

Anticipated acquisition by Patagonia Bidco Limited of certain businesses owned by Grafton Group Plc

Decision on relevant merger situation and substantial lessening of competition

ME/6950/21

SUMMARY

1. Patagonia Bidco Limited, the holding company of Huws Gray builders' merchant business (**Huws Gray**) has agreed to acquire a number of builders' merchant businesses (the **Targets**) ultimately controlled by the Grafton Group plc (**Grafton**) (the **Merger**). Huws Gray and the Targets are together referred to as the **Parties** and, for statements concerning the future, as the **Merged Entity**.
2. The Parties overlap in (i) the supply of building materials through general builders' merchants (**GBMs**) and (ii) the retail supply of specialist timber and forest products. Building materials are materials that have a construction use, including both naturally occurring materials (such as clay, sand and timber) and man-made materials.
3. In the course of the CMA's Phase 1 investigation, the Parties requested that the case be fast tracked to the consideration of undertakings in lieu of a reference (**UILs**). For a case to be fast tracked, the CMA must, at an early stage of its investigation, have evidence objectively justifying the belief that the test for reference to Phase 2 is met.
4. The CMA has concluded that the test for reference is met in this case because the CMA considers that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in the supply of building materials through GBMs as a result of horizontal unilateral effects in one local area in Sudbury (the **SLC Area**). The CMA notes that the identified SLC is one that could be resolved through the sale of one or more of the Parties' GBMs. The CMA has also had regard to its administrative resources and the

efficient conduct of the case. In light of the above, the CMA believes that it is appropriate to proceed with a fast track consideration of UILs.

5. In addition to considering local overlaps in the supply of building materials through GBMs, the CMA considered the impact of the Merger on (i) the supply of building materials through GBMs on a national basis and (ii) the retail supply of specialist and forest products on a national and local basis. The CMA did not identify competition concerns in either of these areas as the Parties' have a moderate combined position, are not particularly close competitors and face competition from a number of rivals.
6. The Parties have until 6 December 2021 to submit a formal offer of an undertaking to resolve the competition concern regarding the supply of building materials through GBMs in Sudbury. If the Parties do not offer an undertaking that is acceptable to the CMA, then the CMA will refer the Merger to Phase 2 pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties and transaction

7. Patagonia Bidco Limited,¹ the holding company of Huws Gray, agreed to acquire 100% of the issued share capital in the Targets, under the terms of a share purchase agreement entered into on 30 June 2021.
8. Huws Gray is a GBM which supplies a broad range of building materials at the retail level, primarily to builders and other tradesmen, in England and Wales. Huws Gray operates 115 locations (100 GBM and 15 non-GBM branches). Huws Gray generated revenues of [X] in FY2020.²
9. The Targets operate the following businesses:
 - (a) **Buildbase**: a GBM with 125 branches in England and Scotland;
 - (b) **PDM Buildbase**: comprising a specialist distributor of civils (**PDM**) and a GBM (Buildbase Scotland), both active in Scotland;³
 - (c) **Civils & Lintels (C&L)** (including Harvey Steel Lintels): a specialist distributor of civils, drainage and lintels, with 21 depots and 19 physical

¹ Patagonia Bidco Limited is owned by The Blackstone Group Inc. (**Blackstone**). Blackstone is a global investment business. Blackstone owns a range of portfolio companies, none of which (apart from Huws Gray) is active in the supply of building materials. Therefore, Blackstone's other portfolio companies are not considered further in this decision.

² Final Merger Notice submitted by the Patagonia Bidco Limited to the CMA on 7 October 2021 (**FMN**), paragraph 4.4.

³ Buildbase and Buildbase Scotland together referred to as "**Buildbase**".

locations in England & Wales;

- (d) **The Timber Group (TTG)**: a merchant primarily specialising in timber and forest products, with six branches in London and the South East;
- (e) **Lloyd Worrall**: a supplier of architectural ironmongery, with five branches;
- (f) **Bathroom Distribution Group (BDG)**: a wholesale and retail supplier of bathroom and plumbing products, with two locations in the North of England; and
- (g) **NDI**: a specialist supplier of drywall, insulation and ceiling products, with six branches in England and Wales.

10. The turnover of the Targets in 2020 was [REDACTED]⁴ in the UK.

Procedure

- 11. The CMA commenced its Phase 1 investigation on 11 October 2021. On 3 November 2021, the Parties accepted that the test for reference under section 33(1) of the Act is met on the basis that the Merger raises a realistic prospect of an SLC arising from horizontal unilateral effects in the supply of building material through GBMs in one local catchment area in Sudbury (the **SLC Area**).
- 12. The Parties requested that the case be fast tracked to the consideration of UILs.⁵ As part of the request, the Parties agreed to waive their procedural rights to challenge the position that the test for reference is met during a Phase 1 investigation and agreed that the CMA would not be required to follow all of the procedural steps it normally follows in cases that raise complex or material competition issues (including the discussion of the case at an issues meeting).
- 13. The CMA has considered the Parties' request and, for the reasons set out in this decision, finds that the Merger gives rise to a realistic prospect of an SLC in the SLC Area. The CMA also had regard to its administrative resources and the efficient conduct of the case. In light of these considerations, the CMA decided that in this case it was appropriate to proceed with an accelerated Phase 1 timetable, reaching a decision ahead of its statutory 40 working day deadline.

