

VERSION FOR PUBLICATION

CASE ME/5252/11

COMPLETED ACQUISITION BY SAINT-GOBAIN OF BUILD CENTER

**DECISION OF THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 22
ENTERPRISE ACT 2002**

8 February 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.

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PARTIES

1. Jewson Limited (**Jewson**) owns a chain of 510 general builders merchants (**GBMs**) in the UK operating under the Jewson and 'Gibbs and Dandy' brands.¹ Jewson is ultimately controlled by Compagnie de Saint-Gobain (**Saint-Gobain**), the French multinational. Jewson operates some specialist distribution businesses in the UK, including Graham (plumbing and heating), Minster (insulation materials), and International Decorative Services (flooring, worktops and surfaces). The Saint-Gobain group includes businesses in the UK that manufacture, process or distribute glass products, timber, plaster-based products (plasters and plasterboard), insulation products, mortars, abrasives, pipes, municipal castings, roof trusses, joists and floor cassettes. The turnover of the Saint-Gobain group for the financial year 2010 was €40,119 million (around £34,416 million).
2. **Build Center** is a chain of 149 branches in the UK. Of these, 123 branches are GBMs, and the remainder are specialist outlets trading as Glass Center (four branches), Ironmongery Center (11 branches) and Timber Center (11 branches). Build Center's turnover for the financial year to 31 July 2010 was £[], all of which was achieved in the UK.

TRANSACTION

3. This transaction concerns the acquisition by Jewson of sole control over the Build Center business from Wolseley plc. The transaction was structured as an asset sale and was completed on 4 November 2011.
4. The OFT accepted initial undertakings pursuant to section 71 of the Enterprise Act 2002 (the **Act**) on 17 November 2011 through which the parties held the two businesses separate.

JURISDICTION

5. The transaction qualified for investigation by the European Commission under the European Merger Regulation (Regulation 139/2004).

¹ In this Decision, references to Jewson should be read to include Gibbs and Dandy except where the context requires otherwise.

6. The parties notified the transaction to the European Commission by way of a Form RS on 23 September 2011. The transaction was referred to the UK under Article 4(4) EUMR on 27 October 2011.²
7. As a result of this transaction Jewson and Build Center have ceased to be distinct. The UK turnover of Build Center exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

8. The parties overlap in the provision of building materials. The primary overlap between the parties is between their GBM businesses (Jewson and Build Center). They also overlap in relation to their specialist glass businesses (Solaglas and Glass Center) and specialist ironmongery businesses (George Boyd and Ironmongery Center). Whilst both parties have timber businesses (International Timber and Timber Center), they are not directly comparable.
9. The Saint-Gobain group is also active upstream at the manufacturing level, owning a number of businesses including BPB (British Gypsum). There are vertical overlaps between its manufacturing businesses and GBMs in the UK.
10. Building materials are any materials that have a construction use, including both naturally occurring materials (for example, clay, sand and timber) and man-made materials. The types of materials sold by GBMs, such as the parties, can be broadly categorised as:
 - timber and joinery, such as wood, timber linings and doors
 - bricks and blocks
 - aggregates and cement
 - insulation and plasterboard, including plaster and acoustic or thermal insulations products
 - landscaping supplies, such as paving slabs, fencing and stones
 - drainage products, such as guttering, pipes and manhole covers
 - plumbing and heating
 - ironmongery
 - roofing

² Case COMP/M.6359.

- tools, and
 - shop goods/sundries.
11. The building materials distribution sector contains a range of different types of business, which can broadly be broken down into:
- DIY/retail outlets
 - GBMs, and
 - specialist merchants (for example, timber merchants, glass merchants, etc).
12. The different characteristics of these businesses drive the majority of their sales either towards retail customers (in the case of DIY outlets) or trade customers (in the case of GBMs and specialist merchants). Manufacturers and importers are upstream from these businesses, although some products are bought by trade customers directly from manufacturers/importers.

Product scope

13. As set out in the Merger Assessment Guidelines, market definition is a useful tool, but not an end in itself. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of a merger, as it is recognised that there can be constraints on merging parties from outside the relevant market.³

Segmentation by product category

14. The parties submit that there exists a market for the distribution of all building materials, regardless of the type of material (that is, there is not an individual market for the distribution of sand). Segmentation of building materials by product has generally only been considered relevant by the OFT in instances where there have been specific overlaps between the parties in relation to specific product groups. In the OFT's *Travis Perkins/BSS* decision, the parties primarily overlapped in the distribution of plumbing and heating products. The OFT did not consider it appropriate to narrow the market by reference to individual plumbing and heating products in that case.
15. Building products are generally complementary rather than substitutable in use. For example, as a result of their different prices, characteristics and intended

³ See for example, OFT/CC Joint Merger Assessment Guidelines, paragraph 5.2.2.

uses, sand cannot be substituted for cement, and bricks cannot be substituted for roof tiles. It seems likely, therefore, that the 'hypothetical monopolist test' would show different building products constitute different product markets, because customers would not respond to a price rise for a specific product (for example, sand) by switching to another product (for example, cement) to such an extent that a price increase by the hypothetical monopolist would not be profitable.⁴ Therefore, from the demand side perspective, separate markets for each individual building product could exist.

16. However, as stated in the Merger Assessment Guidelines, the relevant market may not be the narrowest market that meets the hypothetical monopolist test.⁵ In this case, there are a number of reasons why it may not be considered appropriate to define markets with reference to individual product types, including:

- Customers will often purchase a bundle of products in a single transaction, so products will be in joint demand.
- GBMs typically stock a similar range of products to meet their customers' requirements and have the ability to flex their use of space in response to changes in demand.
- Within a product category, GBM's products are often homogeneous, with little in the way of brand differentiation.
- The OFT's market investigation has not indicated that there is a key product in the market which drives searching or switching behaviour.

17. Although there is little scope for demand side substitution between different categories of building material products, the reasons given above suggest that it is not appropriate to delineate the market with reference to these different products.

Segmentation by channel

18. Previous decisions of the European Commission have considered that the overall market for the distribution of building materials could be segmented on the basis

⁴ For further information on the hypothetical monopolist test, see the OFT/CC Joint Merger Assessment Guidelines, chapter 5.

of a distinction between (a) wholesale, (b) 'professional' retail (that is, merchants), and (c) 'non-professional' retail (that is, DIY). The merchandising segment may be further subdivided between generalists and specialists.⁶ This is consistent with the OFT's decision in *Travis Perkins/BSS*, where a market for plumbing and heating specialists was found.⁷

19. Due to the nature of the overlap in this case (primarily between the parties' GBM businesses, but also between their glass and ironmongery specialist businesses), the OFT has considered whether the supply of building materials through each of GBMs and specialist merchants constitute distinct economic markets.
20. GBMs will typically occupy larger sites than specialists -- often around two acres with a 15,000-20,000 square foot warehouse, a sales counter and a yard, although some GBMs can be substantially larger or smaller. GBMs will typically sell the full range of product categories listed in paragraph 10 (above), but will tend to specialise in heavyside materials (bricks, blocks, steel lintels, aggregates, etc), tending to stock a much narrower range of specialist products, such as plumbing and heating products. As such, customers of GBMs tend to demand a bundle of products that would not be readily available from a specialist merchant, so it seems that customers are unlikely to switch away from GBMs in response to a small but significant price rise in all products, but specialist merchants may impose a constraint for products in which they overlap.
21. Glass merchants specialise in the sale of glass and glazing systems. Ironmongery distributors specialise in the sale of products such as hinges, door furniture and leavers. There is some overlap between the product ranges of these specialist businesses and the product ranges of GBMs, DIY sheds and perhaps also some interior design companies, but the product ranges and competitive dynamics are sufficiently separate that it seems appropriate to treat these specialists as each being in a discrete market for the purposes of the OFT's competitive assessment of the transaction, although the OFT recognises that there may exist some constraint from outside of these narrowly defined markets.
22. Timber specialists, on the other hand, are sometimes quite similar to GBMs because timber is an important product range for GBMs, sometimes constituting a majority of a GBM's sales. The OFT has taken account of the 11 branches of

⁵ OFT/CC Joint Merger Assessment Guidelines, paragraph 5.2.3.

⁶ See for example, Case M.3184 Wolseley/Pinault Bois Materiaux, Case M.3943 Saint-Gobain/BPB, Case M.3142 CVC/Traelast.

Timber Center (Build Center's timber specialist business), and other timber specialists where appropriate, in its local assessment of GBMs. This is discussed in greater detail below.

Segmentation by customer type

23. The parties submit that GBMs and specialists target the professional customer, offering complementary services such as credit facilities, expert advice and logistics. This contrasts with DIY stores who sell more standardised products at standardised prices and do not offer as many specialised services to their customers. Additionally, Saint-Gobain believes that the parties' combined share of sales of building materials to non-professional customers will be minimal.
24. The OFT's market investigation indicates that professional customers purchase building materials through varied means. In particular there are some larger customers with a nationwide presence who are more likely to purchase goods through framework agreements or other long term contracts, which may specify certain levels of geographic coverage, thereby limiting the number of competitors for this type of customer. Also, these large customers tend to purchase a large quantity of products on credit terms. These factors may indicate that smaller independent or regional merchants may not be able to serve the requirements of certain large professional customers since they may suffer difficulty managing the effects on their cash flow and carrying the credit risk. In practice, the OFT's investigation indicates that only the largest GBMs with nationwide presence are able and willing to supply their products at the prices demanded by this small class of large customers.
25. There may be further segmentation within this class of customer, for example between house builders and civil engineering firms. These possible subsets are considered where appropriate in the horizontal issues below.

Conclusion on product market

26. The OFT has assessed the merger with reference to (a) the supply of building materials through GBMs (primarily to builders and other tradesmen), (b) the specialist ironmongery merchant market and (c) the specialist glass merchant market.

⁷ Anticipated acquisition by Travis Perkins plc of the BSS Group plc, 26 October 2010.

27. As is stated in the Merger Assessment Guidelines, the OFT will take into account constraints from outside the frame of reference or market in its competitive assessment. In this case, the OFT considers that there are likely to exist a degree of competitive constraints on GBMs from a range of specialists where there is a partial overlap in product ranges between the GBM and the specialist. The strength of this constraint will depend on the size, profile and type of products sold by the specialist. For example, it is stronger where the specialist competitor is large and the GBM derives a high percentage of their total revenue from products that are similar to the specialist's product range. Therefore, in local areas that raise prima facie competition concerns (based on a reduction in the number of fascia of GBMs), the OFT has, where evidence is available, taken account of the competitive constraint from specialists active in that area.
28. The OFT believes that there may be a distinction between the purchasing requirements of customers with national, regional and local scope, such that it is appropriate to delineate the market with reference to this division. Therefore, the OFT has assessed the transaction with reference to (a) national, (b) regional, and (c) local customers. The extent to which local and regional independent GBMs exert a competitive constraint on the national GBMs is considered for each type of customer.

Geographic scope

GBMs

29. The parties submit that, in line with previous case precedent in building materials mergers, there are both national and local aspects to competition. Both Build Center and Jewson set elements of their offering, notably purchasing policy, branding and some marketing nationally, but local branches are given significant discretion in offering discounts on the list price of products and also control the quality, range and service of the branch offering. Furthermore, the parties submit that customers typically choose their suppliers by reference to their ability to provide products in their local area.
30. The geographical scope of competition is also dependent on the preferred purchasing method of the customer. For large customers, especially for the small number of large customers who desire a national framework agreement, or other similar long term contract, the geographical spread of the business may be important. To be a credible contender for these large contracts, a GBM may

require a network of branches that can adequately serve the geographic area of the contract. Whilst this will not be the case for all large customers, and it seems that even large customers with framework agreements tend to purchase from local players to some extent, it introduces regional and national elements to competition, as local players may not be credible competitors for the contracts (see also paragraph 24 above).

