CLIFFORD

CHANCE

LIMITED LIABILITY PARTNERSHIP

NON-CONFIDENTIAL VERSION

COMPLETED MERGER INQUIRY

BUCHER INDUSTRIES AG ("BUCHER")

JOHNSTON SWEEPERS LIMITED ("JOHNSTON")

Main Submission

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1. EXECUTIVE SUMMARY

1.1 Bucher has been looking at three strategies for its municipal business which has not achieved the profitability targets set for the group as a whole. [CONFIDENTIAL; BUSINESS SECRETS]. When the Johnston acquisition became possible it was quickly identified as being complementary to the Bucher business and having the necessary cost-saving potential.

1.2 The transaction has a strong efficiency rationale that will have pro-competitive implications. This picture is supported by the Bucher Board Paper (**"the Board Paper"**) of February 3rd 2005 which provides evidence for the efficiency rationale for the transaction, both in general terms and in the specific sweeper segment.

1.3 In particular, the transaction is driven by the prospect of achieving efficiencies through:

- [CONFIDENTIAL; BUSINESS SECRETS].
- Savings in cost of component sourcing due to purchase of standardised components for the production of kits and associated purchasing efficiencies.
- [CONFIDENTIAL; BUSINESS SECRETS].
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- [CONFIDENTIAL; BUSINESS SECRETS].

1.4 In addition there are merger efficiency rationales that lie outside the area of truck mounted sweepers or compact sweepers, in particular:

- [CONFIDENTIAL; BUSINESS SECRETS].
- The more efficient distribution of Bucher winter maintenance and airport vehicles in the UK and airport vehicles in Australia through existing Johnston distribution.
- [CONFIDENTIAL; BUSINESS SECRETS].
- The opening of a US and Canadian distribution outlet through the contract that Johnston has with Madvac (formerly a Johnston group company but now a separate company).
- [CONFIDENTIAL; BUSINESS SECRETS].

1.5 The transaction will not lead to any appreciable reduction in actual competition in the UK market.

- Current supplies in the UK by Bucher amounted to only [5 - 10] ordered units of truck mounted sweepers in 2004, out of total UK sales of truck mounted sweepers of [300 - 400] units, amounting to less than [1 - 5]% of UK sales in this segment. Of those [5 - 10] units only [1 - 5] was/were delivered in 2004 with the remainder still awaiting delivery.

- Bucher did not sell any compact sweepers into the UK in 2004 and therefore does not currently compete in any meaningful way with the acquired Johnston business.

- Bucher's position in the UK market has been declining since the termination of its distribution agreement by Jack Allen in 2003, [CONFIDENTIAL; BUSINESS SECRETS] in the 3 year strategic plans and budgets:

	3 Year Plan (Units)	Budget (Units)	Actual Sales (Units)
2002			
Compact	[CONFIDENTIAL; BUSINESS SECRETS]	[CONFIDENTIAL; BUSINESS SECRETS]	**[10-20]**
Mid-size			**[0-10]**
Truck M.			**[20-30]**
2003			
Compact	[CONFIDENTIAL; BUSINESS SECRETS]	[CONFIDENTIAL; BUSINESS SECRETS]	**[0-10]**
Mid-size			**[0-10**
Truck M.			**[0-10]**
2004			
Compact	[CONFIDENTIAL; BUSINESS SECRETS]	[CONFIDENTIAL; BUSINESS SECRETS]	**[0-10]**
Mid-size			**[0-10]**
Truck M.			**[0-10]**

- Bucher lacks a recognised brand in the UK market as its machines were previously marketed under the name of its dealer Jack Allen.

- Bucher has developed no specific action plans for the UK beyond the aspirations set out in the 2004 3 year strategic review. The 2004/2005 budgeting process did not authorise or foresee any material new entry into the UK.

- Bucher is not currently in any negotiations with a potential UK distributor, and its existing service agent (Greenman) does not have a national distribution capability.

1.6 On a forward looking basis, Bucher does not see itself as a credible entrant into the UK market, in absolute or relative terms.

- Although Bucher has a range of products in this sector, it does not have UK distribution capabilities, which are essential for expansion.
- There are other firms – notably Faun, Schmidt and Elgin/Ravo - who have a product range which is essentially equivalent to that of Bucher, and who have access to distribution facilities in the UK, either through their own distribution (Faun, Schmidt) or an established distributor (Elgin/Ravo).

1.7 The minimal sales of Bucher in the UK, its historical inability to enter the UK on any appreciable scale, as well as the presence of other more credible entrants to the UK, mean that there is no appreciable prospect of the transaction leading to a substantial lessening of competition (SLC) in the UK.

1.8 This absence of any SLC, combined with the pro-competitive efficiencies of the transaction suggests that the overall effect of the transaction is pro-competitive.

2. THE REFERENCE

2.1 In its reference to the Competition Commission, the OFT identified possible competition issues in the supply of truck-mounted sweepers in the UK. Without going further into the appropriate market definition for sweepers, it should be noted that there are elements of demand-substitution between different sweeper models as a result of fleet purchasers seeking to satisfy a sweeping requirement with different fleet combinations as well as elements of supply-substitution especially from compact sweepers to truck-mounted sweepers where the latter do not require the production of a chassis. However, for the purpose of this merger reference, it is not necessary to define the product market in any great detail, as even on the narrow definition adopted by the OFT, the merger does not give rise to a substantial lessening of competition in the UK.