⁴ FMN, paragraph 4.2.

⁵ See [Guidance on the CMA's Jurisdiction and Procedure \(CMA2, December 2020\) \(CMA2\)](#), paragraphs 7.8 – 7.13.

Jurisdiction

14. Each of Huws Gray and the Targets is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
15. The UK turnover of the Targets exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
16. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
17. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 11 October 2021 and the statutory 40 working day deadline for a decision is therefore 3 December 2021.

Counterfactual

18. The CMA assesses a merger's impact relative to the situation that would prevail without the merger (ie the counterfactual).⁶ In an anticipated merger, the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the prevailing conditions of competition.⁷ In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.⁸
19. The Parties submitted that the appropriate counterfactual is the prevailing conditions of competition.
20. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

21. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive

⁶ [Merger Assessment Guidelines \(CMA129, March 2021\)](#) (**Merger Assessment Guidelines**), paragraph 3.1.

⁷ [Merger Assessment Guidelines](#), paragraph 3.2.

⁸ [Merger Assessment Guidelines](#), paragraph 3.9.

effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.⁹

22. The Parties overlap in (i) the supply of building materials through GBMs and (ii) the retail supply of specialist timber and forest products.^{10,11} Building materials are materials that have a construction use, including both naturally occurring materials (such as clay, sand and timber) and man-made materials.¹²

Product scope

Supply of building materials

23. In line with previous decisional practice, the CMA has considered whether the supply of building materials can be further segmented by (i) product category, (ii) type of customer and (iii) type of merchant.¹³

⁹ [Merger Assessment Guidelines](#), paragraph 9.4.

¹⁰ Huws Gray overlaps with TTG (one of the Targets) in the retail supply of specialist timber and forest products. Huws Gray supplies these specialist timber and forest products from its GBM branches as well as via two engineered timber product specialist locations and a single specialist timber merchant branch.

¹¹ There is also a vertical relationship between the Parties as Huws Gray purchases a limited amount of products (sanitaryware, baths, shower enclosures and brassware, ie 'SHAP' products) from BDG. The Parties estimate that BDG has a small share (ie less than [0-5]%, of the wholesale supply of SHAP products). The CMA therefore considers that if BDG were to exclusively supply to the Merged Entity, or to degrade supply to competitors of the Merged Entity, competing GBMs would have alternative sources of SHAP products. The CMA therefore believes that the Merged Entity will lack the ability and the incentive to engage in an input foreclosure strategy. The CMA also considers that there is also no realistic prospect of the Merged Entity having the ability or incentive to engage in a customer foreclosure strategy, since Huws Gray does not represent a significant customer of SHAP products (Huws Gray accounts for only [0-5]% of BDG's sales).

¹² OFT decision of 8 February 2012, Case ME/5252/11 Saint-Gobain/Build Center (**Build Center Decision**), paragraphs 13-28.

¹³ Build Center Decision, paragraph 10. The types of materials sold by GBMs such as the Parties can broadly be categorised as:

- (a) Timber and joinery (eg wood, timber linings and doors);
- (b) Bricks and blocks;
- (c) Aggregates and cement;
- (d) Insulation and plasterboard, including plaster and acoustic or thermal insulations products;
- (e) Landscaping supplies, such as paving slabs, fencing and stones;
- (f) Drainage products, such as guttering, pipes and manhole covers;
- (g) Plumbing and heating;
- (h) Ironmongery;
- (i) Roofing;
- (j) Tools;
- (k) Shop goods/sundries.

Segmentation by product category

24. The Parties submitted that in line with previous OFT precedents, there exists a market for the supply of all building materials, regardless of the type of materials, for the following reasons:
- (a) Customers will often purchase a bundle of building materials in a single transaction.
 - (b) GBMs typically stock a similar range of products to meet customer requirements and have the ability to flex their use of space in response to changes in demand.
 - (c) Within a product category, GBMs' products are often homogeneous.
 - (d) The OFT's merger investigation in the Build Center Decision did not indicate that there is a key product in the market which drives searching or switching behaviour.¹⁴
25. The CMA's merger investigation confirmed the Parties' submissions. For instance, a buying group told the CMA that it is important for the suppliers of building materials to provide a mix of products and range.¹⁵ Furthermore, competitors indicated that GBMs carry a range of heavyside (bricks, blocks, aggregates, etc) and lightside (adhesives, electrical wiring accessories, kitchen and bathroom equipment, etc) building materials, which are tailored to local markets and customer base.¹⁶ Accordingly, the CMA believes the relevant product frame of reference should not be further segmented by the type of building materials.