31. In cases like this with multiple local areas, catchment areas provide a pragmatic approximation for a candidate market to which a hypothetical monopolist test can be applied. A catchment area is generally defined so as to include the area in which the great majority (for example, 80 per cent) of a branch's custom is located.⁸
32. In 1999, the GBM sector was reviewed in the *Travis Perkins/Keyline* decision under previous legislation (the Fair Trading Act 1973), using a 10-mile radius as the local catchment area. Since the Act came into force, the OFT has examined a number of transactions in the building materials sector, but this is the first between national GBMs. In its *Travis Perkins/BSS* decision (in October 2010), the OFT assessed the plumbing and heating sector based on a 10-mile radius. The OFT has assessed whether the catchment areas used in previous cases are appropriate in this case given that the dynamics of competition may have changed or be different. In particular, GBMs tend to occupy significantly larger sites than plumbing and heating specialists. The parties submit that larger sites are generally harder to acquire, which could suggest a lower density of GBMs, which could encourage competition over a larger geographic area.
33. The parties provided analysis of the catchment areas within which 80 per cent of their customers' invoice addresses are located for each of their branches, but only for [trade and credit account] customers located within 30 miles of the branch.⁹ The parties submit that the [account] data represents [a large majority] of all sales and often non-[account] customers (for example, customers who pay in cash or by personal credit card) will actually be trade account holders who for whatever reason have chosen to pay by cash for an order. Therefore, they

⁸ OFT/CC Joint Merger Assessment Guidelines, paragraph 5.2.25.

⁹ The parties submit that customers located more than 30 miles from a branch are typically those who are invoiced to a central location (such as national builders) or are customers who often work long distances away from home (such as shop fitters). Therefore, the parties believe that the inclusion of these customers would overstate local catchment areas.

believe that it is broadly representative of their customer base and does not exhibit any systematic bias towards delivery or collection customers.

34. The 80 per cent catchment analysis, which has been conducted for customers of both Jewson and Build Center, suggests that the average catchment area for the parties in London is around [10-20] miles, in small towns around [10-20] miles and in urban areas around [10-20] miles. The parties believe that this information suggests a [10-20] mile catchment area would be appropriate in this case.
35. Additionally, the parties have provided evidence on delivery catchment areas. As they do not systematically record details of delivery addresses and in any event new build sites are unlikely to have been assigned a postcode at the time the relevant purchase is made (the lack of a post code makes analysis difficult), Jewson undertook an internal study of its branch level records over a two week period at five branches, selected to cover a range of different types of locations. In four of the five locations the 80 per cent catchment area, by linear delivery distance, exceeded [10-20] miles. Except for one area ([]), which had a catchment area of over [20-30] miles, the results are not materially out of line with the analysis of catchment areas based on invoice/home address.
36. The parties believe that independent GBMs tend to deliver over a larger distance than the large national GBMs because they tend to have fewer branches and they value customer relationships highly, but submissions received by the OFT from independent GBMs did not support this belief. Therefore, evidence on both the 80 per cent home address catchment area and 80 per cent delivery catchment area supports a catchment area of around [10-20] miles.
37. The OFT has considered the parties' view that [10-20] miles would be an appropriate catchment area to use in this case. However, the OFT considers that the invoice address of customers may give an incomplete picture for GBMs. In particular, if customers tend to pick up goods from a branch near the site they are working, the 80 per cent catchment area based on home (or office) address could merely be showing that builders are prepared to travel in excess of [10-20] miles to work on a site. This is likely to be a particular issue in large conurbations, such as London, where population centres may not be located close to areas of intense construction activity.
38. In order to assess the appropriateness of the 80 per cent catchment area, which the parties submit should be regarded as a good proxy in this case for local

catchment areas, and which should therefore lead to a initial filter based on a [10-20] mile radius, the OFT has looked at other sources of information.

39. The parties have provided data on the percentage of goods that are collected, delivered by the branch or delivered directly.¹⁰ Across all regions, around [] per cent of both parties' goods are collected, [] per cent delivered and [] per cent delivered directly, although these proportions vary greatly from branch to branch. Therefore, on average, [a majority] of sales are delivered, normally to the customer's building site, with the remainder collected from the branch by the builder. This mix of collection and delivery further complicates the definition of a catchment area and potentially leads the 80 per cent catchment area to overstate the area over which local competition truly exists.
40. In (say) a grocery retail market, if 40 per cent of customers collect their goods, the catchment area would be partly based on customers' willingness to travel from their home address to the branch. This would normally lead to narrower catchment areas, particularly within the M25, where travel is often relatively more time consuming than elsewhere. However, as builders have the opportunity to purchase goods at any time during their working day and the goods are required at the site rather than at the invoice address (which will normally be the builder's home or office), it is not clear that they would collect goods solely from branches based near their invoice address.
41. Information received by the OFT shows that the relationship between a customer and the GBM staff is important in this industry. Orders are often individually negotiated, and customers buy from GBMs regularly, sometimes every day. Some face to face contact is therefore a feature of the industry. The OFT has been told that when a particular staff member moves to work at a competing GBM, many of his customers will often move with him. The desirability of fairly regular face to face contact suggests that the distance a customer is willing to travel to collect goods is an important factor in assessing the geographic area over which competition takes place.
42. In an attempt to determine the collection patterns of customers, the OFT requested information from the parties on the flow of collection business through the day. The data show that there is a peak in collection orders shortly after the

¹⁰ Direct sales are where the branch makes the sale, but the products are delivered directly from the manufacturer/importer, so the goods do not physically pass through the GBM branch.

branch opens between 8 and 9 am, orders then fall off slightly before another peak around lunchtime and then decline for the remainder of the day. The peaks in collection activity may indicate that customers are collecting goods from a branch near their site, as the lunchtime peak is likely to be associated with journeys from site, whereas the morning peak could be associated with any collection profile.

43. Additionally, the OFT sent out nearly 1,000 questionnaires to branch level customers of the parties and received a response to over one-third of these questionnaires. When asked where the merchant from whom they last purchased a large quantity of building materials was located, the majority of respondents indicated that it was from a merchant based near their site, although a significant proportion indicated it was from a merchant near their home. Relatively few customers collect goods en route from their home to the site.
44. These pieces of evidence suggest that using the customer's invoice address (which is usually the home or office address) to assess a branch's catchment area may give an incomplete impression because the location of the branch in relation to the building site is more important than its location in relation to the customer's home or office.
45. The OFT's questionnaire contained a question on the parties' customers' willingness to travel to collect goods from a branch. Customers indicated that they were willing to travel a median of 10 miles to collect goods that could not be delivered, although there was significant variation.¹¹
46. The parties' survey of around 10,000 customers contained a question on willingness to travel to collect building materials.¹² This found that:
 - [] per cent of Jewson customers and [] per cent of Build Center customers are willing to travel 0-10 miles.
 - [] per cent of Jewson customers and [] per cent of Build Center customers are only willing to travel between 0 and five miles.¹³

¹¹ The question asked was: 'How far would you drive to collect building materials that could not be delivered? __ mile(s)'.

¹² The question asked was: How far are you willing to travel (one way) to collect goods from a builders merchant? The choices were: 0-five miles, five-10 miles, 10-15 miles, 15-20 miles, more than 20 miles, other.

47. The OFT has also asked the parties' GBM competitors how close to an existing branch they would consider opening a new one. There was a significant variation in competitors' answers, but they stated that it depends on population density and would normally be between five and 20 miles. On the assumption that a GBM would generally wish to avoid cannibalising an existing branch's sales with a new branch opening, this may give an indication of what GBMs consider a branch's catchment area to be. However, the OFT recognises that new branch openings are not necessarily a good proxy for catchment areas as they are affected by a number of factors other than sales cannibalisation.
48. On balance, the evidence available to the OFT suggests that a 10-mile radius is an appropriate area over which to assess the competitive environment outside the M25 at first phase.

GBMs within the M25

49. The implication from the parties' 80 per cent catchment area data is that the catchment area inside the M25 is no narrower (in fact it is slightly wider) than that outside of the M25. However, branches tend to be located closer together in cities, particularly in London, which could be illustrative of customers' being willing to travel less far. Indeed, areas with a 10-mile radius in London often contain a large number of Jewson branches. This may suggest that local catchment areas are smaller in London.
50. The parties have presented the results from their customer survey, split by area, which show that:
- [] per cent of Jewson customers and [] per cent of Build Center customers are willing to travel 0-10 miles within the M25.
 - [] per cent of Jewson customers and [] per cent of Build Center customers are only willing to travel between 0 and five miles within the M25.

¹³ The parties' survey question was slightly different to the OFT's question, which perhaps explains the slightly shorter distance that respondents to the parties' survey were willing to travel. The OFT's question related to goods 'that could not be delivered'.

51. The survey results suggest that for Build Center customers in particular, the catchment area may be narrower within the M25 than outside of it.
52. When the OFT asked the parties' GBM competitors how close to an existing branch they would consider opening a new one, answers suggested that catchment areas should be smaller within the M25 than elsewhere. Many answers suggested a two- to five-mile catchment area within the M25.
53. Therefore, in line with previous OFT decisions in comparable sectors, it seems appropriate to use a smaller catchment area for GBMs within the M25 than outside the M25, but it is unclear precisely what that catchment should be and whether (for example) three or five miles would be the more appropriate filter to use. The initial filter used a catchment area of three miles so as to be appropriately cautious and ensure that potentially problematic areas were not excluded from a more detailed assessment.

Specialist glass distributors

54. The parties submit that the geographic market for glass specialists is wider than for GBMs. Because of the nature of the products, customers rarely collect them from a branch. This argument is supported by third party submissions.
55. The parties submit that the Glass Center business delivers within an area of around 50 miles and that this is typical of a glass merchant. The OFT has not received any information to the contrary.
56. As no material competition concerns arise in relation to glass specialists, the OFT has not come to a firm conclusion on the appropriate size of the geographic market for this activity.

Specialist ironmongery distributors

57. The parties' ironmongery businesses are not directly comparable. Whilst Ironmongery Center operates from branches, Saint-Gobain's George Boyd business is mail-order only. George Boyd competes on a national basis and it has no physical presence in local areas where Ironmongery Center is present.

58. There is a single Jewson branch in Glasgow that stocks a large range of ironmongery products for historical reasons. Competition in this particular local area has been assessed for completeness in the competitive assessment section below.
59. The parties submit that competition between ironmongery specialists is driven less by local factors than the GBM channel and that to the extent that local competition occurs, it is over a wider geographic area than for GBMs. The nature of the products involved means that internet and mail-order sales are common, giving a much stronger national basis for competition. The parties have presented evidence that shows the geographic distribution of ironmongery customers is 'flatter' than for GBMs, which shows that a greater proportion of customers travel further.
60. The parties have also analysed the 80 per cent catchment area for Ironmongery Center's customers by invoice address. Disregarding those customers who are located more than 30 miles from the Ironmongery Center branch ([20-30] per cent across all 11 Ironmongery Centers) gives an 80 per cent catchment area of [10-20] miles. In the case of the Glasgow Ironmongery Center (the only area where there is potentially an overlap between the parties' physical branches) 80 per cent of its account customers come from within [10-20] miles of the branch.
61. The evidence presented by the parties suggests that the catchment area for specialist ironmongery merchants may be wider than for GBMs. However, the OFT applied a cautious 10-mile initial filter when analysing local issues and (as discussed below) found no material competition concerns, so has no need to come to a firm conclusion on the geographic market definition for this activity.

Conclusion on geographic market

62. The OFT has assessed the GBM sector in relation to the national and regional aspects of competition (in particular competition for large national customers). The OFT has also considered possible segmentation amongst large national customers.
63. In assessing local aspects of competition, the OFT has proceeded on an appropriately cautious basis in using a three-mile initial filter for catchment areas for GBMs within the M25, and a 10-mile initial filter for catchment areas for GBMs outside the M25.

