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Anticipated acquisition by Travis Perkins plc of the BSS Group plc

ME/4609/10

The OFT's decision on reference under section 33(1) was given on 10 December 2010. Full text of decision published 14 December 2010.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

## **PARTIES**

1. **Travis Perkins plc (TP)** primarily distributes building materials through over 600 branches across the UK. Its businesses also include **City Plumbing Supplies (CPS)** a national chain of 194 outlets which specialises in the supply of plumbing and heating (P&H) products; and **Wickes**, a national do-it-yourself (DIY) retailer with 196 stores.<sup>1</sup>
2. **The BSS Group plc (BSS)** primarily retails and wholesales P&H products in the UK and the Republic of Ireland. It has three business divisions: Domestic, Industrial and Specialist. Its Domestic and Industrial divisions supply P&H products to different customer groups through different branded businesses.<sup>2</sup> Its subsidiary, Plumbing Trade Supplies Limited (PTS), operates 325 branches retailing P&H products mainly to 'domestic' customers (mainly sole traders, plumbers and house builders) in the UK. PTS generated a turnover in 2009 in excess of £[ ] million. Other

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<sup>1</sup> In addition, TP operates: i) other retail outlets specialising in heavy side building materials such as drainage, concrete, bricks and blocks (Keyline); a kitchen and joinery trade-only retail chain (Benchmark); a chain of ceramics stores (Tile Giant) open to the general public; and; ii) at wholesale and retail levels, Commercial Ceiling Factors (CCF), which specialises in suspended ceilings, partitions and insulation systems.

<sup>2</sup> Its Specialist division distributes power and hand tools, accessories, consumables, clothing and maintenance equipment to domestic and industrial retail and wholesale customers.

subsidiaries supplying P&H products mainly to 'domestic' customers include: F&P Wholesale (a wholesale supplier to general and specialist builders' merchants), Spendlove C. Jebb (a plumbers' merchant in Northern Ireland and the Republic of Ireland); and, Direct Heating Spares (a distributor of domestic heating spare parts). The Industrial division includes: BSS Industrial,<sup>3</sup> UGS and Warren businesses.

## **THE TRANSACTION**

3. TP proposes to acquire BSS by way of a scheme of arrangement. The transaction is subject to the UK Takeover Code and is conditional on the Office of Fair Trading (OFT) not referring the transaction to the Competition Commission (CC).
4. TP notified this transaction to the OFT on 19 July 2010. The OFT's administrative deadline in this case was 26 October.

## **JURISDICTION**

5. As a result of the proposed merger TP and BSS will cease to be distinct.
6. For the year ending on 31 March 2010, BSS had a UK turnover in excess of £1.3 billion. Therefore, the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is met. This transaction does not have a Community dimension for the purposes of the EC Merger Regulation, Council Regulation (EC) No 139/2004 because both parties earn more than two-thirds of their Community turnover within the UK.
7. Consequently, the OFT considers that arrangements are in progress or contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

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<sup>3</sup> BSS Industrial forms the industrial division of BSS with 58 branches across the UK and the Republic of Ireland. It supplies specialist brands for specific technical product ranges such as pumps, plastics and controls. It also markets and distributes heating and plumbing, process, pipeline and mechanical services equipment primarily for industrial applications. It stocks some products which can be used in domestic installations. Since the material overlap resulting from this merger relates to domestic products, this assessment has focused on BSS Domestic Division which in the UK consists of PTS at the retail level and F&P at the wholesale level.

## **BACKGROUND**

8. In its decision of 26 October 2010 (the Decision), the OFT stated that it believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition on the basis of unilateral effects arising in the retail supply of P&H products in 20 local areas.
  - The OFT found competition concerns in 13 catchment areas where the merger would lead to a fascia reduction in the number of national P&H specialists of '3-to-2' and '2-to-1'.
  - In relation to areas where the merger would lead to a fascia reduction in the number of national P&H specialists of '4-to-3' the OFT considered that these areas raised preliminary competition concerns that merited further assessment, but which were relatively muted. After further consideration, the OFT could not dismiss its preliminary competition concerns in six local areas. Concerns could also not be dismissed in an additional area in which the merger would create a '2-to-1' reduction in national P&H specialist outlets within five miles' radius of the target, even where four national P&H specialist outlets would be left post-merger within a 10-mile catchment area.
9. The OFT considered carefully three further theories of harm put to it during its investigation. These were: input foreclosure of boilers to independent P&H specialists; anti-competitive buyer power in relation to boilers (in the form of a 'waterbed effect' and/or 'demand withholding'); and coordinated effects at the retail level between TP and Wolseley's Plumb Center. For the reasons given in the decision, the OFT did not consider that a realistic prospect of a substantial lessening of competition arose in relation to any of these theories of harm.

## **DIVESTMENT UNDERTAKINGS OFFERED BY TRAVIS PERKINS**

10. To address the OFT's concerns, TP offered undertakings in lieu of reference (UILs) to divest a store or stores in the 20 local areas where the OFT identified competition concerns meeting its test for reference to the CC.
11. The OFT stated in its Decision that the proposed undertaking is a structural remedy that will, in each local area, remove the overlap between the parties. Thus, the OFT considered that TP's proposed UILs were sufficient in

principle to act as a clear-cut and comprehensive remedy to the competition concerns identified by the OFT.