Segmentation by type of customer

26. The Parties submitted that their customers include both consumers and trade and professional customers. From a demand-side standpoint, the Parties submitted that all categories of trade and professional customers procure from a range of different sources and consider convenience of location, price, product range and stock availability as important parameters of competition. From a supply-side standpoint, the Parties argued that most types of retailers serve most customer groups, at least to an extent.
27. The Parties further submitted that there is no need for the CMA to consider segmentation by customer type when determining the appropriate frame of

¹⁴ Build Center Decision, paragraphs 14-17.

¹⁵ Note of call with a buying group dated 28 September 2021.

¹⁶ Competitor responses to CMA Questionnaire dated 11 October 2021, question 4.

reference. According to the Parties, issues in relation to specific sub-segments of customers should be taken into account in the CMA's competitive assessment.

28. Third-party evidence received by the CMA indicates to some extent that purchasing patterns may be different for large, national housebuilding customers (for whom the operation of a national branch network might be important, for example), as opposed to small, independent tradesmen, who do not require a national branch network.¹⁷
29. The CMA understands, however, that such large customers are typically a small proportion of the customer base for GBMs.¹⁸ Furthermore, as explained below, the Merger does not give rise to a realistic prospect of an SLC in the supply of building materials on a national basis, and therefore the CMA has left open whether a sub-segmentation for national customers is necessary. The CMA has considered the relative importance of certain customer groups in its competitive assessment.

Segmentation by type of merchant

30. The Parties submitted that they compete against a range of different types of suppliers, including GBMs, fixed price merchants (**FPMs**), specialist merchants, DIY stores, and manufacturers who supply directly to customers. The Parties further submitted that online distribution is frequently used for the supply of building materials and that pure online GBMs compete directly with traditional GBMs.
31. The evidence available to the CMA indicates that GBMs compete most closely with other GBMs, and that the competitive interactions between GBMs and other retailers (specifically FPMs and DIY stores) are limited. For instance, one customer told the CMA that it does not consider FPMs or DIY stores to be alternatives to GBMs.¹⁹ Similarly, a competing GBM told the CMA that it competes most closely with GBMs. According to this third party, GBMs mainly sell heavyside materials and target trade customers, whereas FPMs and DIY stores focus more on lightside products and retail customers.²⁰

¹⁷ Note of call with a buying group dated 28 September 2021. Customer responses to CMA Questionnaire dated 11 October 2021, question 8.

¹⁸ Buildbase estimates that [redacted] of its customers source at the national or regional level (FMN, paragraph 8.25); Huws Gray has [redacted] customers which source at the national level and 0.5% of its customer base sources at the regional level (FMN, paragraph 8.24). A competitor estimated that up to a maximum of [redacted] of its customers operate nationally (Note of call with a competitor dated 27 September 2021).

¹⁹ Note of call with a customer dated 20 September 2021.

²⁰ Furthermore, the CMA asked competitors to list their five main competitors in the building materials sector and to rank them based on market share. All five GBM competitors that responded to this question of the CMA Questionnaire, dated 11 October 2021, only included other GBMs as their five main competitors.

Finally, the third party indicated there is some competitive interaction with FPMs, but caveated that this remains limited.²¹

32. The Parties' internal documents indicate that the Parties do not consider specialist merchants to be a major competitive constraint.²² However, customers told the CMA that specialist merchants are viable alternatives in the specific product areas they cover.²³
33. Based on the available evidence, the CMA believes that the relevant frame of reference is the supply of building materials through GBMs. The CMA has considered the competitive constraints posed by the other types of merchants in its competitive assessment.

Retail supply of specialist timber and forest products

34. As explained in paragraphs 24 and 30, the Parties submitted that the retail supply of specialist timber and forest products is part of a broader frame of reference that includes the supply of building materials, regardless of the type of material or type of merchant.
35. The OFT has previously concluded that the supply of building materials through specialist merchants is distinct from the supply of building materials through GBMs. The OFT, however, considered that specialist merchants pose a competitive constraint on GBMs to the extent the GBMs sell the relevant specialist products.²⁴
36. On a cautious basis, the CMA has considered the impact of the Merger in the retail supply of specialist timber and forest products. However, the CMA has left the exact product scope of the retail supply of specialist timber and forest open since, as explained below, the Merger does not give rise to an SLC in this segment, on any plausible basis.

Geographic scope

Supply of building materials

37. The Parties submitted that competition for building materials predominantly takes place at the local level.

²¹ Note of call with third party dated 27 September 2021.

²² See, for example, Annex 5.8 to the FMN, slide 19.

²³ Customer responses to CMA Questionnaire dated 11 October 2021, question 6.

²⁴ Build Center Decision, paragraph 27.

38. The OFT previously found that the supply of building materials is characterised by both national and local elements of competition.²⁵ The OFT noted that certain elements of a GBM's offering, notably purchasing policy, branding and some marketing, were set nationally, and for a small percentage of large customers, which operate nationally, it was necessary to have a national presence. However, the OFT also noted that 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. The OFT's findings are consistent with the evidence received by the CMA in this investigation.^{26,27}
39. In relation to the local assessment, and in line with previous decisions, the CMA considers that the impact of a merger in the supply of building materials through GBMs can be assessed using catchment areas. Catchment areas are typically constructed by analysing data on customer location to determine the area from which a firm draws 80% of its business.²⁸
40. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of building materials through GBMs on both a national and local basis.