64. However, the OFT recognises that there is evidence that supports the extension of the catchment area in some areas that are identified by these initial filters, and this is taken into account in the competitive assessment below. In particular, the OFT has asked the parties to provide the 80 per cent delivery catchment area in each of the areas identified by the initial filter. The OFT has also asked the parties to conduct a fascia count for every branch that has an 80 per cent catchment area of less than 10 miles.
65. The OFT has also used evidence such as the responses from its customer questionnaire and the parties' customer survey to determine whether competition concerns arise for each branch identified by the relevant initial filter. Accordingly, whilst it is necessary to use the initial filters as a tool to help frame the OFT's competition assessment, the initial filters are not necessarily determinative of the relevant geographic area over which the OFT has analysed the competitive landscape.
66. In relation to glass specialists and ironmongery specialists, the OFT has used an initial catchment area of 50 miles and 10 miles (respectively). However, the OFT has not come to a firm conclusion on the appropriate size of the geographic market for these activities.

VERTICAL ISSUES

67. The Saint-Gobain group is present in markets that are upstream of the GBM sector. In particular, the Saint-Gobain group has significant market shares in the manufacture of plasters, plasterboards and (to a lesser extent) municipal castings.
68. The OFT has framed its analysis of input foreclosure around three questions:
- Ability: would the merged firm have the ability to harm rivals, for example through raising prices or refusing to supply them?
 - Incentive: would it be profitable to do so?
 - Effect: would the effect of any action by the merged firm be sufficient to reduce competition in the affected market to the extent that, in the context of the market in question, it gives rise to a substantial lessening of competition?

69. In practice, the analysis of these three questions may overlap and many of the factors examined below may affect more than one question.

Plasters

70. Saint-Gobain acquired BPB (British Gypsum) in 2005 and with it acquired a near monopoly of UK plasters manufacturing. The parties submit that there is currently one plasters competitor in the UK, Knauf, which has a market share of around [0-10] per cent. This competitive structure would be likely to give Saint-Gobain the ability to foreclose.
71. In 2005,¹⁴ the European Commission found that the acquisition of BPB would not make it profitable post-merger for Saint-Gobain to attempt to foreclose downstream GBM rivals. Importantly, a high proportion of Saint-Gobain's plaster would still require a route to market through third parties.
72. The parties estimate that the total volume of plaster sold in the UK in 2010 was [0.5-1.5 million] tonnes. Of this the parties estimate Jewson and Build Center have a combined share of supply of [10-20] per cent. Jewson and Build Center purchased [10-20] per cent of Saint-Gobain's UK plaster production, with the remainder sold mainly through GBM competitors.
73. Saint-Gobain provided details of its upstream and downstream profitability to enable the OFT to analyse whether foreclosure would be a profitable strategy. Additionally, this analysis allowed the OFT to determine the approximate downstream market share that would be necessary for foreclosure to be profitable and thus how likely it is that the parties could expand sufficiently in the short term to make foreclosure profitable.
74. This analysis showed that if Saint-Gobain refused to supply any rival downstream GBM competitors and could not increase downstream sales it would result in a significant financial loss. In order for foreclosure to be profitable, Jewson would need to increase downstream sales (and share of supply) by a significant extent. In the OFT's view, taking account of the available evidence, it seems unlikely that Jewson would be able to achieve this, and it therefore seems unlikely that Jewson would have the incentive to attempt this. Total foreclosure

¹⁴ Case COMP/M.3943 Saint-Gobain/BPB.

also presupposes that Jewson could credibly commit not to restart supplying, for which the OFT has seen no evidence despite having the ability to do so.

75. Further, the evidence on Saint-Gobain’s strong market position and its upstream profit margins for plasters (consistently around [] per cent) suggests that partial foreclosure is less likely than total foreclosure. Any increase in upstream prices will decrease sales, which would result in a greater loss upstream than is captured downstream, as downstream margins are significantly lower. Additionally, partial foreclosure usually has less of an impact on competition than of total foreclosure.
76. In addition, the parties submit that Build Center currently purchases negligible amounts of plaster from sources other than British Gypsum, so it is not clear how a plasters competitor could be foreclosed as a result of the transaction.
77. No GBM competitors raised any concerns about either full or partial foreclosure in the normal course of business and it is not clear that the unavailability of a single product line would lead to the foreclosure of a rival GBM. Therefore, the OFT does not believe foreclosure, either of manufacturing or distribution rivals, is likely (and there is no need to consider the potential effect of any foreclosure).

Plasterboard

78. Saint-Gobain’s plasterboard production capacity was acquired as part of the acquisition of BPB in 2005. The parties submit that there are two other plasterboard manufacturers in the UK and that raw materials for the production of plasterboard are plentiful. The parties submit that shares of supply for plasterboard are as follows:

Table1: National plasterboard shares of supply

Competitor	Sales volume (square metres)	Share of supply (per cent)
Saint-Gobain	[]	[50-60]
Knauf	[]	[20-30]
Lafarge	[]	[20-30]
Other	[]	[0-10]

79. The parties estimate that the total volume of plasterboard sold in the UK in 2010 was [100-300] million square metres. Of this the parties estimate that Jewson and Build Center have a combined share of supply of [10-20] per cent. If all of this was purchased from Saint-Gobain, this would represent [10-20] per cent of Saint-Gobain's UK plasterboard production.
80. Given its share of supply, Saint-Gobain would not necessarily have the ability to foreclose. In any case, Saint-Gobain provided details of its upstream and downstream profitability to enable the OFT to analyse whether foreclosure would be a profitable strategy if it were the case that it would have the ability. Additionally, this analysis allowed the OFT to determine the approximate downstream market share that would be necessary for foreclosure to be profitable and thus how likely it is that the parties could expand sufficiently in the short term to make foreclosure profitable.
81. This analysis showed that in order for foreclosure to be profitable, Jewson would need to increase downstream sales (and share of supply) by a significant extent. In the OFT's view, taking account of the available evidence, it seems unlikely that Jewson would be able to achieve this (given its share of supply downstream) and it therefore seems unlikely that Jewson would have the incentive to attempt this.
82. Additionally, it is unclear that any rival GBM would be successfully foreclosed from the market if Saint-Gobain refused to supply plasterboard, as there are two large competitors (Lafarge and Knauf) at the manufacturing level. When contacted by the OFT, no competitor (upstream or downstream) expressed concerns on this issue.
83. Saint-Gobain would have to increase its combined downstream market share by a significant extent for foreclosure to be profitable, but even then, it is unlikely that downstream competitors would be foreclosed from the market, given that alternative suppliers exist in the market. Build Center currently purchases its plasterboard from [], but there have been no concerns raised by any third party that [] would be foreclosed if Build Center switched supplier to Saint-Gobain post merger. Therefore, the OFT does not believe foreclosure, either of manufacturing or distribution rivals, is likely (and nor would Saint-Gobain necessarily have the ability in any case).

Municipal castings

84. Municipal castings are products such as manhole covers and gulleys, cast out of metal. The parties submit that there are a number of manufacturers in the UK. Saint-Gobain is the largest player, with a share of supply of [30-40] per cent in the UK, and there are six competitors with shares of supply of between [0-10] and [20-30] per cent (Wrekin Welding Fabrication, Clarke Steel Drain, Peter Savage, Thomas Dudley, Fibrelight, and Structural Sciences Composite).
85. The parties estimate that the total value of municipal castings sold in the UK in 2010 was £[0-100] million (at manufacturer's selling price). Of this the parties estimate Jewson and Build Center have a combined share of supply of [0-10] per cent. If all of this was purchased from Saint-Gobain, this would represent [10-20] per cent of Saint-Gobain's UK municipal castings production. Given the number of alternative suppliers in the municipal castings market, the OFT has seen no evidence that any distribution rival would be unable to source municipal castings if Saint-Gobain refused to supply or increased its prices.
86. The parties submit that municipal castings are not a product typically stocked by GBMs, with potentially more products being supplied directly by manufacturers than distributed through GBMs. Thus, any ability to foreclose an upstream competitor by withholding downstream demand will be tempered because the manufacturer can also directly supply the market.
87. Given the available evidence, the OFT does not believe there is a realistic prospect that the parties would have the ability or incentive to foreclose manufacturing rivals post-transaction, nor that any such foreclosure would have an anticompetitive effect.

HORIZONTAL ISSUES FOR GBMS AT THE NATIONAL AND REGIONAL LEVEL

88. The OFT has considered whether the transaction raises any concerns about horizontal unilateral effects at the national or regional level and whether the transaction may be expected to give rise to a substantial lessening of competition as a result. As part of this assessment, the OFT has considered whether some or all customers with a national scope will be adversely affected by the transaction.

Competition for all customers nationally

89. The parties submit that they had a combined share of sales in 2010 of the distribution of building materials through GBMs of [15-25] per cent, with the transaction causing an increment of [0-10] per cent (see Table 2 below). This would not normally be of a size to cause significant competition problems provided the market has been drawn sufficiently narrowly. This includes TradePoint (a division of Kingfisher that has entered the market in the last two years targeting trade customers from existing B&Q premises) and a large number of independent merchants.

Table 2: National GBM shares of supply for all customers

GBM	No. of branches	Sales (£m)	Share of branches (%)	Share of Sales (%)
Saint-Gobain	[]	[]	[]	[]
Build Center	[]	[]	[]	[]
Travis Perkins	[]	[]	[]	[]
TradePoint	[]	[]	[]	[]
Grafton	[]	[]	[]	[]
Burdens	[]	[]	[]	[]
MKM	[]	[]	[]	[]
Other	[]	[]	[]	[]
Total	[]	[]	100	100

Source: internal Saint-Gobain estimates based on publicly available material.

90. Whilst the inclusion of some of these competitors may be debatable, even if Burdens and a number of the independent GBMs that make up the 'Other' category in Table 2 were excluded, the transaction appears not to raise substantive competition concerns at an aggregate level nationally, not least because a large part of the competition in this sector takes place at a local level.

Competition for large customers with national scope

91. As part of its investigation, the OFT contacted 30 large customers who operate nationally. Of the minority who responded, a small number made the suggestion that the transaction represents a reduction in competition between GBMs who can service large customers with a national scope. It was suggested that the transaction could be seen as a four to three merger, with the parties' only competitors post-merger being Travis Perkins and Grafton (Buildbase).

92. It is not clear from the OFT's market investigation that large customers have fundamentally different demand characteristics from other GBM customers. It is

therefore not clear that these customers should be regarded as a separate customer segment.

93. It is also difficult to produce reliable share of supply figures for this suggested class of customer for two main reasons. First, it is quite difficult to identify which customers should be included in this class and which businesses are competing for these customers' purchases. Secondly, GBMs in general, and the parties in particular, do not seem to regard national customers as a distinct market.
94. In the absence of reliable data covering this putative customer segment, the OFT has undertaken a qualitative assessment of the competitive environment for national customers.
95. In the OFT's view, the characterisation of the transaction as a 4 to 3 reduction in competitors overstates the parties' competitive position in relation to large customers with a national scope. The following businesses represent a competitive constraint to varying extents:¹⁵
- **Burdens:** It seems on the information currently available to the OFT that Burdens is not a close competitor in the GBM sector. However, its product ranges do overlap with GBMs, and there is likely to be some competition at the margins. In particular, Burdens generally operates in a specialist subsector (civils, drainage, engineering) and it seems likely that Burdens exerts a competitive constraint for the customers in this subsector such as civil engineering companies. The OFT notes the parties' view that Burdens is a direct competitor, notwithstanding its focus on a specialist subsector, and recognises that the evidence is mixed on this issue. For example, of the six national customers who replied to the OFT's questions, a greater level of spend was placed with Burdens than with Grafton.
 - **Independent GBMs:** Some third parties contacted by the OFT have suggested that a lack of national geographic scope may make independent GBMs less attractive to the large national customers, especially for certain types of purchases. However, it seems that the large independent GBMs operating on

¹⁵ TradePoint is not included in the list because most third parties contacted by the OFT have said that TradePoint is not generally considered able to compete for large national customers. The parties have accepted that TradePoint is not currently an effective competitor for these customers. However, given TradePoint's recent entry into the GBM sector and its rapid growth, it seems possible that they could emerge as a credible supplier to national customers in the future.

a regional basis (such as Bradfords, MKM, Ridgeon, Huws Gray, and EH Smith) supply national customers to a material extent, although the available evidence is inconclusive. The parties have provided evidence showing that even the largest national house builders often purchase through regional buying offices, in which case the large regional independent GBMs would appear to represent a competitive constraint. The parties have also provided a survey conducted in July 2010 in the normal course of business showing that self-identified national customers direct a significant proportion of their GBM spend to independent GBMs.¹⁶ The parties have provided data from Saint-Gobain's upstream plasterboard business (British Gypsum) showing the proportion of sales that are placed through a merchant but delivered direct to site, which are typically only for large customers. The data suggest that independent GBMs have a similar proportion of direct to site orders to the major GBM chains. The parties have also provided documentary evidence showing large orders for national customers lost to independent GBMs.

