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***Case No COMP/M.6359 –  
SAINT GOBAIN/  
BUILD CENTER***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 4(4)  
Date: 27/10/2011



EUROPEAN COMMISSION

Brussels, 27.10.2011

C(2011) 7914

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party:**  
**To the Office of Fair Trading**

Dear Sirs,

**Subject: Case No COMP/M.6359 – SAINT GOBAIN/ BUILD CENTER  
Commission decision following a reasoned submission pursuant to Article 4(4) of Council Regulation (EC) No 139/2004<sup>1</sup> for referral of the case to the United Kingdom.**

**Date of filing: 23.09.2011**

**Legal deadline for response of Member States: 14.10.2011**

**Legal deadline for the Commission decision under Article 4(4): 28.10.2011**

## **I. INTRODUCTION**

1. On 23 September 2011, the Commission received by means of a Reasoned Submission a referral request pursuant to Article 4(4) of the Council Regulation (EC) No 139/2004 (the "Merger Regulation") with respect to the transaction cited above. The notifying party requests the operation be examined in its entirety by the competent authorities of the United Kingdom.
2. According to Article 4(4) of the Merger Regulation, before a formal notification has been made to the Commission, the parties to the transaction may request that their transaction be referred in whole or in part from the Commission to the Member State where the concentration may significantly affect competition and which present all the characteristics of a distinct market.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

3. A copy of this Reasoned Submission was transmitted to all Member States on 26 September 2011.
4. By fax of 13 October 2011, the Office of Fair Trading ('OFT') as the competent authority of the United Kingdom informed the Commission that the United Kingdom agrees with the proposed referral.

## **II. THE PARTIES**

5. Compagnie de Saint-Gobain ("Saint-Gobain") is a French multinational group active in the production and sale of materials such as plaster-based products (plasters and plasterboard), insulation products, mortars, abrasives, pipes and municipal castings and flat glass and the distribution of building materials.
6. Saint-Gobain controls Jewson Limited ("Jewson"), which is a chain of general builders merchants in Great Britain active in the distribution of building materials primarily to trade buyers. Jewson also operates some specialist distribution businesses, including Graham (plumbing and heating) Minster (insulation materials) and International Decorative Surfaces (flooring, worktops and surfaces). Saint-Gobain also imports timber into Great Britain through its International Timber business and manufactures and sells roof trusses, joists and floor cassettes, principally to house builders although some of these products are also sold to Jewson.
7. Build Center is a general builders merchant, distributing building materials primarily to trade buyers from branches in 149 locations across Great Britain, trading primarily under the "Build Center" brand (including a number of specialist outlets trading as Glass Center, Ironmongery Center and Timber Center). Build Center currently operates from within Wolseley plc group ("Wolseley"), the current owner of the business.

## **III. THE OPERATION AND CONCENTRATION**

8. The transaction in question involves the acquisition by Jewson of the Build Center business and associated assets pursuant to a business sale agreement entered into by Wolseley and Jewson on 24 July 2011.

## **IV. EU DIMENSION**

9. The undertakings concerned have a combined aggregate worldwide turnover in excess of EUR 5 billion [Saint-Gobain EUR 40 119 million, Build Center EUR [...] <sup>2</sup> million]. Each of the undertakings concerned has an EU-wide turnover in excess of EUR 250 million [Saint-Gobain EUR [...] million, Build Center EUR [...] million]. Although Build Center achieves its entire turnover within the United Kingdom, Saint-Gobain does not achieve more than two-thirds of its EU-wide turnover within any one Member State. The notified operation therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

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<sup>2</sup> Note that Build Center generated total turnover of GBP 316.1 million (EUR 360.4 million) for the financial year to 31 July 2010. However, there are two branches which Saint-Gobain is not acquiring. These will be retained by Wolseley and re-branded Plumb Center. Once the turnover of these branches has been deducted, Build Center's turnover for its most recent financial year is GBP [...] million (EUR [...] million).

## V. ASSESSMENT

10. On the basis of the information submitted in the reasoned submission, the proposed transaction will give rise to horizontally affected markets in relation to the activities of the merged entity in the distribution of building materials in the United Kingdom. The proposed transaction will also result in vertically affected markets in the procurement of building materials.

### *(i) Horizontal markets: distribution of building materials*

#### *A. Relevant product market*

11. Building materials are any material which is used for a construction purpose. Apart from naturally occurring materials (such as clay, sand, wood and rocks), many man-made products are in use, some more and some less processed. The manufacture of building materials is an established industry in many countries and the use of these materials is typically segmented into specific specialty trades, such as carpentry, plumbing, roofing and insulation work.
12. Saint-Gobain submits that there is a market for the distribution of all building materials, regardless of individual product category. This is consistent with the approach in other sectors where both the Commission and the OFT have defined retail product markets by reference to the type of outlet (e.g. grocery stores<sup>3</sup> or DIY sheds<sup>4</sup>).
13. Segmentation of building materials by product has generally only been considered relevant by the Commission<sup>5</sup> in instances where there have been specific overlaps between the parties in relation to particular product groups.<sup>6</sup> Consequently, Saint-Gobain has adopted the approach in the Form RS of considering the overlaps between the parties by looking at the range of products available in a given type of outlet and

