kew') to transfer the Divestment Branches, conditional upon the OFT's acceptance of the undertakings.

## **CONSULTATION**

9. On 20 December 2012, pursuant to paragraph 2(1) of Schedule 10 of the Act, the OFT published the proposed undertakings in lieu of a reference that it was minded to accept, inviting interested parties to give their views in relation to the proposed undertakings, including Kew as purchaser of the Divestment Branches. The consultation text published on the OFT's website alongside the proposed undertakings is set out in the Annex to this decision.
10. For the reasons set out in the consultation text, the OFT considers, subject to the outcome of the consultation, that Kew is a suitable purchaser of the Divestment Branches and that the undertakings offered by Rexel and the purchase of the Divestment Branches by Kew are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.
11. The OFT received no comments from third parties during the consultation period.

## **DECISION**

12. The Decision concluded that the Acquisition would be referred to the Competition Commission if Rexel failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
13. The OFT considers that the undertakings provided by Rexel are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings offered by Rexel, including Kew as the purchaser of the Divestment Branches.
14. The Acquisition will therefore not be referred to the Competition Commission and the undertakings, which have been signed by Rexel, will come into effect from the date of this decision.

## **Annex – consultation text issued on 20 December 2012**

### **COMPLETED ACQUISITION BY REXEL UK LIMITED OF CERTAIN ASSETS OF WILTS WHOLESALE ELECTRICAL COMPANY LIMITED**

#### **Notice under Paragraph 2(1) Schedule 10 of the Enterprise Act 2002 of proposed undertakings in lieu of reference pursuant to section 73 of the Enterprise Act 2002**

##### **OFT's duty to refer**

On 26 October 2012 the OFT announced its decision to suspend its duty to refer the completed acquisition by Rexel UK Limited (Rexel) of certain assets of the business of Wilts Wholesale Electrical Company Limited (Wilts) to the Competition Commission under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from Rexel in lieu of reference.

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 in electrical wholesaling in six local areas, namely Chippenham, Melksham, Midsomer Norton/Bath, Rugby, Weymouth/Dorchester and Winchester/Chandler's Ford. The text of the OFT's decision (the Decision), published on 13 November 2012, provides details of the OFT's findings.

Accordingly, the OFT found itself under a duty to refer the merger to the Competition Commission.

##### **Divestment undertakings offered by Rexel**

To address the OFT's competition concerns, Rexel offered to divest all Wilts branches in the local areas of concern, namely the Wilts branches in Chandler's Ford, Chippenham, Devizes, Midsomer Norton, Rugby, Trowbridge and Weymouth (the Divestment Branches).

As set out in the Decision (paragraphs 169 to 172), the OFT considered that it was reasonable and proportionate to seek an upfront buyer in respect of all of the branches to be divested to ensure that the competition concerns were remedied in this case.

## **Upfront buyer for the Divestment Branches**

Rexel has proposed Kew (Electrical Distributors) Limited (Kew) as the purchaser of all of the Divestment Branches. Rexel and Kew have entered into a sale and purchase agreement to transfer the Divestment Branches, conditional only upon formal OFT approval of Kew as purchaser of the Divestment Branches.

## **Suitability of the proposed purchaser**

In approving a purchaser, the OFT's starting position is that it must be confident without undertaking a detailed investigation that the proposed purchaser will restore pre-merger levels of competition. The OFT therefore seeks to ensure that the proposed buyer is independent of the merged parties and has the necessary expertise, resources, incentives and intention to operate the divested business as an effective competitor in the marketplace.<sup>1</sup>

The proposed purchaser, Kew, is a well established electrical wholesaler operating 12 branches in the South of England – from Thanet in Kent to Poole in Dorset – and one branch in Belfast. Kew's management team have significant experience in the industry. Kew previously successfully integrated its current branch in Belfast after acquiring this from administration in 2008.

Based on the evidence presented to the OFT, Kew is independent of and unconnected to Rexel. It has confirmed that it does not anticipate any difficulties in obtaining the necessary approvals, licences and consents relevant to the Divestment Branches, including from landlords. The OFT further considers that Kew has the necessary expertise, resources, incentives and intention to operate the Divestment Branches in competition with other electrical wholesalers in the relevant areas.

Kew does not currently operate in any of the six local areas where the Divestment Branches are located and does not have branches within 10 miles of any of the Divestment Branches (this radius was part of the initial filter applied in the OFT's investigation of the merger to identify local areas of potential concern, as set out in the Decision). The OFT does not therefore consider that the proposed sale of the Divestment Branches to Kew will raise *prima facie* competition concerns.

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<sup>1</sup> The approach and criteria followed by the OFT to approve a purchaser are set out in further detail in the OFT's *Mergers – exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT 1122, December 2010, in particular from paragraph 5.25).

Therefore, subject to the outcome of this consultation, the OFT considers Kew to be a suitable purchaser of the Divestment Branches.

### **Proposed decision and process going forward**

The acceptance by the OFT of the proposed undertakings in lieu is dependent on this public consultation.

The OFT considers that the undertakings offered by Rexel and the purchase of the Divestment Branches by Kew are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.

The OFT therefore gives notice that it proposes to accept undertakings in lieu in the form of the proposed undertakings.

Before reaching a decision as to whether to accept the proposed undertakings including Kew as purchaser of the Divestment Branches, interested parties are invited to make their views known.

Representations should be made in writing to:

Tom Heideman  
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Office of Fair Trading  
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London  
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**Deadline for comments: 5pm on 18 January 2013**