- **Manufacturers:** The parties have provided information showing that the GBM sometimes arranges for the supply of a product at a price agreed directly between the customer and the manufacturer, meaning that the GBM has little or no influence over pricing. Alternatively, there may be some form of rebate arrangement between the manufacturer and the GBM, which also shows a lack of influence by the GBM.
- **Specialists / Intermediaries:** For a customer placing large orders (for example, orders that constitute a full lorry delivery of products), specialists in the fields of insulation, drainage, glass, timber, and other product ranges are likely to be effective competitors against the national GBMs. The parties have also provided information suggesting that there are businesses that operate as intermediaries between the manufacturer and the customer and/or are specialists in a limited number of products. They can supply materials to customers by co-ordinating delivery direct from the manufacturer, and do not necessarily need a typical GBM yard. Examples of businesses providing services in this broad category include Brickability (bricks only), SIG or Premier Building Supplies.

¹⁶ In this survey, 'national customers' are respondents who classified themselves as such. It is not clear how this differs from other possible definitions of national customers.

96. The evidence received by the OFT suggests that large national customers do use the suppliers listed above to some extent, even if they perhaps do not use them as their primary supplier.
97. In the OFT's view, the parties are not particularly close competitors for large customers with a national scope, or for any readily identifiable subset of those customers. In particular, it seems that Build Center supplies large national customers to a greater degree than Jewson, relative to other types of customers. However, as stated above, shares of supply in this regard have been relatively difficult to quantify.
98. For the reasons given above, the transaction is not likely to result in a substantial lessening of competition in relation to large customers with a national scope.

Competition for large customers with regional scope

99. The OFT has assessed whether the transaction causes concerns with regard to competition between GBMs who can service large customers with a regional (as opposed to national or local) scope.
100. As the large national GBMs (such as Travis Perkins and Grafton) are present in each region and there is at least one large regional competitor present in each region (such as Bradfords, MKM, Ridgeon, Huws Gray, and EH Smith), the OFT believes that any adverse effects to regional competition caused by the transaction should not be a material concern, and in any case any adverse effects are of a lesser order than for national customers (discussed above). Accordingly, the transaction is not likely to result in a substantial lessening of competition in relation to large customers with a regional scope.

HORIZONTAL ISSUES FOR GBMS AT THE LOCAL LEVEL

Introduction

101. The OFT has considered whether the transaction raises any concerns about horizontal unilateral effects in local areas and whether the transaction may be expected to result in a substantial lessening of competition as a result.
102. In assessing possible competition concerns at the local level the OFT has considered a large quantity of evidence submitted by the parties and by third

parties, which is discussed in more detail where appropriate below. In particular, the OFT has considered:

- margin concentration analysis submitted by the parties, which analysed the effect of the number and presence of different competitors on the profit margins of the parties' branches in local markets, thus providing information on the competitive constraint exerted by these competitors
- entry and exit analysis submitted by the parties, which analysed the extent to which the entry or exit of competitors in local markets affects competition
- responses to questionnaires sent by the OFT to ten branch level customers of each of the parties in each of the 50 areas¹⁷ initially identified as potentially problematic (nearly 1,000 questionnaires in total, with 339 responses), which helped the OFT to consider such issues as the geographic market, the role of independent GBMs, the competitive position of the parties, and the opinions of local customers
- local area telephone surveys carried out by the parties, which surveyed 100 customers of each party in 49 local areas (nearly 10,000 customers in total), and which resulted in useful data on such issues as the closeness of competition between the parties in each area, and the distances customers are willing to travel to visit GBMs, and
- other documentary evidence submitted by the parties, including (but not limited to) information on independent GBMs, Jewson's internal competitor monitoring documents, delivery data showing the catchment area within which 80 per cent of the parties' customers are located, customer surveys carried out in the normal course of business, and evidence showing the extent to which the parties are able to pass through cost increases to their customers.

103. Consistent with its approach in comparable cases, the OFT has adopted a two step approach to assess the impact of the transaction on local areas:

- First, the OFT employed an initial filter based on a three-mile radius within the M25 and a 10-mile radius outside the M25. As discussed further below,

¹⁷ Two areas were subsequently added to the list of potentially problematic areas.

the OFT also considered whether it was appropriate to widen or narrow the catchment area in certain areas. Any area where the transaction leads to a reduction in fascia within the relevant catchment area from five to four (only where there is also a two to one within five miles¹⁸), four to three, three to two or two to one was treated as raising prima facie competition concerns and requiring further analysis.

- Secondly, the OFT used the available evidence to assess the reduction in competition resulting from the transaction in each local area identified by the initial filter. This assessment included a consideration of local geography, the parties' proximity to each other, customer comments, and other local factors. The parties' local area survey was used by the OFT to measure the closeness of competition between the parties and other competitors in the area, and the incentives for any post-merger price increases.

104. The remainder of this section is structured as follows. In undertaking the fascia count as part of the initial filter, it is clearly important which competitors are included (and which are excluded). This issue is therefore considered in the following section. Subsequently, the closeness of competition between Jewson and Build Center is considered because this is an important issue when considering the reduction in competition caused by the transaction. Then the OFT's local area methodology is explained in more detail. The section concludes with the competitive assessment of the areas identified by the initial filter.

Competitors

105. The parties submit that they compete against a wide range of GBMs, comprising of:

- national chains, which they believe to be the parties, plus Travis Perkins, Grafton (Buildbase), Kingfisher (TradePoint), and Burdens, and
- a large number of local and regional independent GBMs.

106. The OFT has considered whether these businesses, and any additional businesses, should be included in the competitor set for the local area assessment and in particular in the fascia count as part of the initial filter.

¹⁸ This is because proximity is an important factor in the GBM sector.

(a) Travis Perkins and Grafton

107. The OFT's market investigation has shown that Travis Perkins and Grafton (Buildbase) are generally acknowledged to be major national GBM chains that compete directly against the parties. The OFT has included these two competitors in the fascia count for the initial filter.

(b) Kingfisher TradePoint

108. The OFT has considered whether TradePoint represents a sufficient competitive constraint on the parties to be included in the initial filter. This is because TradePoint is a relatively new entrant trading from existing B&Q premises, and as such may not yet have a sufficient GBM customer base to constrain effectively the established national chains. The parties have argued that TradePoint is a valid competitor.

109. At the OFT's request, the parties submitted an analysis of entry and exit, which attempted to measure the impact of competitors' (particularly TradePoint's) entry (or indeed exit) on Jewson's variable profit margin. The results of this analysis show that []. However, both the OFT and the parties agree that the results were of limited use for a number of reasons including the presence of some counterintuitive results, the difficulty of knowing the precise date of entry in many cases, the large variation of results arising from the same competitor entering the market, different results in the two different time periods that were assessed, and the likely presence of other factors that could not be taken into account in the analysis.

110. The parties have submitted a survey undertaken in the normal course of business in June 2011, which found [].

111. Evidence received by the OFT is mixed on the issue of whether TradePoint should be regarded as a full competitor in the GBM sector. It seems that TradePoint stocks a similar range of products to a GBM and offers delivery as a typical GBM does, although it is partly fulfilled through third parties. However, TradePoint is staffed to some extent by staff from its DIY business, and the OFT has received some anecdotal evidence that its offering does not currently include everything that trade customers expect.

112. It seems that TradePoint currently targets local 'jobbing' builders, and that it is not currently in a position to win business from large contractors. However, these types of smaller customers represent the majority of sales (by volume) in the GBM sector, and the OFT recognises that TradePoint's apparent lack of competitiveness for large customers may change as TradePoint becomes more established. The OFT also recognises that a GBM does not have to be a full competitor for every customer in order to exert a competitive constraint on the parties.

113. TradePoint offers a separate entrance and trade counter for GBM customers in a number of the larger 'warehouse' stores. TradePoint customers are able to place orders in smaller branches, using a catalogue ordering and collection service.

114. On balance, the OFT's view is that TradePoint should be included in the fascia count for the initial filter where it is present as a fully operative GBM (those branches with a separate GBM entrance and trade counter). The parties suggest that even the branches that merely operate a catalogue service may impose some competitive constraint on Jewson and Build Center, but only 126 TradePoint branches which have a separate GBM entrance and trade counter were included in the initial filter.

(c) Burdens

115. The OFT believes that Burdens is not a sufficiently direct competitor for local customers in the GBM sector to be included in the initial filter, though the OFT recognises that the evidence is mixed on the issue.

116. The evidence suggesting that Burdens is not a competitor includes:

- Although its product ranges do overlap with GBMs, and there is likely to be some competition at the margins, Burdens generally operates in a specialist subsector (civils, drainage, engineering) serving large civil engineering firm rather than the GBM sector serving local jobbing builders.
- Burdens branches tend to be two to three times larger than a typical GBM, and they are not located in places where GBMs tend to be located (very generally, Burdens branches tend to be less readily accessible from typical building site locations).

- Burdens branches are further apart from each other. These differences mean that Burdens branches tend not to be close to Jewson or Build Center branches, and the evidence received by the OFT suggests that proximity is a material factor in GBM competition.¹⁹
- Responses to the OFT's local customer questionnaires suggest that few GBM customers view Burdens as a GBM competitor. Burdens were only a first choice merchant for two customers and a second choice merchant for two customers who responded to the OFT's branch level questionnaires (sample size 339).
- In the local area customer survey evidence submitted by the parties, Burdens does not feature as prominently as one might expect for a large GBM, even where its relatively close proximity to Jewson or Build Center suggests it should feature.
- []

117. On the other hand, the parties have made various arguments in support of treating Burdens as a competitor, including:

- One would not expect to see Burdens appear very often in the local area survey results (or in the OFT's own customer questionnaire). Given that only areas with a fascia count of four to three or worse have been surveyed, and that in nearly all areas a Travis Perkins branch and at least one large independent is present, in general there will not be other fascia close within these areas.
- Burdens does perform well in some places in the survey results. For example, Burdens ([0-10] per cent) is mentioned in Maidstone by nearly as many Jewson customers as Build Center ([0-10] per cent) despite being 11.2 miles away to Build Center's 0.6 miles (and therefore imposing a constraint even from outside the initial 10-mile filter).

¹⁹ See, for example, the parties' margin concentration analysis discussed above, which found that Jewson has a lower than average profit margin when Travis Perkins and large independent GBMs are present within five miles.

- Internal Jewson documents show customer orders that have been lost to Burdens, and frequently name Burdens as a competitor.
- Burdens stocks a full range of general building materials.
- The 2010 AMA report²⁰ notes that Burdens increasingly focuses on the specialist supply of civil engineering materials, but it does continue to supply general building materials.

118. On balance, it seems likely that Burdens does offer some competitive constraint for at least some local customers. However, having weighed up the available evidence, the OFT has adopted an appropriately cautious approach and therefore has not included Burdens in the fascia count for the initial filter. As the exclusion of Burdens from the initial filter can only increase the number of potentially problematic local areas, this approach enables the OFT to be certain that no local area has avoided a detailed competition assessment by virtue of including Burdens in the initial filter. The presence of Burdens in a local area has been taken into account in an appropriate way in the OFT's detailed competitive assessment of local areas.