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<sup>3</sup> See, for example M.784 *Kesko/Tuko* or the most recent of the OFT's many decisions in the UK grocery sector, *Asda/Netto* (ME/4551/10)

<sup>4</sup> *Home Retail Group plc/Focus (DIY) Ltd* (ME/3427/07)

<sup>5</sup> See cases M.4898 *Saint-Gobain/Maxit*, M.3943 *Saint-Gobain/BPB*, M.3407 *Saint-Gobain/Dahl*, M.3184 *Wolseley/Pinault Bois & Materiaux*, M.3142 *CVC/Traelast*, and M. 1974 *Saint-Gobain/Raab Karcher*.

<sup>6</sup> For example, OFT's decision ME/4609/10 *Anticipated acquisition by Travis Perkins of the BSS Group plc*, at paragraph 29. In that case the parties overlapped in the distribution of P&H products and the OFT focussed its assessment on the retail supply of P&H products and did not consider it appropriate "to narrow the market by individual P&H product type." In *Saint-Gobain/Maxit*, the product market was assessed in the context of the distribution of "heavy building materials," (paragraph 172 where these are defined as including "mortars, plaster-based products, bricks, concrete, draining and water-proof products, fences, portals, building site materials, woods products, tiling, heavy sanitary ware, etc) encompassing a wide range of building materials. However, the parties overlapped in the production of pre-mix mortars. Distribution of mortars was therefore assessed as a separate product group. In *Saint-Gobain/BPB*, the distribution of building materials in the UK was assessed with specific reference to plaster-based products and insulation materials, given that there were vertically affected markets in relation to these products. In that case, the Commission's "narrower market" for the distribution of building materials comprised the distribution of all building materials to professionals, excluding all sales through DIY stores and all sales through specialist stores active in piping, plumbing, sanitary and heating (other than plaster-based products and insulation materials) - paragraph 68.

so (consistent with Commission and OFT precedent) to look separately at different distribution channels.

14. Saint-Gobain argues that an overall market for the distribution of building materials regardless of customer type or distribution channel can be identified. The Commission has previously indicated that narrower relevant product markets could be defined, although the precise definition was ultimately left open.<sup>7</sup> In the *CVC/Traelast* case<sup>8</sup>, the Commission referred to a possible division between (i) the wholesale of building materials; (ii) the retail sale of building materials to professional customers (mainly through builders' merchants) and (iii) the retail sale of building materials to non-professional customers (primarily through DIY stores). Moreover, the Commission has indicated in the past that a distinction could be made between sales to professionals by generalists on the one hand and by specialists on the other hand.
15. These cases suggest that the overall market for the distribution of building materials could be segmented first on the basis of a distinction between wholesale, "professional" retail (i.e. builders merchants) and "non-professional" retail (i.e. DIY stores) and second on the basis of a further subdivision of the builders merchant segment between generalists and specialists. It has been recognised in most or all of the above cases that there is some competition both between the different segments (some customers may switch between builders merchants and DIY stores) and between the generalist and specialist channels.
16. Saint-Gobain does not consider it appropriate to define the relevant product market by reference to product category, customer type or distribution channel. However, when assessing the local unilateral effects to which the proposed transaction may give rise, Saint-Gobain believes that it would be appropriate to focus on the specific distribution channels in which both Build Center and Jewson operate. This would be consistent with the recent OFT decision in *Travis Perkins/BSS*<sup>9</sup> and the Commission decisions identified above.

#### *B. Relevant geographic market*

17. The Commission examined the distribution of building materials in the United Kingdom in the *Saint-Gobain/BPB* case<sup>10</sup>, but left the precise geographic market definition open. In its *Travis Perkins/BSS* decision, the OFT noted that "[...] *catchment areas provide a pragmatic approximation for a candidate market to which a hypothetical monopolist test can be applied. A catchment area is typically defined so as to include the area in which the great majority (for example 80%) of a store's*

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<sup>7</sup> See cases M.3943 *Saint-Gobain/BPB*, M.3142 *CVC/Traelast*, M.3407 *Saint-Gobain/Dahl* and M.1974 *Saint-Gobain/Raab Karcher*.

<sup>8</sup> M.3142 *CVC/Traelast*.

<sup>9</sup> OFT ME/4609/10 *Anticipated acquisition by Travis Perkins of the BSS Group plc*.

<sup>10</sup> Case M.3943 *Saint-Gobain/BPB*, paragraphs 20-22.

*customer is located*".<sup>11</sup> The OFT concluded that "*a 10-mile radial was reasonable as a preliminary filter*".<sup>12</sup>

18. In the context of the current transaction, Saint-Gobain believes that the methodological approach adopted by the OFT is an appropriate starting point. It has therefore used information on Jewson and Build Center stores' catchment areas to inform the appropriate geographic markets delineation. In particular, it has used information regarding customers' location,<sup>13</sup> to identify the area within which 80% of each store's custom is located, as proposed by the OFT.