12. For the reasons stated in its Decision,<sup>4</sup> in the circumstances of this case, the OFT considered that it was not necessary to include an up-front buyer provision in respect of the 20 local areas where the OFT's duty to refer to the CC has been triggered.
13. The OFT therefore announced that it was suspending its duty to refer the proposed acquisition to the CC under section 33 of the Act because the OFT was considering whether to accept appropriate UILs from TP.

## **CONSULTATION**

14. On 11 November 2010, the OFT published the proposed UILs, inviting interested parties to give their views on them by 26 November 2010 pursuant to paragraph 2(1) Schedule 10 of the Act. The consultation text published on the OFT's website alongside the proposed UILs is set out in the Annex to this decision.
15. The OFT received comments from two interested parties during the consultation period. They both expressed concern over possible divestment of the BSS PTS store in one local area.<sup>5</sup> Concern was also expressed about the uncertainty of the employment situation of the staff of that store.
16. The representations addressed two main issues: i) that the divestment was unnecessary because the merger would not reduce competition in that area; and ii) that the divestment of the PTS store could in itself create a competition problem.
17. On the first issue, the Decision gives the OFT's reasons for believing that the merger gives rise to a realistic prospect of an SLC in this area. The Decision also explains why a divestment will provide a clear-cut remedy to that concern (that is, by removing the overlap between the parties in the local

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<sup>4</sup> See paragraphs 226 to 232.

<sup>5</sup> The choice of whether to sell the PTS store or the overlapping CPS store(s) in a given area is left to the parties under the UIL.

area). The purpose of this consultation period is only to consider the suitability of the proposed UILs in remedying the identified concerns.

18. The OFT has carefully considered the second issue and, based on the information gathered during its investigation, believes that:
  - the entry into the area of a suitable new competitor with a competitive impact comparable to that of PTS would restore competition to pre-merger levels, and
  - the OFT has seen no evidence to suggest that the merged TP/BSS entity would not be interested in continuing the volume and type of business previously carried out by the PTS store through its retained stores in the local area.

On this basis, the OFT does not believe that the divestment of the PTS store could in itself create a competition problem in the local area in question.

19. The OFT further notes that during the purchaser approval process, it will in any event take into account all relevant factors to ensure that acquisition by any proposed purchaser remedies, mitigates or prevents the substantial lessening of competition concerned.
20. In light of the above, the OFT does not believe that these representations warrant a change in the content of the proposed UILs.

## **DECISION**

21. The OFT's Decision concluded that the merger would be referred to the CC if the parties failed to give suitable undertakings in lieu of reference pursuant to section 73 of the Act to address the competition concerns identified in the Decision.
22. The OFT considers that the undertakings provided by TP are clear cut and appropriate to remedy, mitigate or prevent the substantial lessening of competition and any adverse effects resulting from it. The OFT has therefore decided to accept the undertakings in lieu of reference offered by TP.
23. The merger will therefore not be referred to the Competition Commission and the undertakings, which have been signed by TP, will come into effect from

this date or the date on which the transaction completes, whichever is the latest.

## Annex I

### Travis Perkins/BSS undertakings consultation

#### **Anticipated acquisition by Travis Perkins PLC of the BSS Group PLC**

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

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

On 26 October 2010, the OFT announced its decision to suspend its duty to refer the anticipated acquisition by Travis Perkins Group PLC (TP) of the BSS Group PLC (BSS) to the Competition Commission under section 33 of the Enterprise Act 2002 because the OFT was considering whether to accept appropriate undertakings from TP in lieu of reference.

The OFT believes that it is or may be the case that the merger may be expected to result in a substantial lessening of competition in relation to the supply of plumbing and heating products in the local areas around 20 BSS stores.

The text of the OFT's decision, published on 11 November 2010 (the decision), provides details on the OFT's findings, and explains the methodology applied to determine which local areas gave rise to competition concerns.

#### **Divestment undertakings offered by TP**

To address the OFT's competition concerns, TP offered to divest a store (or stores) in each of the 20 local areas identified by the OFT, thereby effectively removing the store overlap created by the proposed merger.

Specifically TP offered to divest either the BSS store or all of the relevant overlapping TP stores in any areas around BSS stores that were found to give rise to concerns.

The OFT proposes that TP should have the option to select whether it divests the BSS store or the relevant TP store(s) in these local areas. In the event that TP does not satisfy its obligations under the undertakings by the end of the

Divestment Period, then any Trustee appointed under the undertakings would also be able to sell either the BSS store or the relevant TP store(s) in the relevant local area(s).

The relevant stores are listed by way of the annex to the undertakings in lieu.

### **Process going forward**

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

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

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

[Download the proposed undertakings](#) (pdf 164kb).

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

Representations should be made in writing to:

Carole Bowley  
Mergers Group  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX  
Telephone: 020 7211 8912  
Email: [carole.bowley@oft.gsi.gov.uk](mailto:carole.bowley@oft.gsi.gov.uk)

**Deadline for comments: 26 November 2010**