(d) Independent GBMs

119. The term 'independent GBM' is used to describe a large spectrum of GBMs from quite small local GBMs with a single branch up to large regional GBMs with revenues of over £100 million and dozens of branches.

120. The parties' margin concentration analysis examined the effect of local area concentration on Jewson's branch level variable profit margins. They performed an econometric analysis of the relationship between margins and local competition, using an approach similar to that used by the Competition Commission in its market investigation into groceries²¹ and data for almost all Jewson branches.²² The specification included using:

²⁰ Builders and Plumbers Merchants Market UK 2010-2014, Eleventh Edition, June 2010, p62.

²¹ See for example, the Competition Commission's final report published 30 April 2008, paragraphs 6.52 to 6.63 and Appendix 4.4.

²² Branches for which 12 months' data was available, totalling [] branches.

- the number of rival national, large independent and other independent GBMs within five, 10 and 15 miles of each Jewson branch, and
- the presence of particular national GBMs, a large independent and another independent within five, 10 and 15 miles of each Jewson branch.

121. The results of the margin concentration analysis showed that Jewson's variable profit margin is [] when a large independent or another independent is present within five miles. The OFT's own analysis of the results and the underlying data generally agreed with the parties' findings on this issue.²³

122. Many independents are members of buying groups such as Cemco, LIMA, H&B, NMBS and United Merchants, which help independents to compete against the national GBMs. Buying groups can allow even single branch independent GBMs to obtain broadly comparable terms to the national GBMs. Buying groups vary in size and approach – for example, LIMA has only two members (Bradfords and MKM, which are the two largest independents), whereas the largest buying groups (United Merchants and NMBS) have more members than the largest national GBM (Travis Perkins) has branches. The OFT has spoken to four major buying groups and their unanimous view was that many independents do compete effectively at a local level against the Jewson, Build Center, and the other national GBMs.

123. The parties believe a strong independent presence is a feature of the GBM sector (and this has been generally borne out in the evidence such as the results of the OFT's customer questionnaires). Thus, the parties believe that a number of large independents should be included in the set of relevant competitors when assessing the effects of the transaction on competition in local areas. Further, they contend that smaller GBMs also exert a competitive constraint on the parties in local areas.

124. In particular, the parties have provided five types of evidence to support the proposition that regional and large independents should be regarded as a competitive constraint on the parties.

²³ The margin concentration data also suggest that []. This result is arguably counterintuitive and raises questions over whether other factors are affecting the results and therefore whether significant weight should be placed on this evidence, but overall the OFT found the margin concentration analysis to be helpful, particularly in showing an effect of competitors on a national basis, although it is less probative in individual local areas.

125. First, they have provided the evidence from a number of surveys commissioned by Jewson in the normal course of business. For example:

- In a June 2011 survey, [] per cent of respondents stated that an independent was their preferred merchant.²⁴
- In a July 2010 survey, [] per cent of respondents had used local GBMs with one or two sites and a further [] per cent said that they had used regional GBMs (independents with more than two sites). When asked which GBM they spent most with, [] per cent said local independents and [] per cent regional merchants. Additionally, [] per cent of respondents cited competitors such as Bradfords or MKM (which are large independent GBMs with a significant regional scope).²⁵

126. Secondly, they submit that Jewson actively monitors all large independents and many small local independents, []. This information forms the core of the information the parties have provided on independents: the implication is that Jewson would not spend time and money on monitoring and reacting to GBMs it does not regard as competitors.

127. Thirdly, they submit that independents consistently represent 40 to 50 per cent of the GBM channel, despite frequent acquisitions by the national chains, suggesting that independent GBMs are robust competitors against the national chains.

128. Fourthly, the parties submit that in a given area, independents can be significantly larger than the parties or other national chains. Independents can also buy products through buying groups, allowing them to purchase on similar or better terms than the national merchants.

129. Lastly, they submit that GBMs carry a wide range of basic products, with no internationally sourced 'must-carry' products, which would favour nationals over independents.

130. Therefore, the parties submitted a list of independents that they argued should be included in the initial filter and also argued that there are many other credible

²⁴ [].

²⁵ [].

independent competitors that also exert a competitive constraint on the parties even if they are not to be included in the initial filter.

131. Given the evidence discussed above, which shows that independents are widely used, [], evidence from third parties that shows that regional and local independents are used in the areas that the OFT is most concerned about, the presence of buying groups that allow independents to compete more effectively with the national chains, and general information supplied by the parties about each of these independents, the OFT believes it is appropriate to include in the fascia count for the initial filter those larger regional and local independents listed in Annex A. These are the independent GBMs that the OFT has been able to identify as offering a typical GBM product range from a typical GBM yard and either operating from multiple branches that generate a broadly similar level of revenues as the parties' typical branch, or from only a small number of branches that generate a larger level of revenues than the parties' typical branch.

132. In the OFT's view, it is likely that the list of independent GBMs in Annex A understates the number of GBMs that exert a competitive constraint on the parties. However, the OFT believes this list is an appropriate list for the initial filter given the time available for the OFT's review, and this approach did not prevent the OFT from considering other local competitors where appropriate in its analysis of each local area (for example, as a result of responses to the parties' customer survey).²⁶

(e) Specialist merchants

133. The OFT has also considered whether specialist merchants (for example, timber merchants, glass merchants, etc) exert a competitive constraint on GBMs. It seems likely that they do exert a competitive constraint to some extent because their product ranges tend to overlap and the distinction between (for example) a timber merchant and a GBM with a large timber offering may sometimes be relatively small. Indeed, in the case of timber, some GBMs seem to include the word 'timber' in their name, presumably because timber products are central to a GBM's offering. Therefore, to take this issue into account in its assessment, the OFT has asked the parties for a breakdown of sales by product category in each relevant branch. If a branch achieves a high proportion of its sales from a

²⁶ For example, [] was not included in the initial filter. However, in [], the survey data showed that this business should be regarded as a direct competitor to the parties and this was taken into account in the OFT's assessment of this local area.

product category other than heavyside building materials, a specialist merchant for that product category may impose more of a competitive constraint on the parties.

(f) DIY stores

134. Although the product ranges of DIY stores and GBMs overlap to some degree, the parties have not argued that DIY stores constitute a competitive constraint on GBMs. On the basis of the evidence available to it, the OFT does not believe that DIY stores constitute a competitive constraint and they have not been included in the initial filter.

Closeness of competition between Jewson and Build Center

135. The effect of the transaction in any local area depends to some extent on the strength of the competitive constraint that is being lost as a result of the transaction. If the parties are not particularly close competitors to each other, this may suggest that the transaction is likely to raise fewer competition concerns than if the parties are each other's closest competitor. The assessment below shows that Jewson and Build Center should be considered to be close competitors.

Margin concentration analysis

136. The results of the parties' margin concentration analysis showed that Jewson's variable profit margin is [] where there is a Build Center present within five miles. The parties' analysis suggests that across all local areas, [].

137. However, the OFT's own analysis of the results and the underlying data found [].²⁷ This uncertainty over the effect of Build Center in a local area has led the OFT not to rely on the margin concentration analysis on this particular issue (the analysis is discussed below in relation to other issues).

Local area surveys

138. The parties have undertaken telephone surveys in 49 local areas²⁸ covering 100 customers of each party in each area (reaching a total of nearly 10,000

²⁷ [].

²⁸ Surveys were not undertaken in Dalbeattie, Greenock or East Kilbride.

customers). The results of the surveys have been used to calculate diversion ratios, which provide some indication of the closeness of competition between the merging parties and so whether a branch has the ability to raise its prices post-merger. The diversion ratios, in combination with the variable profit margin of a branch, have been used to calculate the general upward pricing pressure index (**GUPPI**) (margin multiplied by diversion ratio) on a number of different bases.²⁹ The GUPPIs show the value of business internalised by the merger in percentage terms. To give body to the notion of pricing pressure, the GUPPIs have been calibrated as a potential price rise by assuming a cost pass through rate of 100 per cent, in each local area.³⁰

(a) Diversion questions

139. The survey asked two diversion questions. First, there was a purchase specific question.³¹ The parties were unwilling to ask a question that suggested the branch may close, so instead asked a question which indicated the product was unavailable. Due to the way this particular purchase specific question was phrased, the OFT was concerned that this measure of short term (that is, single purchase) diversion may not accurately represent diversion between the parties in the case that one ceased trading, because different factors may drive single product diversion and long term diversion. However, the OFT believes that this question will provide a measure of diversion in this specific case, and it has formed an important part of its assessment in each local area.
140. Secondly, there was a long run (general) question.³² This question restricted the sample to those who answered Jewson or Build Center as their first choice merchant and so has a relatively small sample size (around 50 on average). The OFT was concerned that this is not a large enough sample to give confidence in the estimated diversion ratios, so the results of the general diversion question

²⁹ The GUPPI has been calculated from Jewson to Build Center and from Build Center to Jewson, and adjusted and unadjusted figures (depending on whether non-diverting customers and customers who answered 'don't know/other' are included) have been considered.

³⁰ This measurement does not take account of the 'feedback effect', which is discussed in further detail in the section on pass through below.

³¹ Thinking back to the day of your purchase, if you had known before you contacted or set out for the branch that you would not be able to obtain these products at Jewson, which supplier would you most likely have used instead?

³² Which builders merchant do you use most frequently? If this builders merchant were to close for refurbishment for an extended period of time, which builders merchant would you most frequently use instead?

have been used only as a robustness check for the purchase specific diversion question.

141. To do this, the OFT has undertaken a comparison of the results given by the two different diversion questions. Its analysis shows that the results for the two questions were highly correlated. As there was little variation between the general diversion ratio and the purchase specific diversion ratio, this helped to assuage the OFT's concerns that the single purchase diversion ratio would not accurately represent longer term diversion.

(b) Non-diverters and the 'don't know/other' category

142. The initial survey data presented by the parties included non-diverting customers (for example, Jewson customers who indicated that they would have purchased from a different Jewson branch if the reference branch was closed) and a 'don't know/other' category (for example, customers who answered 'don't know' or 'it depends' or gave a response such as 'a timber merchant' or similar). The OFT requested that the parties strip these results out because their inclusion may have diluted the diversion ratios.

143. The parties argue that non-diverting customers should be included in diversion ratios because to do otherwise would effectively be to assume that some of these customers would in fact have switched to the merging rival's branch. However, removing non-diverters from the denominator of the diversion ratio is not equivalent to adding them to the numerator. Entirely removing non-diverting customers from the diversion ratio does not assume that these customers divert anywhere and any increase in the diversion ratio to the other party as a result of doing so is due to a change in the denominator, rather than assuming that non-diverting customers have diverted. Therefore, the OFT has calculated the unadjusted diversion ratio by removing non-diverting customers.

144. The parties have also submitted that the 'don't know/other' category should be included when calculating diversion ratios, as customers in this market are well-informed professionals, who typically hold a number of trade accounts. They argue that customers responding 'don't know' or 'it depends' may in fact be the customers most likely to shop around, with their response revealing that they do not have any specific branch/supplier preferences. The OFT notes, however, that it is also plausible that these customers may be the least likely to shop around, perhaps because they always go to whichever GBM is closest. In any case, the

OFT has seen no compelling evidence that these customers would divert any differently to other customers.