### *C. Assessment*

19. Saint-Gobain estimates that the overall value of the market for the distribution of all building materials through all channels in Great Britain was approximately GBP [...] billion in 2010 on which Saint-Gobain had sales of approximately GBP [...] million and Build Center approximately GBP [...] million, giving the parties a combined national share of such sales of under 15% at a national level.
20. Considering the distribution channels within which both Saint-Gobain and Build Center are active in Great Britain: (i) Saint-Gobain estimates that the value of sales of building materials in Great Britain through general builders merchants in 2010 was approximately GBP [...] billion on which Jewson had sales of approximately GBP [...] million and Build Center approximately GBP [...] million<sup>14</sup>, giving the parties a combined national share of such sales of under 20%<sup>15</sup>. (ii) Saint-Gobain estimates that the value of sales of glass in Great Britain through specialist glass distributors in 2010 was approximately GBP [...] million on which Saint-Gobain (through Solaglas) had sales of approximately GBP [...] million and Build Center approximately GBP [...] million, giving the parties a combined national share of such sales of under 15%.
21. As such, there appears to be a horizontally affected market at a national level in relation to the Parties' general builders merchants operations. Moreover, given that competition between general builders merchants operates primarily at local level, the proposed transaction appears to give rise to a series of locally affected markets within Great Britain on the basis that the vast majority of the Build Center branches have at least one Jewson branch within 15 miles.<sup>16</sup>

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<sup>11</sup> OFT ME/4609/10 *Anticipated acquisition by Travis Perkins of the BSS Group plc*, paragraph 37.

<sup>12</sup> OFT ME/4609/10, paragraph 45.

<sup>13</sup> The data is based on known invoice address data with a valid postcode for all credit account customers and Trade Cash Card customers with purchases over £1, where the postcode is located within 30 miles from each store.

<sup>14</sup> This figure represents the sales by Build Center's 122 general builders merchant branches. It excludes sales of Glass Center, Ironmongery Center and Timber Center.

<sup>15</sup> Form RS paragraph 2.48.

<sup>16</sup> Form RS paragraph 2.49.

*(ii) Vertical markets: procurement of building materials*

22. Saint-Gobain is active on a number of markets which are upstream to the distribution of building materials. These are plaster-based products, municipal castings, insulation materials, mortar, abrasives, pipes and flat glass. In respect of all of these products, Build Center's share of purchases (on a national basis) is less than 25%.
23. However, in respect of two products – plaster-based products and municipal castings – Saint-Gobain's upstream market share (on a national basis) exceeds 25%. Consequently, there appear to be vertically affected markets in the United Kingdom for the procurement of plaster-based products and municipal castings. This approach follows that used by the Commission in its assessment of Saint-Gobain's acquisitions of BPB plc<sup>17</sup> and Meyer International<sup>18</sup> which considered (and cleared) transactions involving vertically affected markets in the United Kingdom for plaster-based products and municipal castings.

## **VI. REFERRAL**

24. The Commission Notice on case referral in respect of concentrations<sup>19</sup> ('the Notice') indicates that, in order for a referral to be made by the Commission to one or more Member States pursuant to Articles 4(4), two legal requirements must be fulfilled: (i) there must be indications that the concentration may significantly affect competition in a market or markets; (ii) the market(s) in question must be within a Member State and present all the characteristics of a distinct market.
25. In the light of the foregoing, the Commission considers, on the basis of the information provided by the notifying party in the Reasoned Submission, that the case meets the legal requirements set out in Article 4(4) of the Merger Regulation in that the concentration may significantly affect competition in a number of markets within the United Kingdom which present all the characteristics of distinct markets. The Commission further notes that, according to the Saint-Gobain, there is no overlap between the parties' activities outside the United Kingdom.
26. The guiding principles on the referral of cases set out in the Notice further provide that regard should be had to (i) the specific characteristics of the case; (ii) the tools and expertise available to the authority and (iii) the likely locus of any impact on competition resulting from the concentration. The application of these principles suggests that the United Kingdom competition authorities would be best suited to review the proposed transaction.
27. In this first instance, the markets affected by the proposed transaction appear to be predominantly local in scope and/or closely inter-related to markets that are local in scope. In addition, the Commission has referred a series of transactions that have affected the United Kingdom construction materials sector to the OFT, recognising that the OFT was best placed to investigate such transactions.

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<sup>17</sup> Case M.3943 *Saint-Gobain/BPB*.

<sup>18</sup> Case M.1873 *Saint-Gobain/Meyer*.

<sup>19</sup> OJ C 56, 5.3.2005, p. 2.

28. The Commission considers, on the basis of the information submitted in the Reasoned Submission, that the principal impact on competition of the proposed transaction in the present case is liable to take place on distinct markets in the United Kingdom, and that the requested referral would be consistent with point 20 of the Notice.

## **VII. CONCLUSION**

29. For the above reasons, and given that the United Kingdom has expressed its agreement, the Commission has decided to refer the transaction in its entirety to be examined by the Office of Fair Trading of the United Kingdom. This decision is adopted in application of Article 4(4) of the Merger Regulation.



*For the Commission*  
*(signed)*  
*Alexander ITALIANER*  
*Director General*