

**ACQUISITION BY PATAGONIA BIDCO LIMITED, THE OWNER OF  
THE HUWS GRAY BUILDERS' MERCHANT BUSINESS, OF CERTAIN  
BUSINESSES OWNED BY GRAFTON GROUP PLC**

**Initial Enforcement Order made by the  
Competition and Markets Authority pursuant to  
section 72(2) of the Enterprise Act 2002 (the Act)**

Whereas:

- (a) the Competition and Markets Authority (**CMA**) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Patagonia Bidco Limited (**Patagonia**), Grafton Merchanting GB Limited (**GMGB**), Bathroom Distribution Group UK Limited (**Smiths Briten**), Frontline Bathrooms Ltd (**Frontline Bathrooms**), The Timber Group Limited (**Timber Group**), Harvey Steel Lintels Limited (**Harvey Steel Lintels**) and Crescent Building Supplies (Ruislip) Limited (**CBSR**) ceasing to be distinct (the **Merger**);
- (b) on 29 November 2021 the CMA decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the UK (the **SLC Decision**). As set out in the SLC Decision, the CMA found a realistic prospect of an SLC in relation to the supply of building materials through General Builders' Merchants (**GBMs**) as a result of horizontal unilateral effects in the Sudbury area. The CMA found that two of the Parties' GBM branches, Buildbase Sudbury and Huws Gray (Ridgeons) Sudbury,<sup>1</sup> which are located very close to one another (less than three minutes' drive), did not pass the filters that were applied to screen out overlap areas where competition concerns are unlikely to arise;

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<sup>1</sup> Ie Buildbase - Sudbury and Huws Gray - Sudbury.

- (c) on 30 November 2021, Patagonia offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act;
- (d) on 8 December 2021, the CMA gave notice to Patagonia pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering the Parties' offer;
- (e) the CMA has until 10 February 2021 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings (the **UILs Final Acceptance Decision**), with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 7 April 2022 if it considers that there are special reasons for doing so;
- (f) Patagonia has proposed to divest Buildbase - Sudbury, conditional on approval by the CMA of the purchaser and the terms and conditions of purchase;
- (g) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (h) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Patagonia Bidco Limited (**Patagonia**) and to any of its subsidiaries, including Grafton Merchanting GB Limited (**GMGB**), Bathroom Distribution Group UK Limited (**Smiths Briten**), Frontline Bathrooms Ltd (**Frontline Bathrooms**), The Timber Group Limited (**Timber Group**), Harvey Steel Lintels Limited (**Harvey Steel Lintels**) and Crescent Building Supplies (Ruislip) Limited (**CBSR**) (the **Order**).

### **Commencement, application and scope**

1. This Order commences on the commencement date: being the date of completion of the Merger.
2. This Order applies to Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR.

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

### **Interim action**

4. Pending the CMA's UILs Final Acceptance Decision, save as otherwise agreed in advance in writing by the CMA, Patagonia, and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, shall minimise as far as possible any risk of loss of competitive potential of the Sudbury Businesses and in particular ensure that:
  - (a) the Sudbury Businesses are maintained as a going concern and sufficient resources are made available for the development of the Sudbury Businesses on the basis of their respective pre-Merger business plans;
  - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the Sudbury Businesses;
  - (c) except in the ordinary course of business, the nature, description, range and quality of goods and/or services supplied in the UK by each of the Sudbury Businesses are maintained and preserved;
  - (d) except in the ordinary course of business:
    - (i) all of the assets of the Sudbury Businesses are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the Sudbury Businesses are disposed of; and
    - (iii) no Interest in the assets of the Sudbury Businesses is created or disposed of;
  - (e) the software and hardware platforms of the Sudbury Businesses shall remain essentially unchanged;
  - (f) no changes are made to Key Staff of the Sudbury Businesses; and

- (g) all reasonable steps are taken to encourage all Key Staff to remain with the Sudbury Businesses.
5. At all times, Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, will actively keep the CMA informed of any material developments relating to the Sudbury Businesses, which includes, but is not limited to:
- (a) details of Key Staff who leave the Sudbury Businesses;
  - (b) any interruption of the Sudbury Businesses (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes lost by the Sudbury Businesses; and
  - (d) substantial changes in the Sudbury Businesses' contractual arrangements or relationships with key suppliers.

## **Compliance**

6. Patagonia shall procure that each of their subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, complies with this Order as if the Order had been issued to each of them.
7. Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, and their subsidiaries with this Order. In particular, on the date falling two weeks from commencement of the Order and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of Patagonia or other persons of Patagonia as agreed with the CMA shall, on behalf of Patagonia, and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
8. If Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, have any reason to suspect that this Order might have been breached it shall

immediately notify the CMA and any monitoring trustee that Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harbey Steel Lintels and CBSR may be directed to appoint under paragraph 9.

9. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
10. Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

## **Interpretation**

11. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

12. For the purposes of this Order:

**'the Act'** means the Enterprise Act 2002;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'CBSR'** means Crescent Building Supplies (Ruislip) Limited, Ground Floor, Boundary House 2 Wythall Green Way, Wythall, Birmingham, United Kingdom, B47 6LW, company number 04850331;

**'commencement date'** means the date of the completion of the Merger;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'Sudbury Businesses'** refers to Buildbase - Sudbury, Huws Gray - Sudbury, Buildbase - Hadleigh, Huws Gray – Bury St Edmunds, Huws Gray – Colchester, Buildbase – Haverhill, Buildbase – Braintree and Huws Gray - Kelvedon;

**‘Buildbase - Sudbury’** refers to the Buildbase store (ID 3135) situated at Milner Road, Chiltern Industrial Estate, Sudbury, Suffolk, CO10 2XG UK.