145. The parties point out that in *Sports Direct/JJB Sports* the CC noted that in relation to two versions of diversion (one including such responses and one excluding them), 'the true diversion ratios are likely to lie somewhere between the two'.³³ However, the CC proceeded to use an adjusted diversion ratio (that removed 'don't knows') in analysing market definition. The parties state that the CC used a similar approach in its *Stena/DFDS* decision, although the CC noted that it was reluctant to reallocate the 'don't knows' to other choices pro rata as an unusually large proportion of customers answered don't know.³⁴ In contrast, in this case, the category includes both the 'don't know' and the 'other' responses. If the 'don't know/other' category is included, it assumes that all of these customers would divert but none would divert between the merging parties. This is unlikely to be true for all customers.
146. Therefore, the OFT has calculated the adjusted diversion ratios by stripping out the 'don't know/other' category. This reduces the sample size to an average of 77 (and in one case it is only 41), which may decrease the robustness of the diversion ratios.
147. It is appropriate for the OFT to be cautious in its approach to this data, particularly because the OFT is assessing whether the transaction gives rise to a realistic prospect of a substantial lessening of competition. It is not necessarily appropriate for the OFT to follow the approaches taken by the Competition Commission in other sectors, not least because the Competition Commission's review period affords it more time to consider how to interpret the more problematic responses to a survey question. In addition, the Competition Commission has full control over its own survey.
148. Accordingly, in the absence of conclusive evidence showing that the adjusted figure (excluding the non-diverters and 'don't know/other') is inappropriate in each local area, the OFT has used this adjusted figure in calculating the GUPPI measures.

Local area methodology

³³ Competition Commission final report dated 16 March 2010, Appendix C, paragraph 7.

³⁴ Competition Commission final report dated 29 June 2011, Appendix D, paragraph 56.

149. As discussed above in the section on geographic market definition, the OFT employed an initial filter based on a three-mile radius within the M25 and a 10-mile radius outside the M25. The catchment areas are centered on each Jewson and Build Center branch.
150. Any area where the transaction leads to a reduction in fascia within the relevant catchment area from five to four (only where there is also a two to one within five miles), four to three, three to two or two to one was treated as raising prima facie competition concerns and requiring further analysis. There were 44 areas identified by the 10-mile filter and a further five areas identified by the three-mile filter within the M25.
151. The 44 areas identified by the 10-mile filter include East Kilbride (centered on a Jewson branch), which was not initially treated as being a potentially problematic area because Burdens was included in the fascia count. Following third party evidence and the OFT's own analysis, the OFT decided to re-run the fascia count excluding Burdens. East Kilbride was the only area nationwide that was added to the list of potentially problematic areas as a result; it became a four to three area on a 10-mile basis. As this area was added to the list of potentially problematic areas after the OFT's questionnaire and the parties' survey were completed, the OFT has no survey data for customers in this area (and therefore no evidence on the diversion ratio). East Kilbride is therefore considered separately to the other potentially problematic areas (see Annex B for detailed discussion).
152. The OFT also considered whether it is appropriate to widen the catchment area in certain areas. In particular, there are two areas (Dalbeattie and Greenock) identified by 15-mile and 20-mile filters respectively, but on which there is no overlap between Jewson and Build Center branches based on a 10-mile radius. The OFT considered whether the transaction could give rise to a substantial lessening of competition in these areas notwithstanding the lack of overlap on a 10 mile filter. Additionally, one area (Sandown on the Isle of Wight) was identified by a filter based on the 80 per cent catchment area³⁵, but not the 10-mile filter, so has also been included for further analysis.

³⁵ This is the area within which 80 per cent (by revenue) of the branch's customer's invoice addresses are located.

153. Therefore, the OFT has undertaken a more detailed assessment of the effects of the transaction in 52 local areas in England, Wales and Scotland (Build Center is not present in Northern Ireland).

154. These areas are broken down as follows:

- one area where the transaction represents a two to one in a 10-mile radius (Stranraer)
- 10 areas where the transaction represents a three to two in a 10-mile radius (Aberystwyth, Bowness, Egremont, Galashiels, Hereford, Holyhead, Irvine, Llandrindod Wells, Penzance, St Ives (Cambridgeshire))
- one area within the M25 where the transaction represents a three to two in a three-mile radius (Walton-on-Thames)
- 32 areas where the transaction represents a four to three in a 10-mile radius (Ashford (Kent), Bedford, Bodmin, Carlisle, Colne, Crowborough, Deal/Ramsgate, Devizes, Dorchester, Dumfries, East Kilbride, Folkestone, Hastings, Helston, Ilfracombe, Kings Lynn, Llangefni, Maidstone, Market Harborough, Northampton, Northiam, Oswestry, Paddock Wood, Paignton, St Neots, Spalding, Telford, Thirsk, Tunbridge Wells, Witney, Workington, Worksop)
- four areas within the M25 where the transaction represents a four to three in a three-mile radius (Ashford (Surrey), Coulsdon, Epsom, Hinchley Wood),
- one area where the transaction represents a five to four in a 10-mile radius, but a two to one on a five-mile filter (Faversham)
- one area where the transaction represents a four to three in a 15-mile radius (Dalbeattie)
- one area where the transaction represents a four to three in a 20-mile radius (Greenock), and
- one area where the transaction represents a four to three based on the 80 per cent catchment area (Sandown).

155. All of the 52 areas are centered on a Build Center branch, except for East Kilbride, Greenock, Kings Lynn, Northampton, Ramsgate, Sandown, Thirsk and Worksop.
156. In order to ascertain whether the geographic market may be wider in any of these areas, the OFT requested information on the 80 per cent customer catchment area (by invoice address) and the split of delivery and collection at the relevant branch. This has been incorporated into the analysis of the competitive effects of the merger in each local market, to help to determine whether a competitor outside of the initial filter area may be relevant in the competitive assessment.
157. On the basis of the evidence received on the geographic frame of reference for GBMs, the OFT believes that proximity matters for competition between GBMs.³⁶ For this reason, in its analysis of unilateral effects, the OFT has taken into account the proximity between the merging parties' branches in assessing the competitive impact of the merger in each local area.

Pass through rates

158. As explained above, the value of business internalised by the merger in percentage terms is known as the GUPPI. The OFT has used the GUPPIs in each local area resulting from the parties' survey results to calibrate the potential price rises in each local area that could be expected to occur as a result of the transaction. In order to do so, an assumption about the appropriate pass through rate needed to be made (and the 'feedback effect' discussed below should also be taken into account). This is the extent to which a Jewson or Build Center branch could be expected to pass through any upwards pricing pressure to customers in the form of higher prices. For example, a pass through rate of 100 per cent means that for every one per cent of upwards pricing pressure, it should be expected that one per cent will be added to the prices paid by their customers.
159. The parties have argued that pass through should be regarded as less than 100 per cent. The parties submit that [].

³⁶ See, for example, the discussion of the parties' margin concentration analysis above. This analysis found [] when Travis Perkins and large independent GBMs are present within five miles.

160. The parties presented data showing that Jewson's pass through rate does not [].
161. The parties also provided evidence from a large revenue-weighted basket of goods sold in 2009 and 2010, which suggests that pass through is [] for the branch network as a whole.³⁷ This evidence compares cost increases and price increases from year to year, thus showing what revenues, costs and margins would have been if the first year's quantities had been bought and sold at the prices prevailing in the second year.
162. The parties argue that firm-specific pass through (for example, as a result of the merger) must always be lower than the pass through of industry-wide cost shocks. This is because it is easier to pass through cost increases if all competitors are attempting to do so at the same time. The OFT agrees that this should be expected to be true on average, though the OFT notes that it is not necessarily the case in each individual local area, particularly where there are relatively few competitors.
163. All data on pass through provided by Jewson is for its entire branch portfolio, which will include areas of high and low concentration. It is not clear to what extent the ability to pass through price increases varies across the branch network and thus how applicable the aggregate result is to the 52 areas identified by the initial filter, as they are areas with fewer competitors. However, the parties have presented evidence on product ranges and profit margins suggesting that the pass through for the potentially problematic areas should not be expected to be materially different to the entire branch network.
164. The parties' evidence on pass through rates has led the OFT to consider that isoelastic illustrative price rises (IPRs),³⁸ which have been used by the OFT in previous cases, may not be appropriate in this specific case.³⁹ This is because the parties have provided evidence showing that pass through is around 100 per

³⁷ A representative basket of 8,143 products (for 2009) and 12,179 products (for 2010), accounting for [] Jewson's revenues.

³⁸ The asymmetric isoelastic IPR (illustrative price rise) is a measure of the value of business internalised by the merger in percentage terms calibrated as a potential price rise in an area, which measures the competitive pressure in both directions (Jewson to Build Center and Build Center to Jewson).

³⁹ In supermarket mergers the isoelastic IPR threshold has typically been set at five per cent, with the OFT finding a realistic prospect of a substantial lessening of competition in areas where the merger is likely to result in a price increase greater than five per cent. See, for example, Somerfield/Morrisons, CGL/Somerfield and Asda/Netto.

cent, whereas an isoelastic demand curve (inherent in an isoelastic IPR) assumes a variable pass through rate that is above 100 per cent at all times. Therefore, based on the evidence provided, the OFT has enough confidence that pass through is around 100 per cent to use GUPPI and consider any feedback effects separately. Additionally, the OFT notes that there are material differences between the GBM sector and the types of retail markets where IPRs are typically employed.

165. In summary, the parties have shown that the rate of pass through assumed by an isoelastic demand curve is likely to be inappropriate, but they have not shown that firm-specific pass through as a result of the transaction is less than 100 per cent. Even if the pass through rate will be less than 100 per cent, it is not clear what precise rate should be used. In this case, taking into account that the OFT is undertaking a first phase assessment of this transaction and must consider whether it leads to a realistic prospect of a substantial lessening of competition, the OFT's view is that a pass through rate of 100 per cent is appropriate.
166. In considering the GUPPI measures, the OFT's assessment will not measure the extent to which an incentive for one of the merging parties to increase prices in turn increases the incentive for the other to do so, resulting in a 'feedback effect' between them that can magnify the potential price increase. This aspect is taken into account in the competitive assessment below.
167. In past cases, the OFT's approach has made allowance for a 'feedback effect' between the parties, described above, and we see no reason to depart from that in this case. 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 the potential there is for competition between the parties themselves to be constraining the margins of each of them in a particular local area. On both counts a potential price rise measured only by GUPPI times cost pass-through risks underestimating the potential harm by ignoring the potential feedback effect. To take account of this the OFT has therefore looked particularly closely at areas where the diversion ratio is relatively high in order to ensure that the diversion has suitable weight in the overall assessment. In any case, the GUPPI measure and diversion ratios are only part of the OFT's overall assessment in each area, which includes an assessment of local geography, customer comments, and other local factors.

Competitive assessment of the 52 local areas

168. As explained above, the second step of the OFT's assessment of local areas was to undertake a detailed assessment of the 52 local areas identified by the initial filter. This assessment includes a consideration of local geography, customer comments, and other local factors. The parties' local area survey has been used by the OFT to calculate diversion ratios and GUPPIs, which it has calibrated as potential price increases.
169. The OFT believes that the purchase specific GUPPI measure, using the adjusted figures to exclude the non-diverting and 'don't know/other' categories of response, calibrated as a potential price rise by using a 100 per cent pass through rate, is an indicator (amongst others) of the horizontal unilateral effects theory of harm in this case. Taking account of the specific characteristics of the GBM sector, the OFT considers that a value of this measure greater than five per cent gives cause for concern over unilateral effects.⁴⁰
170. Naturally this must be considered in the context of other evidence, especially for areas where the sample size is lower. The OFT has therefore considered other evidence (such as comments received from its own customer questionnaire) and it has studied maps of each area in order to take into account the local geography in its assessment. In particular, the maps have enabled the OFT to take into account the parties' proximity to each other (an important factor in the GBM sector), the number and identity of competitors remaining in the town (or nearby) post-merger, and road links between different GBMs.
171. The parties have argued that there are several areas where the GUPPI (using the adjusted figures) calibrated as a potential price rise marginally exceed five per cent, largely as a result of a fairly high profit margin for the relevant branch. The parties argue that these areas should not be regarded as giving rise to a substantial lessening of competition. The OFT has considered this argument closely. The OFT believes that varying profit margins across the parties' branch networks are indeed informative about the competitive pressures existing in a local area. In the absence of evidence showing that the adjusted figures are incorrect, the OFT believes that it is appropriately cautious for a first phase

⁴⁰ Importantly, this is not the same thing as merger simulation and therefore it does not try to predict post merger prices nor does it suggest that the OFT is willing to tolerate post merger price increases of up to five per cent.

competition authority assessing whether there is a realistic prospect of a substantial lessening of competition to use the adjusted figures.

