

## Completed acquisition by Edmundson Electrical Limited of Electric Center

ME/5161/11

The OFT's decision on reference under section 22 given on 19 November 2012. Full text of decision published 27 November 2012.

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**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. **Edmundson Electrical Limited ('EEL')** distributes electrical products through 249 branches across the UK.<sup>1</sup> EEL is owned by Marlowe Holdings Limited ('Marlowe'). Marlowe also owns Ryness, an entity which engages in electrical wholesale and retail in the London area. Marlowe is, in turn, a subsidiary of Blackfriars Corporation ('Blackfriars'),<sup>2</sup> which is registered in the United States. Blackfriars is a private company.<sup>3</sup> EEL's turnover for the year ended 31 December 2010 was £852 million.
2. **Electric Center ('EC' or 'the Target')** distributes electrical products through 83 branches across the UK.<sup>4</sup> The target was previously part of William Wilson Limited, belonging to the Wolseley Group of companies. The Target's turnover was £130 million in 2010.

### **JURISDICTION**

<sup>1</sup> EEL also has branches in Jersey and Guernsey and two branches on the Isle of Man.

<sup>2</sup> [EEL has a link, through a degree of indirect common ownership, with Deta Electrical Co. Limited, Stearn Electric Co. Limited, UK Electric Limited, UK Cables Limited and Decco Limited.]

<sup>3</sup> Blackfriars owns Consolidated Electrical Distributors ('CED'), an electrical wholesaler exclusively active in the US. Marlowe owns a number of dormant entities described as electrical wholesalers, but not carrying on any business activities.

<sup>4</sup> The Target also has one branch in Guernsey.

3. As a result of this transaction EEL and EC have ceased to be distinct. The UK turnover of the target businesses exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 ('the Act') is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

## **BACKGROUND**

4. In its decision of 11 May 2012 (the Decision), the OFT announced that it believed that the merger created a realistic prospect of a substantial lessening of competition in electrical wholesaling in four local areas, namely Stornoway, Trowbridge, Elgin and Kendal.<sup>5</sup>
5. To address the OFT's competition concerns, EEL offered to divest all relevant assets comprising a branch electrical wholesaling business in the four areas identified, thereby remedying the competition concerns arising from the merger. EEL reserved the right to sell either the EC or the EEL branch in the relevant local area and to divest the branches either individually or in one or more packages.
6. The OFT stated in the Decision that it considered that the remedy offered by the parties to be in principle sufficiently clear cut to remedy the competition concerns arising from the merger. The OFT also considered that it was reasonable and proportionate to require an up-front buyer in seeking to ensure that the competition concerns were remedied. On this basis, the OFT announced on 11 May 2012 that it was suspending its duty to refer the merger to the Competition Commission in order to seek undertakings in lieu from the parties.
7. Following the suspension of the OFT's duty to refer, EEL entered into a sale and purchase agreement (conditional upon the OFT's acceptance of the undertakings in lieu) with Abbey Cross Trading Limited (Abbey Cross).

## **CONSULTATION**

8. On 23 October 2012, pursuant to schedule 10, paragraph 2(1) of the Act, the OFT published the proposed undertakings in lieu of a reference which it was minded to accept, inviting interested parties to give their views on the

<sup>5</sup> Completed acquisition by Edmundson Electrical Limited of Electric Center, ME/5161/11, 11 May 2012.

proposed remedy by 17.00 Tuesday 13 November 2012. The consultation text published on the OFT's website with the proposed undertakings in lieu is included in the Annex to this decision.

9. The OFT did not receive any responses to its consultation.

## **PURCHASER APPROVAL**

10. The parties' undertakings in lieu offer in this case was subject to an upfront buyer requirement. This means the OFT suspended its duty to refer on the basis that it would only accept the undertakings in lieu once divestments have been agreed with an upfront buyer provisionally approved by the OFT.
11. The prospective purchaser of all four stores is Abbey Cross Trading Limited (Abbey Cross). The OFT's assessment of the suitability of the purchaser is set out below.
12. Abbey Cross is independent of and unconnected to EEL and can be reasonably expected to obtain the necessary approvals, licences and consents relevant to the four divestment stores. Abbey Cross will also benefit from a number of contractual protections under the SPA and will have access to relevant supply agreements.
13. The owner of the purchaser, Abbey Cross, also owns Medlock Electrical Distributors Limited (Medlock), a well established independent electrical wholesaler. Medlock currently has 25 branches and Abbey Cross has five branches, trading under the Medlock brand. The divestment branches to be acquired by Abbey Cross will also trade under the Medlock brand.
14. The owner of Abbey Cross has significant experience in the electrical wholesaling market and has successfully integrated previously acquired businesses into existing operations. The OFT considers that the purchaser will have the incentive and intention to operate the branches in competition with other wholesalers in the relevant markets.
15. Finally, the OFT does not consider that the divestment of the four stores will give rise to a realistic prospect of a substantial lessening of competition within the UK as neither Abbey Cross nor Medlock currently operate in any of the four local areas where the stores are to be divested.