Retail supply of specialist timber and forest products

41. In line with previous decisions,²⁹ the CMA has considered the impact of the Merger in the retail supply of specialist timber and forest products on a local and national basis. The CMA has, however, left the precise geographic frame of reference open for the retail supply of specialist timber and forest products since there is no realistic prospect of an SLC on any plausible basis.

Conclusion on frame of reference

42. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the supply of building materials through GBMs on a national and local basis;

²⁵ Build Center Decision, paragraph 32.

²⁶ Note of call with a buying group dated 28 September 2021. Customer response and competitor response to CMA Questionnaire dated 11 October 2021, question 7 and question 4, respectively.

²⁷ The Parties submitted that local branch managers have [§]. The Parties submitted that pricing [§]. Furthermore, GBM customers told the CMA that customer loyalty programmes and volume discounts, as well as availability of products offered at the branch, were key factors when choosing a supplier.

²⁸ Build Center Decision, paragraph 31.

²⁹ Build Center Decision, paragraph 32.

- (b) the retail supply of specialist timber and forest products on a national and local basis.

Competitive assessment

Horizontal unilateral effects

43. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.³⁰ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger may be expected to result, in an SLC in relation to horizontal unilateral effects in:

- (a) the supply of building materials through GBMs on a national and local basis;
- (b) the retail supply of specialist timber and forest products on a national and local basis.

Supply of building materials through GBMs on a national basis

Shares of supply

44. The Parties submitted share of supply estimates for GBMs on a national basis. Table 1 indicates that the Parties have a combined share of supply by revenue of [5-10]% with an increment of [0-5]% in the supply of building materials through GBMs in the UK.³¹ The Parties compete with Saint-Gobain ([10-20]%), Travis Perkins ([10-20]%) and a tail of smaller players, including Kingfisher (TradePoint), Bain Capital (MKM) and Grafton (Selco).

Table 1: Shares for retail supply of building materials (national) by revenues, GBMs only (2018, 2019 and 2020)

	2018		2019		2020	
	GBP m	Share	GBP m	Share	GBP m	Share
Huws Gray Group	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
<i>Huws Gray</i>	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%

³⁰ [Merger Assessment Guidelines](#), paragraph 4.1.

³¹ The Parties have also provided shares for the retail supply of building materials by *branch count* on a national basis. The Parties have a combined share of [5-10]%, with an increment of [0-5]%. The Parties compete against larger players such as Saint-Gobain ([10-20]%), Travis Perkins ([10-20]%) and Kingfisher (TradePoint) ([10-20]%) and a tail of smaller competitors.

	2018		2019		2020	
Ridgeons ³²	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
2020-2021 acquisitions ³³	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Target (Buildbase)	[X]	[5-10]%	[X]	[0-5]%	[X]	[0-5]%
Combined	[X]	[5-10]%	[X]	[5-10]%	[X]	[5-10]%
Saint-Gobain	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Jewson	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Other Saint Gobain brands ³⁴	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Travis Perkins (Travis Perkins)	[X]	[10-20]%	[X]	[10-20]%	[X]	[10-20]%
Kingfisher (TradePoint)	[X]	[5-10]%	[X]	[0-5]%	[X]	[5-10]%
Bain Capital (MKM)	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Grafton (Selco)	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Cairngorm Capital	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Grant & Stone	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
CRS Building Supplies	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Rawle Gammon & Baker	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Independent Builders Merchant Group	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Rembrand Timber	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Brick-Ability Group (Taylor Maxwell)	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Bradfords (Bradfords)	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
EH Smith (EH Smith)	[X]	[0-5]%	[X]	[0-5]%	[X]	[0-5]%
Others³⁵	[X]	[30-40]%	[X]	[30-40]%	[X]	[30-40]%
Total	[X]	100.0%	[X]	100.0%	[X]	100.0%

Source: FMN, Table 2

45. The CMA considers that the Merged Entity will have a moderate combined share of around [5-10]% and will continue to face competition from a number of other suppliers post-Merger.

Closeness of competition and other competitive constraints

46. The Parties submitted that they compete with a range of other GBMs, including GBMs operating on a national basis and smaller independent GBMs operating on a regional or local basis.
47. The Parties submitted that they do not compete with each other closely. They submitted that they have a different geographic focus within the UK, with Huws Gray's GBM businesses mainly located in the North West, West Midlands, East of England and Wales, and Grafton's GBMs located in the South and East Midlands in England, and in Scotland. The Parties also

³² Ridgeons was acquired by Huws Gray in 2018.

³³ Other acquisitions include (i) Builders Supplies West Coast (acquired in February 2021), (ii) Higgins Builders Merchants (acquired in February 2021), (iii) Uriah Woodheads (Bradford) (acquired in December 2020), (iv) Milfords (acquired in October 2020) and (v) AC Roof Trusses (acquired in March 2020).

³⁴ This row contains other Saint Gobain brands, including GBM brands Gibbs & Dandy, JP Corry and Benchmark.