172. Two further factors have contributed to the this approach in areas where the potential price rise is only marginally above five per cent:

- The OFT notes that using GUPPI calibrated as a potential price rise does not take into account how one merging party reacts to a price increase by the other. This is the 'feedback effect' discussed above in the section on pass through. This effect may be small, but given the relatively small number of competitors in each of the potentially problematic areas and the evidence showing the closeness of competition between Jewson and Build Center, this effect may nonetheless be significant.
- Using past estimates of pass through as an indicator of potential future price rises, as the OFT has done in this case, may fail accurately to capture the fact that pass through post-merger may exceed the pre-merger pass through.

173. There are 18 local areas where the purchase specific GUPPI, using the adjusted figures and a pass through rate of 100 per cent, suggests a potential post-merger price increase of greater than five per cent. In the OFT's view, taking into account other factors such as local geography and customer comments, these areas give rise to a realistic prospect of a substantial lessening of competition:

- Aberystwyth
- Ashford, Kent
- Ashford, Surrey/Staines
- Bedford
- Dumfries
- Epsom
- Faversham
- Galashiels
- Hastings
- Helston
- Holyhead
- Llandrindod Wells/Builth Wells
- Northiam/Hastings
- Penzance

- St Ives, Cambridgeshire
- Sandown, Isle of Wight
- Stranraer, and
- Tunbridge Wells.

174. All these 18 areas are based on a Build Center branch, except for Sandown which is based on a branch of Jewson.

175. In considering the totality of the available evidence for these 18 areas, the following areas are those where the OFT believes the evidence is most mixed, but even in these areas the evidence on balance is sufficient to find that the area has a realistic prospect of a substantial lessening of competition:

- **Epsom:** The GUPPI measure calibrated as a potential price rise for this area is [five-10] per cent, which was driven primarily by a high profit margin rather than a high diversion ratio, although the diversion ratio is [] per cent. In addition, the Jewson and Build Center branches are located near to each other (1.2 miles away by road) and the transaction represents a three to two reduction in fascia in Epsom itself.
- **Llandrindod Wells / Builth Wells:** In this area, the Jewson and Build Center branches are quite far apart (eight miles by road), and Jewson is not Build Center's closest geographic competitor. The GUPPI measure for this area is [five-10] per cent and the transaction represents a three to two reduction in fascia within 10 miles. Further, the 80 per cent catchment area data for Jewson is only [five-10] linear miles, within which the transaction represents a two to one reduction in fascia (with Boys & Boden, a large independent, just outside the area).⁴¹ Importantly, branches are fairly widely dispersed in this area of rural Wales, so a customer not able to purchase a product from Boys & Boden or the parties would need to continue driving for at least 12 miles to reach another GBM. Additionally, according to the survey data, [] per cent of Build Center customers would divert to Jewson or Boys & Boden, which are the only GBMs within 10 miles. Travis Perkins is the next closest competitor and it showed a low diversion ratio, suggesting that it is not an effective constraint on the parties in this area, presumably because its nearest branch is located over 26 miles away by road.

- **Holyhead:** The GUPPI measure for this area is [five-10] per cent, which was driven primarily by a high profit margin rather than a high diversion ratio. However, the transaction represents a three to two reduction in fascia on Holy Island, which is located off the Isle of Anglesey. Other than the parties, the only GBM on Anglesey or Holy Island is Huws Gray (a large independent). The results of the parties' survey showed that around [] per cent of both parties' diversion was to a GBM on the island, suggesting that competition takes place largely on the island. It is also a three to two reduction on the 10-mile filter (and indeed on a 15-mile filter). The next nearest competitor is Travis Perkins on the mainland, nearly 30 miles away by road, and the parties' survey showed that less than [0-10] per cent of the parties' customers would be willing to travel to, or order from, a merchant further than 20 miles away. The 80 per cent catchment area for Jewson customers by home address is around [10-20] miles, which would make the merger a three to two. However, [] per cent of goods for both Jewson and Build Center are collected (rather than delivered) in this area, which tends to suggest a narrower catchment area than the 80 per cent catchment area.

176. The OFT's analysis has resulted in four areas that were a three to two reduction on the initial filter being found not to give rise to a realistic prospect of a substantial lessening of competition:

- **Bowness:** This area was labelled a three to two on the initial filter. However, the survey data shows that it would more accurately be described as a four to three because there is a significant diversion to an independent GBM that was not included in the initial filter. The parties are not located geographically close to each other (the Jewson is over nine miles from the Build Center by road), and this may explain why the survey data shows a relatively low diversion ratio ([] per cent) and GUPPI ([0-five] per cent).
- **Egremont:** The survey data shows that this area has a relatively low diversion ratio ([] per cent) and GUPPI ([0-5] per cent). This could be explained by the fact that the relevant Jewson and Build Center branches are not geographically close, and there is a branch of Travis Perkins located between them. There is also a large independent GBM located in Cockermouth, which is outside the 10-mile filter, but it falls within the Jewson branch's 80 per

⁴¹ The 80 per cent catchment area for the Build Center branch is [0-10] miles, a distance within which the parties do not overlap in this area.

cent customer catchment area.

- **Hereford:** This initial filter for this area was based on a Timber Center (rather than a Build Center), so the parties are not direct competitors (the Build Center branch sells [] per cent timber, Jewson sells only [] per cent timber). Despite being located very close to each other (0.1 linear miles, or 0.4 miles by road), the GUPPI measurement is [0-five] per cent. There is also an independent ([]), which was not included in the initial filter, but which the survey data shows to have a material diversion ratio. In addition, the 80 per cent customer catchment area for the Jewson branch is quite large, within which a number of significant competitors including Grafton and Bradfords are located.
- **Walton-on-Thames:** This area is within the M25 and it is a three to two on a three-mile filter. However, despite the Jewson and Build Center branches being located less than one mile apart, the survey data showed that the diversion ratio between the parties is relatively low ([] per cent) and the GUPPI measurement was [0-five] per cent. There are a number of competitors within five miles.

177. Given that GUPPI is only one possible indicator of competition concerns, and that the available data is problematic to some extent (particularly regarding the 'don't know/other' category of responses), the OFT has also assessed the remaining 34 potentially problematic areas using similar principles to those set out above. Amongst other things, this enables the OFT to be sensitive to the possibility that pass through in a particular local area could be higher than assumed by the GUPPI measurement (perhaps due to the 'feedback effect' discussed above), and also that the parties' survey data may have underestimated the effects of the transaction.

178. Given the specific characteristics of the GBM sector, there are four areas (Devizes, Irvine, Maidstone and St Neots), all of which are centered on a Build Center branch, which give rise to a realistic prospect of a substantial lessening of competition. These four areas are:

- **Devizes:** In this area, the Jewson and Build Center are located only half a mile apart (0.7 miles by road), with no other national GBM or large independent GBM in the town. The adjusted diversion ratio between the

parties is high ([] per cent). Grafton is the nearest large competitor, with branches located in Calne (around six linear miles away, or eight miles by road) and Melksham (around seven linear miles away, or nine miles by road), but the survey data shows that it represents a relatively weak competitive constraint, despite having two branches located in the 10-mile radius. Travis Perkins has three branches in the 10-mile radius, but none in Devizes itself. The GUPPI measurement in this area is nearly [0-five] per cent.

- **Irvine:** In this area, Build Center and Jewson are located half a mile apart in the Heatherfield Industrial Estate area, outside of the town centre. The only other GBM present in the 10 mile catchment area is Travis Perkins, which has a Keyline branch in Ayr over nine linear miles away (nearly 13 miles by road). The adjusted diversion ratio for this area is [] per cent and the GUPPI is [0-five] per cent.
- **Maidstone:** In this area, the adjusted diversion ratio from Build Center to Jewson, is [] per cent, leading to a GUPPI measurement of [0-5] per cent. The parties are geographically close competitors, located 0.6 linear miles apart. There is a branch of Travis Perkins 1.5 miles away in Aylesford. This area was classified as a four to three on the initial filter, due to the presence of a TradePoint branch in Gillingham, over six linear miles from Build Center. However, the survey data shows [] per cent of diversion from Build Center is to either [] or [] suggesting that other fascia in the catchment area will only impose a relatively small competitive constraint. Post-merger, although Aylesford (where the Travis Perkins is located) is close to Maidstone, the parties will be the only competitors in Maidstone itself.
- **St Neots:** In this area, the adjusted diversion ratio from Build Center to Jewson is around [] per cent, leading to a GUPPI of [0-five] per cent, due to relatively low profit margins in the area. The parties are each other's closest geographical competitors, being the only GBMs in the town of St Neots. The transaction was labelled a four to three on the initial filter, due to the presence of a Travis Perkins and Grafton, both in Sandy (around six linear miles away). However, the survey results suggest that [] does not represent a strong competitive constraint in the area, with negligible diversion to it from Build Center and [] per cent of diversion from Build Center to either [] or []. Additionally, a number of third parties have suggested that the merger will raise competition concerns in this area.

179. As discussed above, there is one area (East Kilbride) for which diversion ratios (and therefore GUPPIs) are not available. However, as a result of competition from Travis Perkins, TradePoint, some independent GBMs and some timber specialists, and the lack of close competition between the parties in this area, the OFT does not believe that East Kilbride gives rise to a realistic prospect of a substantial lessening of competition. Please see Annex B for a more detailed discussion of East Kilbride.

180. A total of 22 local areas therefore give rise to a realistic prospect of a substantial lessening of competition.

Barriers to entry and expansion

181. Competitors provided information on the likely costs of entry into individual sites, which ranged from £1-3 million to establish a new branch with an additional £1 million of working capital required. The majority of third parties indicated that site availability and planning restrictions represent a significant barrier to entry or expansion. The parties argue that these figures are too high and therefore overstate the difficulty in entering the relevant markets. Nevertheless, the parties have not based their case on arguing that barriers to entry and expansion are low.

182. No independent GBM who responded to the OFT's questions said that they had specific expansion plans in a location that falls within the catchment area of any branches identified by the initial filter.

183. Given the difficulty in obtaining a suitable site for a GBM, the OFT would require evidence that a site had been acquired and plans were in place to construct a GBM for entry to be sufficient to alleviate competition concerns in any individual local area. No such evidence has been received.

OTHER HORIZONTAL ISSUES

Glass merchants

184. The parties have not provided market shares nationally, as Build Center only own four Glass Center branches, which are clustered in Essex and Central England,

so they submit there are no national dimensions to the merger. Customers have not raised any concerns about the merger nationally.

185. The OFT has looked at each area where Glass Center is present to ensure that there are sufficient post merger competitors within a 50-mile catchment area. The OFT found that there were sufficient competitors in each area.

186. The OFT does not believe there is a realistic prospect of a substantial lessening of competition in relation to glass specialists.

Ironmongery merchants

187. The parties do not have an overlapping national branch network of specialist ironmongery merchants as Saint-Gobain's ironmongery business (George Boyd) operates by mail order. In relation to ironmongery specialists, the main overlap between the parties is between George Boyd and the 11 branches of Ironmongery Center that have been acquired as part of the transaction.

188. George Boyd achieved turnover of approximately £[] million in 2010.⁴² The combined revenue of the 11 branches of Ironmongery Center in 2010 was approximately £[] million, £[] million of which was derived from ironmongery products. Therefore, the parties' ironmongery specialists had a combined turnover of £[] million.

189. Saint-Gobain estimates that the total value of sales of ironmongery products and associated accessories in the UK is £[] million, of which the parties' ironmongery specialists share is approximately [0-10] per cent nationally.