**‘Buildbase - Hadleigh’** refers to the Buildbase store (ID 3064) situated at Landy Lane Industrial Estate, Hadleigh, Ipswich, Suffolk, IP7 6BQ UK.

**‘Buildbase – Haverhill’** refers to the Buildbase store (ID 3067) situated at Phoenix Road, Haverhill, Suffolk, CB9 7AE UK.

**‘Buildbase – Braintree’** refers to the Buildbase store (ID 3011) situated at Manor Street, Braintree, Essex, Essex, CM7 3HS UK.

**‘Key Staff’** means staff in positions of executive or managerial responsibility at the Sudbury Businesses and/or whose performance affects the viability of the Sudbury Businesses;

**‘Frontline Bathrooms’** means Frontline Bathrooms Ltd, Ground Floor, Boundary House 2 Wythall Green Way, Wythall, Birmingham, United Kingdom, B47 6LW, company number 02533308;

**‘GMGB’** means Grafton Merchanting GB Limited, Ground Floor, Boundary House 2 Wythall Green Way, Wythall, Birmingham, United Kingdom, B47 6LW, company number 04725313;

**‘Harvey Steel Lintels’** means Harvey Steel Lintels Limited, Ground Floor, Boundary House 2 Wythall Green Way, Wythall, Birmingham, United Kingdom, B47 6LW, company number 02729505;

**‘Huws Gray – Sudbury’** refers to the Huws Gray store (ID 88) situated at Alexandra Works, Chilton Industrial Estate, Sudbury, Suffolk, CO10 2XH, UK.

**‘Huws Gray – Bury St Edmunds’** refers to the Huws Gray store (ID 85) situated at Beetons Way, Bury St Edmunds, Suffolk, IP32 6TP, UK.

**‘Huws Gray – Colchester’** refers to the Huws Gray store (ID 93) situated at Peartree Road, Stanway, Colchester, Essex, CO3 0JW, UK.

**‘Huws Gray – Kelvedon’** refers to the Huws Gray store (ID 101) situated at The Old Forge, London Road, Feering, Kelvedon, Essex, CO5 9ED, UK

**‘the ordinary course of business’** means matters connected to the day-to-day supply of goods and/or services by the Sudbury Businesses and does not include matters involving significant changes to the organisational structure or related to the post-Merger integration of Patagonia, GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harbey Steel Lintels and CBSR;

**'Patagonia'** means Patagonia Bidco Limited, 1 Bartholomew Lane, London, United Kingdom, EC2N 2AX, company number 13395419;

**'Smiths Briten'** means Bathroom Distribution Group UK Limited, Ground Floor, Boundary House 2 Wythall Green Way, Wythall, Birmingham, United Kingdom, B47 6LW, company number 01367550;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

**'the Merger'** means the transaction by which Patagonia, GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR will cease to be distinct within the meaning of section 23 of the Act;

**'the Parties'** means Patagonia, GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harbey Steel Lintels and CBSR;

**'Timber Group'** means The Timber Group Limited, Ground Floor, Boundary House 2 Wythall Green Way, Wythall, Birmingham, United Kingdom, B47 6LW, company number 02683645;

**'Interest'** includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings but does not include a contract to acquire shares in the future; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

**'UILs Final Acceptance Decision'** means the CMA decision to accept undertakings in lieu of a reference under section 73(2) of the Act in relation to the Merger; and

**'UK'** means the United Kingdom of Great Britain and Northern Ireland,

unless the context requires otherwise, the singular shall include the plural and vice versa.

Lasse Burmester  
Assistant Director, Mergers

17 December 2021

## Compliance statement for Patagonia Bidco Limited

I [insert name] confirm on behalf of Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, has complied with the Order made by the CMA in relation to the Merger on [the date of the completion of the Merger (the Order)].
  - (b) Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, have also complied with this Order.
2. Except with the prior consent of the CMA:
  - (a) The Sudbury Businesses have been maintained as a going concern and sufficient resources have been made available for the development of the Businesses, on the basis of their respective pre-Merger business plans.
  - (b) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the Sudbury Businesses, except in the ordinary course of business.
  - (c) The nature, description, range and quality of goods and/or services supplied in the UK by the Sudbury Businesses have been maintained and preserved, except in the ordinary course of business.
  - (d) Except in the ordinary course of business:
    - (i) all of the assets of the Sudbury Businesses, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
    - (ii) none of the assets of the Sudbury Businesses have been disposed of; and
    - (iii) no Interest in the assets of the Sudbury Businesses has been created or disposed of.



- (e) The software and hardware platforms of the Sudbury Businesses have remained essentially unchanged.
- (f) No changes have been made to Key Staff of the Sudbury Businesses.
- (g) All reasonable steps have been taken to encourage all Key Staff to remain with the Sudbury Businesses.
- (h) Except as listed in paragraph (i) below, there have been no:
  - (i) Key Staff that have left or joined the Sudbury Businesses;
  - (ii) interruptions of the Sudbury Businesses (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Sudbury Businesses; or
  - (iv) substantial changes in the Sudbury Businesses' contractual arrangements or relationships with key suppliers.
- (i) *[list of material developments]*

3. Patagonia and any of its subsidiaries, including GMGB, Smiths Briten, Frontline Bathrooms, Timber Group, Harvey Steel Lintels and CBSR, remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Sudbury Businesses business in accordance with paragraph 5 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

### **I understand that:**

it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fines, imprisonment for a term not exceeding two years, or both**. (Section 117 of the Enterprise Act 2002.)

Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover**

(both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF PATAGONIA BIDCO LIMITED

Signature .....

Name .....

Title .....

Date .....