³⁵ The Parties submitted that none of the competitors grouped together in the 'others' category has a market share higher than the last identified competitor.

submitted that they only have one overlapping customer amongst their top 100 customers. Huws Gray serves a very limited number of customers who are active on a national basis ([X] of revenues), whereas Grafton's (Buildbase) national customers account for [X] of its revenues.

48. The evidence reviewed by the CMA did not suggest that the Parties are particularly close competitors nationally. Internal documents show that the Parties consider they compete with several national GBM competitors, and did not show a particular focus on competition from the other Party.³⁶ Furthermore, evidence gathered from third parties did not suggest material competition between the Parties on a national basis; no third party raised concerns about the Merger's impact on competition on a national basis.

Conclusion on horizontal unilateral effects in the supply of building materials through GBMs on a national basis

49. For the the reasons set out above, the CMA considers that the Parties are not close competitors in the supply of building materials through GBMs on a national basis, and that the Merged Entity will continue to face competitive constraints from several alternative suppliers. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of building materials through GBMs on a national basis.

Supply of building materials through GBMs on a local basis

Framework of the local assessment

50. When analysing whether a merger may result in a realistic prospect of an SLC in cases involving a large number of local overlaps, the CMA may use a filtering methodology to screen out overlap areas where competition concerns are unlikely to arise.³⁷ The filtering methodology used in a given case is driven by the characteristics of the market at issue, based on the evidence available.
51. In previous decisions in the GBM sector, the CMA has adopted the following approach:³⁸
- (a) delineation of catchment areas and identification of overlaps for specific sites;

³⁶ Annex 11.24 (Grafton) to the FMN slide 4, Annex 7.2 (Huws Gray) to the FMN, Annex 8.4 (Grafton) to the FMN, Annex 11.1 (Grafton) to the FMN slides 13 and 14, Annex 22.1 (Huws Gray) to the FMN slide 18.

³⁷ See the [Retail Mergers Commentary \(CMA62, 10 April 2017\)](#), paragraph 3.2.

³⁸ Build Center Decision, paragraph 200.

- (b) filtering to exclude overlaps/sites where there is no realistic prospect of competition concerns arising; and
- (c) local competitive assessment of sites/areas which fail these filters.

The Parties' local assessment

52. The Parties submitted that the appropriate catchment area is a 25-minute drive-time around the Parties' sites. That drive-time was based on invoice and delivery data from the period 2018-2020.³⁹ The Parties submitted that the results based on delivery locations are broadly consistent with the results based on invoice locations.⁴⁰

- *Local overlap analysis*

53. The Parties included all their GBM and the TTG branches as centroids (ie sites on which local catchment areas are centred) in their local analysis. However, the Parties did not include their non-GBM branches as centroids, as they told the CMA that GBMs do not impose a strong constraint on specialist merchants.⁴¹

54. The Parties scaled the 25-minute drive-time by 1.5, resulting in extended catchment areas of 37.5 minutes, in order to account for the fact that weighted shares are used (see footnote 45).⁴²

³⁹ The Parties submitted that the estimates based on Huws Gray's invoice location analysis are more reliable to determine the appropriate catchment area around Huws Gray's branches. This is because only [30-40]% of Huws Gray's delivery data includes the full postcode information. The Parties submitted that they were unable to assess whether the missing data is more likely to be missing for deliveries to locations which are unusually far away or unusually close. See Compass Lexecon Methodology Note dated 17 September 2021. Because each of the Targets' invoice and delivery data sets account for approximately 70% of the Targets' revenues, the Parties submitted that these two data samples were large enough to conduct a robust analysis of catchment areas. In response to the CMA's queries about the missing data, the Parties submitted an analysis of the sample used for the catchment area estimation, based on the invoice data. The Parties' submission showed that (i) the sample accounts for 81.5% and 87.5% of Huws Gray and the Targets' revenue, respectively, ie a size which would be large enough to conduct a robust analysis; (ii) that there is no reason to suspect that the sample might be biased and that therefore the estimated drive-time is a reliable metric; and (iii) that even if all relevant sales with unavailable location information were located within a 20-minute drive-time, a sensitivity check shows that the resulting estimated catchment area based on the closest 80% of sales would still be greater than 20 minutes. See Compass Lexecon Methodology Note dated 27 October 2021.

⁴⁰ The Parties submitted that more weight should be given to the results based on sales, rather than the number of customers. According to the Parties, the value of sales is of more significance to the Parties than the number of their customers.

⁴¹ Compass Lexecon Methodology Note dated 17 September 2021.

