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Anticipated acquisition By Travis Perkins Plc Of BSS Group Plc

**ME/4609/10**

Variation to undertakings accepted 16 February 2011. Full text of decision published 22 February 2011.

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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.**

## **THE 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.
2. **The BSS Group plc (BSS)** primarily retails and wholesales P&H products in the UK and the Republic of Ireland. 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. Other 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).

## **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 this transaction Travis Perkins and BSS ceased to be distinct. The UK turnover of BSS exceeded £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) was satisfied.
6. The OFT concluded in its Decision that arrangements were in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## **BACKGROUND**

7. 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 plumbing and heating products in 20 local areas. The text of the Decision, published on 11 November 2010, provides details of the OFT's findings.
8. To address the OFT's competition concerns, Travis Perkins offered to divest a store (or stores) in each of those local areas (the Divestment Businesses). On 11 November 2010 the OFT published for consultation the text of proposed undertakings in lieu offered by Travis Perkins. These undertakings were accepted by the OFT on 10 December 2010.
9. Information given to the OFT following the Decision and its subsequent acceptance of these undertakings showed that 'Graham', Saint Gobain's branded plumbing and heating specialist national chain, operates a store within the 10-mile catchment areas of two BSS' Plumbing Trade Supplies stores, its Walsall-Stockton

Close branch (postcode, WS2 8LH) and its Aldridge-Brickyard Road branch (postcode, WS9 8SX).

10. These BSS stores and the overlapping Travis Perkins stores in those catchment areas were included among the Divestment Businesses because, based on the information presented to the OFT at the time, it found that this merger would lead to a '4-to-3' fascia reduction in plumbing and heating specialist national chains in those local areas.<sup>1</sup> The presence of the 'Graham' store increases the post merger fascia number to four in both catchment areas such that, on the basis of the methodology set out and applied in the Decision, the OFT should not have had concerns in either of those areas. As such, there should not have been a requirement for Travis Perkins to make a divestment neither in the Walsall nor in the Aldridge areas.
11. In light of the above, and following Travis Perkins' formal requests to vary the undertakings in lieu, the OFT considered that it was appropriate to consult on these proposed variations. These consist of the removal from the undertakings in lieu of the obligation on Travis Perkins to divest the BSS or the overlapping Travis Perkins stores within the 10-mile catchment areas around the BSS' Walsall and Aldridge branches respectively.

## **CONSULTATION**

12. On 7 and 21 January 2011 the OFT published the proposed varied undertakings in lieu inviting interested parties to give their views on them by 24 January and 4 February 2011 (on Walsall and Aldridge respectively) pursuant to paragraph 2(1) Schedule 10 of the Act. In both consultations, the OFT noted that it was minded to accept these proposals.
13. The OFT did not receive any responses against these proposed variations.

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<sup>1</sup> See Paragraph 134 of the Decision and rows and 1 and 17 of Annex 1 (Divestment Business) of the OFT undertakings-in-lieu decision of 10 December 2010.

## **DECISION**

14. In light of these findings post-decision, the OFT considers that the varied undertakings in lieu superseding the existing ones 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 superseded undertakings in lieu offered by Travis Perkins and they come into effect from today.

**Amelia Fletcher**  
Chief Economist  
16 February 2011