16. The OFT is satisfied that Abbey Cross meets the criteria to be approved as a purchaser of the four divestment stores.

## **DECISION**

17. The OFT's decision on 11 May 2012 concluded that the merger would be referred to the Competition Commission if EEL 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.
18. The OFT considers that the undertakings offered by EEL 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 in lieu of reference offered by EEL.
19. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by EEL and Marlowe Holdings Limited, will come into effect from this date.

## **Annex – Consultation Text**

### **Completed acquisition by Edmundson Electrical Limited of Electric Center**

**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 11 May 2012, the OFT announced its decision to suspend its duty to refer the completed acquisition by Edmundson Electrical Limited (EEL) of Electric Center (EC) to the Competition Commission (CC) under section 22 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings in lieu of reference from EEL.

The OFT believes that the merger gives rise to a realistic prospect of a substantial lessening of competition in electrical wholesaling in four local areas, namely Stornoway, Trowbridge, Elgin and Kendal. The investigation identified few remaining electrical wholesalers in these local areas that the OFT was confident had the capability to compete strongly against the parties. The text of the OFT's decision, published on 23 July 2012 (the Decision), provides details on the OFT's findings.<sup>6</sup>

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

#### **Divestment undertakings offered by EEL**

To address the OFT's competition concerns, EEL offered to divest all relevant assets comprising a branch electrical wholesaling business in the four areas identified, thereby remedying the competition concerns arising from the merger. EEL reserved the right to sell either the EC or the EEL branch in the relevant local area and to divest the branches either individually or in one or more packages.

<sup>6</sup> The Decision can be found on the OFT website at:  
[/www.offt.gov.uk/OFTwork/mergers/decisions/2012/edmundson](http://www.offt.gov.uk/OFTwork/mergers/decisions/2012/edmundson)

## **Up-front buyer for the four electrical wholesaling branches**

At the time of the OFT decision, no prospective purchasers had been identified by EEL. The OFT was also mindful that two EC branches, namely Stornoway and Elgin, are not stand alone fascias, but are located in the original vendor's plumbing and heating business premises and therefore may be less commercially attractive to potential bidders than the other branches. With EEL retaining the right to choose which of the parties' businesses were to be divested in each area, the OFT considered that the field of suitable potential candidate purchasers may be limited in this case. The OFT therefore considered the requirement for an up-front buyer was both reasonable and proportionate in seeking to ensure that the competition concerns were remedied in this case.

The proposed purchaser for all four branches, Abbey Cross Trading Limited, (Abbey Cross), is identified in the undertakings in lieu on which the OFT is consulting, and has entered into a sale and purchase agreement (SPA) with EEL to transfer the branch businesses to Abbey Cross. The sale agreement is conditional only upon OFT acceptance of the undertakings in lieu. In three areas, Abbey Cross will acquire the EC branch (Trowbridge, Elgin, Stornoway) and in one area it will acquire the EEL branch (Kendal). The OFT understands that it was at Abbey Cross' election to acquire the EEL, rather than the EC, branch in Kendal.

## **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. As such, the proposed purchaser must not raise prima facie competition concerns.

The owner of the purchaser, Abbey Cross, also owns Medlock Electrical Distributors Limited (Medlock). Medlock is a well established independent electrical wholesaler with a strong regional presence in southern England as well as branches in Ireland. During its investigation, the OFT identified Medlock as a strong competitor to the parties at a local level.<sup>7</sup> Medlock currently has 25 branches and Abbey Cross has five branches, trading under the Medlock brand. The divestment branches to be acquired by Abbey Cross will also trade under the Medlock brand.

<sup>7</sup> See paragraph 88 and footnote 41 in the Decision.

The owner of Abbey Cross has significant experience in the electrical wholesaling market and has successfully integrated acquired businesses into existing operations. The purchaser has confirmed that it does not anticipate any difficulties in obtaining the necessary approvals, licences and consents relevant to the four divestment stores and will benefit from a number of contractual protections under the SPA. The OFT considers that the purchaser, which has access to relevant supply agreements, will have the incentive and intention to operate the branches in competition with other wholesalers in the relevant markets.

Neither Abbey Cross nor Medlock currently operate in any of the four local areas where the stores are to be divested. It is therefore not considered that the transaction will raise prima facie competition concerns.

Based on the financial data available, and given the common ownership with Medlock, the OFT considers that the proposed purchaser is a credible buyer of the four stores.

**The OFT is minded to accept the proposed undertakings in lieu**

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

The OFT considers that the proposed undertakings offered by EEL are clear cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the Decision.

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

Download the proposed undertakings in lieu at [website link].

Before reaching a decision as to whether to accept the proposed undertakings, interested parties are invited to make their views known.

Representations should be made in writing to:

Lisa Hughes  
Mergers Group  
Office of Fair Trading  
Fleetbank House

2-6 Salisbury Square  
London  
EC4Y 8JX

Telephone: 020 7211 8730  
Email: [lisa.hughes@oft.gsi.gov.uk](mailto:lisa.hughes@oft.gsi.gov.uk)

**Deadline for comments: 17.00 13 November 2012**