⁴² The Parties submitted that it was appropriate to apply a scaling factor for the following reasons:

- (a) Without scaling, the branch on the perimeter of the 80% catchment area would be assigned a weight of zero (as opposed to one in the non-weighted approach). When a scaling factor of 1.5 is used, a branch has a weight of 1/3 at the border of the catchment area, which is in line with the overlapping customer base between the centroid and the branch on the perimeter. Compass Lexecon Methodology Note dated 17 September 2021. Assuming that the catchment area is a circle, and customers or revenue were uniformly

55. Using a 37.5-minute drive-time, the Parties found that:
- (a) 67 out of 100 Huws Gray's GBM centroids overlap with the Targets' GBM, TTG and non-GBM branches; and
 - (b) 58 out of 149 of the Targets' GBM and TTG centroids overlap with Huws Gray's GBM and non-GBM branches.
 - o *Competitor set and filtering analysis*
56. The Parties included the following of their branches in the competitor set:
- (a) all of the Parties' GBM branches;
 - (b) Huws Gray's non-GBM branches; and
 - (c) the Targets' TTG and BDG branches.
57. Given data limitations regarding the list of third-party competitor branches, the Parties' analysis was conducted in three stages. The competitor set varies between stages, as set out below:
- (a) Stage 1: The Parties included GBM branches of competitors with ten or more branches.
 - (b) Stage 2: The Parties added to the Stage 1 competitor set competitors with fewer than ten GBM branches.⁴³
 - (c) Stage 3: The Parties added to the Stage 2 competitor set non-GBMs and assigned different weights to each type of merchant.⁴⁴
58. The Parties applied the following filters for Stage 1 and Stage 2:
- (a) Share of branches: the centroid is caught if (i) the combined weighted share is 40-45% and the increment is above 5%, (ii) the combined weighted share is 45-50% and the increment is more than the difference between the combined share and 50%, or (iii) the post-Merger combined

distributed in the catchment area, the customer overlap between the centroid and the branch on the perimeter would be 39%.

- (b) Customer overlaps can occur when the branches are outside the 80% catchment area. Applying the scaling factor also allows branches outside the 80% catchment area to be taken into account when applying the filters.

⁴³ Given data limitations regarding the list of third-party competitor branches, the Parties only verified the branches belonging to the fascia with fewer than ten GBM branches for those areas that did not pass one or both filters at Stage 1.

⁴⁴ As above, the Parties only verified the branches belonging to non-GBM fascia for those areas that did not pass one or both filters at Stage 2. See footnote 45 for further details on the weighting methodology.

weighted share is above 50%. The share estimates are weighted by (i) location of the branch⁴⁵ and (ii) the branch type.⁴⁶

(b) Fascia count: the centroid is caught if the post-Merger fascia count within the extended catchment area is four or fewer.

59. If a centroid fails either of the fascia count or share of branches filter, it moves to the next stage.
60. Based on the filtering analysis described above, ten of the Parties' branches did not pass one or both of the Stage 1 filters (five branches of Huws Gray and five branches of the Targets). This number reduced to one branch after applying the Stage 2 filters (Huws Gray Sudbury located in Suffolk), which failed the share of branches filter only.^{47, 48}

CMA assessment

61. As regards the catchment area analysis, the CMA believes that delivery data is a more reliable metric than invoice data when estimating catchment areas. If customers tend to purchase their building supplies from a branch near the construction site, rather than near their home (or office), the invoice data may not be representative of the 80% catchment area.
62. However, as set out in footnote 39, only [30-40]% of Huws Gray's delivery data includes the full postcode information for its customers. The CMA considers that this data sample is too small to provide reliable estimates of the catchment areas around Huws Gray's branches. Accordingly, in this case the CMA has put more weight on the invoice data analysis (based on sales) to determine the relevant catchment areas around Huws Gray's branches.
63. The CMA has considered both the Targets' delivery and invoice data (based on sales) in order to determine the relevant catchment areas around the

⁴⁵ A weight assigned to a branch depends on its distance from the centroid: a weight of 1 is assigned to a branch located right next to the centroid. The weight declines proportionally towards 0 as branches get closer to the perimeter of the expanded catchment area (ie towards the 37.5-minute drive-time boundary).

⁴⁶ For GBM centroids, GBMs are assigned a weight of 1 (before taking into account distance). For non-GBM centroids (ie the TTG centroids), a full weight is assigned to non-GBM branches with a similar product offering as the centroid. A full weight is also assigned to GBM branches in the non-GBM centroid's catchment.

⁴⁷ Compass Lexecon Methodology Note dated 17 September 2021.

⁴⁸ Following comments made by the CMA that non-GBMs should not be included in the competitor set, the Parties revised their approach to Stage 3 on the basis of a 30-minute drive-time. The Parties submitted that all areas failing Stages 1 and 2, with the exception of the Huws Gray Sudbury and Buildbase Sudbury branches, would not give rise to an SLC if the CMA were to consider (i) distance-related systemic factors (that each branch is located at a considerable distance from the other Party's nearest GBM branch, and that in every case there is at least one third-party competitor with a GBM branch nearer to the centroid than the other Party); (ii) that all branches passed the fascia count threshold; (iii) that all branches have ten or more 'key' non-GBM branches (Screwfix, Toolstation, Wickes and specialist timber merchants); and (iv) that on the basis of a 33.75-minute drive-time, all of the areas passed the share of branches filter.

Target's branches. Both data sets are representative as each of them accounts for approximately 70% of the Targets' revenue.