2.2 The OFT decision leaves the geographic market definition open but suggests that there is evidence to the effect that the market is no wider than the UK. For the purpose of this inquiry, Bucher accepts the OFT's conclusions on the geographic scope of competition and would like to stress the following factors:

- In each European market, the national producers or other producers with significant national presence will tend to have a higher share of the national market.
- Customers require a national service and maintenance network which will tend to favour the established producers.

- Distributors and producers do not operate on a pan-European level and are generally focussed on the national conditions of competition in the countries in which they operate.
- Tenders, even under the EU procurement rules, tend to have a national focus with specific requirements for each national market.
- Homologation requirements have a tendency to favour the national producer as there is no European standardisation of such requirements.
- Exchange rate risks can contribute to uncertainty over time when making longer term investments, in particular in distribution capability.
- The unconditional clearance decisions issued in relation to this transaction by the Spanish and German authorities found there to be a national market in those countries.

3. TRANSACTION HAS A PRO-COMPETITIVE RATIONALE

3.1 The transaction has a strong efficiency rationale likely, if anything, to lead to pro-competitive effects. This is evidenced by the Board Paper which contains an overview of the global municipal vehicle sector and which comments in detail on the efficiencies that are expected from the transaction.

3.2 The mission statement in 1.1 of the Board Paper puts the focus of the transaction on gaining access to business from new markets so that the increased total output of the merged entity will in turn lead to cost-leadership. [CONFIDENTIAL; BUSINESS SECRETS]. In addition, existing distribution facilities outside Europe and to some extent in the UK will be better utilised with strong products from both ranges being given more effective distribution where this is currently lacking.

3.3 The Board Paper clearly states the market context for this pressure to move towards [CONFIDENTIAL; BUSINESS SECRETS], a move already undertaken by Bucher's competitors Schmidt and Elgin/Ravo. Schmidt already has [CONFIDENTIAL; BUSINESS SECRETS] production facilities in Eastern Europe, and Elgin/Ravo sources its key components from Eastern Europe. This pressure arises from the essentially static nature of the municipal vehicle sector combined with significant pressure on the budgets of the municipalities resulting in a downward pricing trend (see paragraph 2.1 of the Board Paper).

3.4 The pressure on costs is exacerbated by the fact that the sector as a whole does not exhibit high profitability and therefore margins can only be sustained or increased through aggressive cost reduction on an ongoing basis.

3.5 [CONFIDENTIAL; BUSINESS SECRETS].

3.6 [CONFIDENTIAL; BUSINESS SECRETS].

3.7 [CONFIDENTIAL; BUSINESS SECRETS].

3.8 Further efficiencies are expected through the standardisation of components and more efficient purchasing policies.

3.9 Bucher expects the total cost-savings post-transaction to amount to CHF [CONFIDENTIAL; BUSINESS SECRETS] in the period 2005-2007 (see paragraph 1.3 of the Board Paper).

3.10 The Board Paper envisages distribution efficiencies as a result of using a dual-brand strategy which takes advantage of the existing distribution networks in each individual territory within Europe. [CONFIDENTIAL; BUSINESS SECRETS].

3.11 [CONFIDENTIAL; BUSINESS SECRETS].

3.12 The rationale for the merger is summarised in the board minutes of the Bucher board (Verwaltungsrat) meeting of March 11th 2005 as follows:

> *"In sales we foresee a two-brand strategy (Bucher Schörling and Johnston) via separate distribution networks.* [CONFIDENTIAL; BUSINESS SECRETS]. *The opening of the US market for sweepers is secured through the distribution agreement with Madvac Inc, a former subsidiary of Johnston. […]"* (office translation)

4. BUCHER HAS WHOLLY INSIGNIFICANT SALES INTO THE UK

4.1 Bucher was present in the UK until around 2003 when its then distributor Jack Allen terminated the distribution agreement with Bucher. Bucher believes that the main reason for termination by Jack Allen was that the new owners of that company did not consider the arrangement to generate sufficient profit to justify an ongoing relationship. Jack Allen has since exited UK distribution of sweepers and is no longer a potential distributor for Bucher.

4.2 Bucher has not been actively looking for a new UK distributor since then as it had other more immediate priorities and investment into the UK market would have required significant management time and would also have had immediate negative repercussions in financial terms - neither of which was justifiable to Bucher in the light of current price levels and its own recent experience.

4.3 Even when Bucher had an effective UK distributor in the form of Jack Allen, its presence in the UK remained limited. UK sales of compact and mid-size sweepers reached [20 - 30] units and [10 - 20] units respectively at their peak in 2000. UK truck mounted sweeper sales peaked in 1997 at [30 - 40] units. Since the termination of the distribution agreement with Bucher by Jack Allen, the annual sales of Bucher have fallen to only [5 - 10] units of truck-mounted sweepers in 2004 amounting to less than [1 - 5]% UK truck-mounted sweeper segment as defined by the OFT. Only [1 - 5] unit(s) was/were actually delivered in 2004 with the remainder still awaiting delivery. Bucher did not sell any compact or mid-size sweepers in the UK in 2004.