190. There is one branch of Jewson (in Glasgow) that for historical reasons still stocks a large range of ironmongery products. This branch is five miles from an Ironmongery Center. However, there are a number of competitors located in the area, such that the merger represents a six to five reduction in fascia if single branch independent ironmongery specialists are excluded. The inclusion of single branch independents would add at least another six fascia to the relevant fascia count. The OFT does not believe that there are material competition concerns in this local area.

⁴² Jewson's ironmongery sales across all branches were £[] million in 2010.

191. The OFT has also assessed whether there are any local areas where an Ironmongery Center and a Jewson branch is present, where there is a reduction in competition sufficient to cause prima facie competition concerns. The OFT's assessment found that there are no such areas.

192. The OFT does not believe there is a realistic prospect of a substantial lessening of competition in relation to ironmongery specialists.

Timber businesses

193. Whilst both parties have timber businesses (International Timber and Timber Center), they are not directly comparable.⁴³ Timber Center has been included in the OFT's local area assessment for GBMs because timber is a core product for GBMs and timber merchants can often be close competitors to GBMs.

194. The OFT does not believe any material competition concerns are raised by the potential overlap in the UK of Timber Center and International Timber. The OFT does not believe there is a realistic prospect of a substantial lessening of competition in this area.

ASSESSMENT

195. Jewson and Build Center are two of the largest GBMs in the United Kingdom.

196. The parties also overlap in relation to their specialist glass businesses (Solaglas and Glass Center) and specialist ironmongery businesses (George Boyd and Ironmongery Center), but their competitive positions in these areas are not significant and no material competition concerns arise in this area.

197. Whilst both parties have timber businesses (International Timber and Timber Center), they are not directly comparable and no material competition concerns arise in this area.

198. The Saint-Gobain group is also active upstream at the manufacturing level. There are vertical relationships between its manufacturing businesses (in particular plasters, plasterboards, and municipal castings) and GBMs in the UK. However, the OFT's analysis has shown that it would not be profitable for the merging

⁴³ International Timber is a wholesaler that imports timber into the UK. Timber Center is a specialist timber retailer in the UK.

parties to foreclose competitors in these area (even in areas where Saint-Gobain may have the ability to foreclose).

199. The OFT has found that the transaction does not give rise to a realistic prospect of a substantial lessening of competition for GBMs on a national or regional basis. This is because the parties' combined position is not sufficient to give rise to a substantial lessening of competition and there are sufficient remaining competitors.

200. The OFT adopted a two-step approach to assess the impact of the transaction on the GBM sector in local areas:

- First, the OFT employed an initial filter based on a three-mile radius within the M25 and a 10-mile radius outside the M25. The OFT also considered whether it was appropriate to widen or narrow the catchment area in certain areas. Any area where the transaction leads to a reduction in fascia within the relevant catchment area from five to four (only where there is also a two to one within five miles), four to three, three to two or two to one was treated as raising prima facie competition concerns and requiring further analysis. A total of 52 local areas were identified by this initial filter.
- Secondly, the OFT used the evidence available to assess the reduction in competition resulting from the transaction in each of the 52 local areas that are identified by the initial filter. There are 22 local areas where the totality of the available evidence supports a conclusion that they give rise to a realistic prospect of a substantial lessening of competition.

201. 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

202. 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.

203. The OFT has therefore considered whether there might be undertakings in lieu of reference (**UILs**) which would address the competition concerns outlined above. The OFT's guidance states that UILs are appropriate only where the competition concerns raised by the merger and the remedies proposed to address them are clear cut, and those remedies are capable of ready implementation.⁴⁴
204. The parties offered UILs to divest a branch or branches in the 22 local areas where the OFT identified competition concerns meeting its test for reference to the CC.
205. As a structural remedy that will, in each local area, remove the overlap between the parties and restore pre-transaction competition, the OFT considers that the parties' proposed UILs are sufficient in principle to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT.

Upfront buyers

206. 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.
207. An upfront buyer requirement means that the proposed divestment purchasers will have committed contractually, subject to formal OFT approval of the UILs, to acquiring the relevant divestment store(s) before the OFT accepts UILs. 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 may consult publicly on the suitability of the proposed divestment purchasers, as well as any other aspects of the draft undertakings, during the public consultation period.
208. The OFT will seek an upfront buyer where the risk profile of the remedy requires it, for example where the OFT has reasonable doubts with regard to the ongoing viability of the divestment package and/or there exists only a small number of candidate suitable purchasers.⁴⁵

⁴⁴ Mergers – substantive assessment guidance, OFT516, June 2003, paragraph 8.3 and Mergers: jurisdictional and procedural guidance, OFT527, June 2009, paragraph 8.5.

⁴⁵ Mergers: jurisdictional and procedural guidance', OFT527, June 2009, paragraph 8.32. See for example, Anticipated acquisition by Co-operative Group Limited of Somerfield Limited, 20 October 2008; Completed acquisition by Home Retail Group plc of 27 leasehold properties from Focus (DIY)

209. In its December 2010 guidance on exceptions to the duty to refer, the OFT states that it is 'mindful of the burden that imposition of an upfront buyer requirement places on the parties and the need for proportionality in the use of this mechanism'.
210. In this case, the question for the OFT was whether the parties, or a divestment trustee, should one need to be appointed, would be able to sell the branch or branches in each of the divestment areas to a suitable purchaser approved by the OFT that was not already present as an effective competitor in the local area such that the divestment remedied, mitigated or prevented the substantial lessening of competition in that area.
211. The parties have argued that an upfront buyer provision was not required in this case given that they believe there are a large number of potential purchasers for divestment branches, including other national GBM chains, regional independent GBMs and stand alone independent GBMs.
212. In previous cases,⁴⁶ in deciding whether to require that divestments be made upfront, the OFT has had regard to the number of buyers for each divestment store that it would be reasonable to consider would be able and potentially willing to acquire the store. In this case, having regard to the existence of the other national GBM chains (and Burdens), as well as the large number of regional independent GBMs and a number of local independent GBMs who could reasonably be considered able to purchase a divested store, the OFT considers that there could reasonably be expected to be sufficient businesses that would be eligible and potentially willing purchasers for each of the areas in which a divestment is required.
213. The parties have also submitted evidence suggesting that there are at least [] credible buyers for each of the branches that gives rise to a GUPPI of greater than five per cent (which is 18 of the 22 branches being divested). In previous cases involving local branch divestments (for example, CGL/Somerfield⁴⁷), an upfront buyer requirement was not imposed where there were at least three credible buyers for each store.

Ltd, 15 April 2008; Completed acquisition by Global Radio UK Limited of GCap Media plc, 8 August 2008.

⁴⁶ See for example, Co-operative/Somerfield, paragraphs 186 and 190; Anticipated acquisition by Asda Stores Limited of Netto Foodstores Limited, 23 September 2010, paragraph 144.

⁴⁷ Anticipated acquisition by Co-operative Group Limited of Somerfield Limited, 20 October 2008.

214. The OFT has decided that, given the facts of this case, there is no need to include an upfront buyer provision in respect of the 22 local areas where the OFT's duty to refer to the CC has been triggered.

Identity and choice of branches to be divested

215. The parties' offer is to divest the reference branch (the branch whose location is the central point in the catchment area). In those areas where the other party has only one branch present within three miles (for areas within the M25) or 10 miles (for areas outside the M25), the parties have offered (as an alternative) to sell the other party's branch. In the case of Sandown (where the catchment area is defined by reference to the Jewson branch's 80 per cent catchment area and is [] miles), the parties have offered to sell either the Jewson branch or the Build Center branch within [] miles of the reference (Jewson) branch. In each case, the choice of branch would be the parties'.

216. The OFT considers that the parties' offer in this regard is sufficient to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT because it restores competition to the pre-merger level.

DECISION

217. The OFT's duty to refer the completed acquisition by Saint-Gobain of Build Center 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. However, pursuant to section 34A(3) of the Act this decision does not prevent the OFT from making a reference in the event of no such undertakings being offered or accepted.

Ali Nikpay
Senior Director
8 February 2012

ANNEX A: INDEPENDENT GBMS INCLUDED IN INITIAL FILTER

- A Thompson & Sons
- AE Spink
- Alsford Timber
- AW Lumb
- Beatsons Building Supplies
- Beers Timber and Building Supplies
- Beesley and Fildes
- Blanchford and Company
- Boys & Boden
- Bradfords
- Brown Builders Merchants
- Builder Depot Limited
- Building and Plumbing Supplies
- C&W Berry
- Carboclass Limited (t/a Lords Builders Merchants)
- Carver (Wolverhampton)
- Chandlers Building Supplies
- CT Baker
- D McNair
- David Cover and Sons
- EH Smith
- Elliott Brothers
- Grant & Stone
- H Butterfield
- Harris and Bailey
- Huws Gray
- James Burrell
- John A Stephens
- John Nichols
- Joseph Parr
- JT Atkinson
- JT Dove
- Kellaway Building Supplies
- Lawsons
- M Markovitz
- MKM Building Supplies
- MP Moran and Sons
- Naylor Myers
- Parker Building Supplies
- Rawle Gammon and Baker
- Richard Williams (Deganwy)
- Ridgeon Group
- Robert Price
- Sherborne Holdings (t/a Sydenhams)
- Sussex Turnery and Moulding Company (t/a Stamco)

- TG Builders Merchants
- Thorncliffe Building Supplies
- Turnbull and Company
- Walter Tipper

ANNEX B: DETAILED ANALYSIS OF EAST KILBRIDE

1. East Kilbride has a population of 73,796 (2001 census) and is located in the South Lanarkshire council area, in the West Central Lowlands of Scotland, about 8 miles south of Glasgow city centre.
2. The area is a four to three reduction in fascia on a 10-mile radial (if Burdens is excluded from the competitor set), centred on the Jewson branch in East Kilbride. The nearest acquired branch is a Timber Center, which is 5.5 miles away in Glasgow. Jewson has a total of seven additional branches within the 10-mile catchment area. Other national GBMs present in the catchment area are:
 - a. Travis Perkins which has six branches in the 10-mile catchment area, the closest being 0.4 miles from Jewson (and therefore being a geographically closer competitor than the Timber Center), and
 - b. Kingfisher TradePoint, which has four branches in the 10-mile catchment, the closest 2.2 miles from Jewson.
3. As the acquired branch is a Timber Center, it derives a high percentage of its revenue from timber sales. In support of this the parties have submitted a breakdown of the sales for Jewson and Timber Center. This breakdown shows that the Timber Center derived [] per cent of its revenue from timber sales, compared with the Jewson which only derived [] per cent from timber and [] per cent from heavy building materials. Therefore, it is not clear that the parties are particularly close competitors in terms of product mix, and large timber specialists are likely to constrain Timber Center to a significant degree.
4. There are no independent GBMs present within five miles of Jewson, with a total of three independents located in the 10-mile catchment area; Hamilton Building Supplies (6.4 miles), John W Grant & Son Ltd (9.5 and 9.9 miles) and Robert Lang & Sons (9.6 miles). Additionally, there are a total of 14 timber specialists within the 10-mile catchment area, with the OFT having some evidence that Thornbridge Timber is a competitor for larger customers and as such should be considered as a credible competitor to Timber Center. Additionally, the OFT has information on V K Timber, Kelvin Timber and Shawfield Timber, which suggests they may be credible competitors to the Timber Center.

5. The OFT does not have any survey or questionnaire results for this area as it was added to the list of potentially problematic areas late in the OFT's review period. However, the OFT notes that survey results in other areas with a Timber Center (rather than a Build Center) tend to show a lower diversion ratio between the parties, than other areas with similar characteristics, presumably as a result of the different product ranges being sold by the Jewson and Timber Center branches.
6. For the above reasons, the OFT believes that the transaction does not give rise to a realistic prospect of a substantial lessening of competition in East Kilbride.