64. The CMA has adopted the following approach to estimate the relevant catchment areas:
- (a) using sales figures rather than customer number figures;
 - (b) excluding the Parties' non-GBM branches (with the exception of TTG);
 - (c) excluding locations further than 30 miles; and
 - (d) for the invoice data, using a weighted average across the three sales channels (collected, delivered and direct).⁴⁹
65. Based on this approach and on the data provided by the Parties, the CMA considers that the appropriate catchment area should be of a 23-minute drive-time⁵⁰ around the centroid branches.⁵¹
66. In relation to the competitor set and, as outlined in paragraphs 31-32, the CMA notes that:
- (a) GBMs consider other GBMs to be their closest competitors;
 - (b) customers predominantly consider other GBMs to be the most viable alternative to the Parties' GBMs;
 - (c) whilst non-GBMs impose some degree of out-of-market constraint, this constraint is limited, and is weaker in the case of certain kinds of merchants (eg DIY stores) than others (eg FPMs).
67. For these reasons, the CMA has not included the Parties' non-GBM branches (with the exception of TTG) in the analysis and also did not include third-party non-GBM competitors in the competitor set. The CMA has, however, taken into account out-of-market constraints when setting the Stage 1 and 2 filter

⁴⁹ Retailers of building materials typically have up to three key distribution channels: (i) collections (by the customer from the retailer's local branch); (ii) deliveries (to the customer's address or relevant construction project) and (iii) the 'direct' channel. The direct channel involves a customer placing an order with a retailer for a product that is then delivered by the upstream supplier (ie the manufacturer or importer) to the customer directly, without being handled by the retailer itself. In such cases, the upstream supplier will typically take care of the logistics and deliver directly to site, such that the role of the retailer is limited to invoicing and credit collection. In the first half of 2021, deliveries accounted for [redacted] of Huws Gray's gross sales, with collections at [redacted] and the direct channel at [redacted]. For Buildbase, in 2019, deliveries accounted for [redacted] of Buildbase's gross sales, with collections at [redacted] and the direct channel at [redacted].

⁵⁰ Huws Gray's invoice data and the Targets' invoice data both point to 23-minute drive-time catchment areas, while the Targets' delivery data (based on sales) indicates a 24-minute drive-time around the Targets' centroids. Considering these data points in the round, the CMA believes it appropriate to use 23-minute drive-time catchment areas around both Parties' centroid branches.

⁵¹ In the Build Center Decision, the catchment areas were 3 miles (within the M25) and 10 miles (outside the M25).

thresholds (paragraph 72). The CMA considers this approach is appropriate in a phase 1 investigation.

- *Local overlap analysis*

68. In line with previous CMA decisions⁵² and with the Parties' proposed approach, the CMA considers that scaling the 23-minute catchment area by 1.5 is appropriate. As set out in footnote 42, the CMA believes that using a 1.5 times catchment area is appropriate because customer overlaps can occur when sites are outside each other's 80% catchment area. This scaling gives rise to a drive-time of 34.5-minute around each overlapping centroid.

69. Using a 34.5-minute drive-time, the CMA found that:

(a) 63 out of 100 Huws Gray's GBM centroids overlap with the Targets' GBM and TTG branches; and

(b) 53 out of 149 of the Targets' GBM and TTG centroids overlap with Huws Gray's GBM and non-GBM branches.

- *Filtering analysis*

70. The CMA has adopted a two-stage filtering methodology analogous to the first two stages of the Parties' proposed analysis, but has used different thresholds. If a centroid fails either of the fascia count or share of branches filter at Stage 1, it moves to Stage 2.

71. As set out in paragraph 67, the competitor set in the CMA's filtering analysis includes the GBM and TTG branches of the Parties. The competitor set used by the CMA varies between stages, as set out below:

(a) Stage 1: The CMA included GBM competitors with ten or more branches.

(b) Stage 2: The CMA added to the Stage 1 competitor set GBM competitors with fewer than ten branches.

72. At both stages, the CMA applied the following filters:

(a) Share of branches filter: The CMA has applied a share of branches filter of 40%. In past local assessment cases the CMA has adopted various share of supply thresholds, with 40% being at the higher end of those thresholds.⁵³ The CMA considers that adopting a higher share of

⁵² CMA decision of 26 August 2020, Case ME/6862 Breedon/Cemex, paragraph 160.

⁵³ See, for instance, CMA decision of 26 August 2020, Case ME/6862 Breedon/Cemex and CMA decision of 20 April 2021, Case ME/6911/20 EG/Asda.

branches threshold in this case is appropriate to account for the out-of-market constraint posed by non-GBM competitors, such as FPMs that are not included in the filtering analysis.

(b) Fascia count filter: The CMA considers that the appropriate threshold for the fascia count filter is a reduction in fascia from 5 to 4 or fewer.

73. Based on the filtering analysis described above, the CMA found that 20 of the Parties' branches did not pass one or both of the Stage 1 filters and two of the Parties' branches (both of them in Sudbury, ie Huws Gray Sudbury and Buildbase Sudbury)⁵⁴ did not not pass one or both of the Stage 2 filters.⁵⁵

Conclusion on horizontal unilateral effects in the supply of building materials through GBMs on a local basis

74. As a result of the analysis above, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of building materials through GBMs in one local area in Sudbury, the SLC Area.