4.4 Bucher does not consider itself active in the UK market - but has merely responded passively to [1 - 5] order(s) in 2004 through Greenman, its UK service agent. In the absence of the Johnston transaction this situation was unlikely to change in the short to medium term.

5. BUCHER HAS LITTLE ABILITY TO ENTER THE UK

5.1 The UK sweeper sector has a number of factors which determine whether an entrant will be successful or fail:

- The most important factor is to have a distribution system which is sufficiently close to the customer to understand their needs and to influence the specification of tenders before that tender is even issued.
- An established producer such as Scarab or Johnston will have its own distribution and servicing network for its sweepers. Other players will use a national distributor.
- Such a distribution system would have to be national in reach, which can either be achieved through a national distributor or through a network of regional distributors.
- The distribution network needs to be close to the customers who are the decision markers in the municipalities or the contractors. In addition, product demonstrations are crucial to the sales process and the ability to demonstrate a range of machines is a necessary element.
- Furthermore, a track-record is necessary in terms of servicing and spare parts as it is important for sweepers to be repaired quickly and efficiently when they break down. Decision makers are reluctant to take risks on the parts and servicing side when purchasing a sweeper. A national servicing and parts network is therefore essential.

5.2 At present Bucher does not have access to a distributor that would provide it with a credible UK distribution network that would meet the above requirements. Its UK service agent Greenman does not have UK-wide distribution capability.

6. OTHERS ARE MORE CREDIBLE ENTRANTS IN THE UK

6.1 The OFT identified a potential competition issue in truck-mounted sweepers in the UK as a result of the removal of Bucher as a potential entrant. This analysis not only fails to take into account the fact that Bucher is not a credible entrant, but also that there are other potential entrants who are much better placed than Bucher. Specifically rivals such as Schmidt, Elgin/Ravo and Faun have existing truck-mounted sweeper systems but also benefit from existing distribution in the UK of related products that are sold to the same end customers.

6.2 The primary source of competition for Johnston in the truck-mounted segment is from the other established player Scarab which could expand output through its existing distribution capability. This source of actual competition is unaffected by this transaction.

6.3 A potential further source of competition is from those players who both have truck-mounted sweeper systems outside the UK and also have existing distribution for compact or mid-size sweepers (or for related products such as refuse trucks) in the UK which could easily accommodate truck-mounted sweepers. The latter includes Schmidt who produces and sells truck-mounted sweepers in Germany and who has its own UK distribution system for compact sweepers and winter service equipment which was used to distribute two truck-mounted sweepers in 2003. Equally, Faun has production and distribution of truck-mounted sweepers in Germany and currently distributes its own refuse trucks in the UK. Tennant, a producer of indoor sweeping equipment has recently expanded into outdoor sweepers and is now offering a truck-mounted sweeper.

6.4 The US producer Elgin/Ravo (part of the US conglomerate Federal Signal) has a truck-mounted sweeper product in the US which it is now selling in the UK through the distribution network of Douglas, an established UK distributor for aircraft-handling equipment with a sales-force that is largely ex-Johnston. Two articles reviewing Elgin/Ravo's entrance into the UK market are attached to this submission.

6.5 Also, on a prospective basis, the Chinese producer Zoomlion has a truck-mounted sweeper for which it has recently set up a UK distribution.

6.6 Although Bucher produces truck-mounted sweepers as well as compact sweepers, it is unable to distribute those effectively in the UK due to the absence of a distribution network. The only way to overcome this impediment is to team up with a national distributor, which Bucher has not been able to do since the termination of the Jack Allen agreement in 2003.

7. TRANSACTION HAS NO CONCEIVABLE SLC

7.1 The transaction is motivated by a strong efficiency rationale across all types of municipal vehicles including compact sweepers and truck-mounted sweepers. This rationale involves [CONFIDENTIAL; BUSINESS SECRETS] standardisation of components [CONFIDENTIAL; BUSINESS SECRETS]. This is enhanced by purchasing efficiencies resulting from greater standardisation [CONFIDENTIAL; BUSINESS SECRETS].

7.2 The transaction does not result in a substantial lessening of competition in the UK as Bucher is not active to any material extent in the UK, nor does it represent a likely or credible entrant on any material scale. Bucher does not consider itself active in the UK but merely responds to sporadic requests from its UK service agent Greenman resulting in only [5 - 10] unit sales of which only [1 - 5] unit(s) was/were delivered in 2004.

7.3 Moreover, there are other suppliers such as Schmidt, Elgin/Ravo and Faun who have existing distribution in the UK for related products to the same customers who represent much more credible entrants into the UK truck-mounted sweeper segment.

7.4 This transaction does not result in any appreciable lessening of actual or potential competition, nor does it even conceivably lead to a substantial lessening of competition within the meaning of the Enterprise Act 2002.

Bucher Industries AG
11 May 2005