Retail supply of specialist timber products on a national and local basis

75. Huws Gray overlaps with TTG (one of the Targets) in the retail supply of specialist timber and forest products. Huws Gray supplies these specialist timber and forest products from its GBM branches, as well as via two engineered timber product specialist locations and a single specialist timber merchant branch.

76. The Parties submitted that the Targets'⁵⁶ share in the retail supply of specialist timber products on a national basis is [5-10]%. The Parties further submitted that Huws Gray only operates two timber engineering branches and a single specialist timber merchant branch. Therefore, at the national level,

⁵⁴ Huws Gray Cleveley did not pass one or both of the Stage 2 filters. However, the Parties have a combined share in the supply of building materials through GBMs in the catchment area of [40-50]% with an increment of [0-5]%. The CMA notes the Parties' combined share of supply is not significantly higher than the share of branches threshold and that the increment is very small, ie below 1%. The CMA therefore believes the Merger does not give rise to an SLC in the supply of building materials in Cleveley.

⁵⁵ The CMA notes that the Parties' revised approach to Stage 3, as described in footnote 48, is inappropriate, and has therefore not included a Stage 3 in the filtering analysis. First, the distances between the Parties' branches, and between the centroid and the competitors' sites, have already been factored into the share of branches filter. This is because the share of branches filter is adjusted by location, so that the distance between the centroid and neighbouring GBM sites is used as a weight to calculate the post-Merger combined share of branches in each overlapping area. Second, the out-of-market constraints are already accounted for by having a 40% threshold for the share of branches filter. Finally, in relation to the Parties' competitive assessment of the local areas failing Stages 1 and 2, the CMA is of the view that the analysis of all areas of overlap should be systematically undertaken by reference to the same factors, rather than having regard to different factors in different local areas (unless there is evidence that certain factors are only applicable in certain areas).

⁵⁶ The relevant company is TTG.

the Merged Entity would have a small share of supply with a very small increment.

77. The CMA's investigation confirmed that the merged entity would have only a limited share of supply of specialist timber products on a national basis and that the Merger would result in only a small increment. The CMA has seen no evidence to suggest that the Parties' are particularly close competitors at the national level.
78. The Parties submitted that the Merger does not raise concerns at a local level. For the purposes of the Parties' local analysis, TTG were considered as being part of the same frame of reference as GBMs and other providers of building materials.⁵⁷
79. The CMA considers that TTG and Huws Gray's two engineered timber product specialist locations are not located in the same catchment area. The CMA therefore believes the Merger does not give rise to any local overlap in relation to specialist timber products.

Conclusion on horizontal unilateral effects in the retail supply of specialist timber products on a national and local basis

80. For the reasons set out above, the CMA considers that the Merged Entity will have a small presence in the retail supply of specialist timber products on a national basis. Furthermore, the Parties' timber specialists do not overlap on any local areas, and our local analysis shows that no issues arise in local areas centered on TTG branches. Accordingly, the CMA believes the Merger does not give rise to an SLC in the retail supply of specialist timber products on a national or local basis.

Barriers to entry and expansion

81. Entry, or expansion of existing firms, can mitigate the initial effect of the acquisition on competition, and in some cases may mean that there is no SLC.⁵⁸ In assessing whether entry or expansion might prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁵⁹
82. As set out in paragraphs 12 and 13, the Parties accepted that the test for reference is met in respect of the SLC Area and accordingly the CMA believes

⁵⁷ The Parties treated TTG branches as centroids for the purpose of the local assessment, as described in paragraphs 53-60.

⁵⁸ [Merger Assessment Guidelines](#), paragraph 8.28 to 8.29.

⁵⁹ [Merger Assessment Guidelines](#), paragraph 8.31.

that entry or expansion would not be sufficient to prevent a realistic prospect of an SLC in the supply of building materials through GBMs in the SLC Area as a result of the Merger.

Conclusion on substantial lessening of competition

83. Consequently, the CMA believes that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (iii) the creation of that situation may be expected to result, in an SLC within a market or markets in the United Kingdom.
84. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.⁶⁰ Patagonia Bidco Limited has until 6 December 2021 to offer an undertaking to the CMA.⁶¹ The CMA will refer the Merger for a phase 2 investigation⁶² if Patagonia Bidco Limited does not offer an undertaking by this date; if Patagonia Bidco Limited indicates before this date that it does not wish to offer an undertaking; or if the CMA decides⁶³ by 13 December 2021 that there are no reasonable grounds for believing that it might accept the undertaking offered by Patagonia Bidco Limited, or a modified version of it.

Joel Bamford
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Competition and Markets Authority
29 November 2021

⁶⁰ Section 33(3)(b) of the Act.

⁶¹ Section 73(2) of the Act.

⁶² Sections 33(1) and 34ZA(2) of the Act.

⁶³ Section 73A(2) of the Act.